

**CONTRACT FOR SERVICES
THE CITY OF KANSAS CITY, MISSOURI**

CONTRACT NO. EV00000846

TITLE/DESCRIPTION: Curbside Refuse Collection and Disposal / Bulky-Express Service

THIS Contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("CITY"), and TOWN AND COUNTRY DISPOSAL OF WESTERN MISSOURI, INC. ("CONTRACTOR").

Sec. 1. Scope of Services.

- (a) CONTRACTOR shall perform the work and supply the equipment and services specified in **ATTACHMENT A, SCOPE OF SERVICES**, and elsewhere within the body of this Contract and its Attachments.

Sec. 2. Initial Term of Contract and Additional Periods.

- (a) Initial Term. The initial term of this Contract shall begin on **May 1, 2010**, and shall end on **April 30, 2015**. The payment of any compensation due under this Contract for any year within the initial term provided for herein is contingent upon the annual appropriation of funds by the City Council of the CITY. The failure of the City Council to appropriate funds for this purpose shall relieve all parties from any responsibility under this Contract.
- (b) Renewal Terms. The Director of Public Works is authorized to enter into one or more renewals of this Contract with CONTRACTOR to extend the term of this Contract for up to five (5) additional one (1) year periods. Not less than ninety (90) days prior to the expiration date of the initial term or any renewal term, CITY shall notify CONTRACTOR in writing of its intent to exercise any renewal option or allow the Contract to expire.
- (c) Transition Term. Notwithstanding the expiration of the initial term or any subsequent term or all options to renew, CONTRACTOR and CITY shall continue performance under this Contract until the CITY has a new contract in place with either CONTRACTOR or another provider or until the CITY terminates the Contract. In no event shall this transition term exceed ninety (90) calendar days unless CITY and CONTRACTOR mutually agree otherwise.

Sec. 3. Compensation.

- (a) The maximum amount the CITY shall pay CONTRACTOR under this Contract shall not exceed Five Million Eight Hundred Forty-One Thousand Seven Hundred Six Dollars and Eighty Cents (**\$5,841,706.80**) for the first year of the Initial Term (May 1, 2010 through April 30, 2011). This sum represents a rate of \$5.15 per dwelling unit not otherwise defined as an exempt dwelling unit, per month, (the "unit price") with an eligible dwelling unit count of 94,526 for the period of May 1, 2010 through April 30, 2011. The maximum amount for any subsequent year within the Initial Term and any Renewal Term for which funds have been appropriated shall be determined as follows: City shall determine the eligible dwelling unit count by taking the then existing count as established by City and adding to it the difference between any new eligible dwelling units that have been constructed and approved for occupancy and any eligible dwelling units which have been demolished or otherwise determined uninhabitable during the twelve-month period immediately preceding the contract year which is to ensue (the "updated count"). The updated count shall be multiplied by the then existing unit price as adjusted pursuant to the Refuse Rate Index ("RRI") which shall be calculated in accordance with **ATTACHMENT B, REFUSE RATE INDEX**. The weighted percentage change as determined in accordance with ATTACHMENT B shall be based on the twelve-month period from December to December immediately preceding the contract year which is to ensue. Thus, a unit price adjustment occurring as of May 1, 2011 would be based on the weighted percentage change in the indices from December 2009 to December 2010, and so on. On or before March 15 of each year this Contract remains in effect, CONTRACTOR shall provide to CITY, in the format required by City, all financial information for the services performed under this Contract during the relevant December to December period. CITY shall notify CONTRACTOR of the updated count and unit price by May 1 of each year. In the event CONTRACTOR fails to provide any information needed by CITY to determine the appropriate RRI within the time allotted herein, CONTRACTOR shall not be entitled to any adjustment to the unit price.
- (b) The updated count shall occur on an annual basis as provided in subsection (a) above, and there shall be no month-to-month adjustment except upon circumstances in which both parties mutually agree that circumstances are of sufficient magnitude as to warrant an intervening adjustment. In the event CONTRACTOR disputes the updated count annually provided by CITY, CITY shall identify the basis for the count to CONTRACTOR and CONTRACTOR shall provide to CITY any information which it believes CITY overlooked or misconstrued in establishing the updated count. The parties shall attempt in good faith to reach an agreement on the updated count. In the event they are unable to do so prior to May 1 of the contract year which is to ensue, the count as established by CITY shall control unless and until such time as CONTRACTOR provides, at its expense, an actual, physical count of the eligible dwelling units

within the areas to be served by it under this Contract, such count to be performed by an independent third-party and upon terms agreeable to CITY and CONTRACTOR.

- (c) CONTRACTOR shall bill the City, in a form acceptable to the City, on the following basis: Monthly. CITY shall pay any invoice determined eligible for payment as provided in Section 5 of this Contract, within thirty (30) days of receipt.
- (d) CITY may withhold from any monies due CONTRACTOR any administrative charges which may be due as provided and in the amounts set forth in **ATTACHMENT C, UNRESOLVED COMPLAINTS**. In the alternative, CITY may elect to separately invoice CONTRACTOR for any administrative charges which may be due during any given month of this Contract and CONTRACTOR shall remit payment of such invoice to CITY within thirty (30) days of the date of the invoice.
- (e) CITY shall not be liable to CONTRACTOR for any amounts which may be due and payable CONTRACTOR by any third party electing to use "Bulky-Express" service as outlined in **ATTACHMENT D, BULKY-EXPRESS**.
- (f) Should CITY elect to modify its residential refuse collection and disposal program at a future date by adding regularly scheduled bulky item pick-up or leaf and brush pick-up services under this Contract, implementing the utilization of refuse carts in one or more areas of the City in which CONTRACTOR provides refuse collection and disposal services, or by combining any portions of the above services, any additional compensation due CONTRACTOR shall be based on the monthly prices submitted by CONTRACTOR in response to the RFP No. EV00000846 as adjusted pursuant to the RRI. CONTRACTOR hereby agrees that it shall, during the Initial Term and any Renewal Term of this Contract, implement any additional curbside collection services requested by CITY provided that CITY shall provide CONTRACTOR no less than six (6) months written notice of any such modifications to the program, provided however that nothing herein shall obligate CITY to utilize CONTRACTOR as its provider of additional curbside collection services.
- (g) CITY'S Director of Public Works has the authority to provide for the collection of refuse from exempt dwelling units when, in his judgment, such collection has become necessary for the preservation of the public health or safety. In such event, any exempt dwelling unit to which service is extended shall be considered an eligible dwelling unit for the balance of the Initial Term and any Renewal Term. CITY shall confer with CONTRACTOR for purposes of determining whether CONTRACTOR is ready, able and willing to assume responsibility for collection from any dwelling unit within the North and South Zones that is

rendered an eligible dwelling unit hereunder, provided however that CONTRACTOR shall not be obligated to provide those expanded services under this Contract until such date as the CITY and CONTRACTOR mutually agree such expanded services shall commence. Any expanded services shall be subject in all regards to the terms and conditions of this Contract except as specifically provided for herein. Notwithstanding the provisions of paragraph (a) of this Section 3, the unit price with regard to the dwelling units rendered eligible under this paragraph (g) shall be determined and mutually agreed upon by CITY and CONTRACTOR. Such rate shall thereafter be subject to adjustment in accordance with ATTACHMENT B.

Sec. 4. Effective Date of Contract.

- (a) Notwithstanding Section 2 of this Contract, neither party has any obligation under this Contract until the CITY'S Director of Finance has certified in writing that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment will be made, each sufficient to meet the obligation incurred hereunder.

Sec. 5. Invoices.

- (a) CONTRACTOR shall submit to CITY a request for payment (hereinafter "Invoice") for services performed in sufficient detail for the CITY to determine that the amount CONTRACTOR is requesting is in fact due and payable.
- (b) CITY shall not pay any Invoice from CONTRACTOR unless CONTRACTOR is in compliance with, and not in material breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by CITY as a result of a material breach or default by CONTRACTOR, CITY may withhold payment(s) to CONTRACTOR for the purpose of set off until such time as the exact amount of damages due to CITY from CONTRACTOR may be determined.
- (c) CITY shall not process CONTRACTOR's Invoice unless CONTRACTOR's Invoice is in proper form, correctly computed, and is approved by CITY as payable under the terms of this Contract.
- (d) CITY is not liable for any obligation incurred by CONTRACTOR except as approved under the provisions of this Contract.
- (e) CONTRACTOR is required to meet MBE/WBE goals for this Contract. CONTRACTOR shall not submit an Invoice to the City unless CONTRACTOR's Invoice is accompanied by a copy of the most recent 00485.01 M/WBE Monthly Utilization Report submitted by CONTRACTOR to the City's Human Relations Department. CONTRACTOR shall remain current on CONTRACTOR's filing of

00485.01 M/WBE Monthly Utilization Reports. CITY shall not pay CONTRACTOR's Invoice unless CONTRACTOR is current on CONTRACTOR's filing of 00485.01 M/WBE Monthly Utilization Reports.

Sec. 6. Representations and Warranties of CONTRACTOR. CONTRACTOR hereby represents and warrants to the CITY the following:

- (a) CONTRACTOR is in good standing under the laws of the state of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on CONTRACTOR's ability to perform this Contract in accordance with its terms.
- (b) The execution, delivery and performance by CONTRACTOR of this Contract have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of CONTRACTOR's board of directors; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to CONTRACTOR or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which CONTRACTOR is a party or by which it or its properties may be bound or affected.
- (c) CONTRACTOR shall not enter into any contract for the services to CITY that purports to grant a security interest or right of repossession to any person or entity respecting the services, or any portions thereof or chattels placed thereon.
- (d) There is no litigation, proceeding or other investigation pending or, to the knowledge of CONTRACTOR, threatened against CONTRACTOR which would prevent consummation of the transaction contemplated by this Contract or would have a materially adverse effect on CONTRACTOR.

Sec. 7. Survival of the Representations, Warranties and Covenants. All representations, warranties and covenants expressed herein shall survive the execution of this Contract for the benefit of the parties hereto.

Sec. 8. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and CONTRACTOR: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum nonconveniens as an objection to the location of any litigation.

Sec. 9. Termination for Convenience. CITY may, at any time upon one hundred eighty (180) days written notice to CONTRACTOR specifying the effective date of termination, terminate this Contract, in whole or in part.

Sec. 10. Default and Remedies.

- (a) If CONTRACTOR shall be in material default or breach of any material provision of this Contract, CITY may terminate this Contract, suspend CITY's performance, withhold payment or invoke any other legal or equitable remedy after giving CONTRACTOR ten (10) days written notice and opportunity to cure such default or breach.
- (b) If CITY shall be in material default or breach of any material provision of this Contract, CONTRACTOR may terminate this contract or suspend CONTRACTOR's performance after giving CITY ten (10) days written notice and opportunity to cure such default or breach.

Sec. 11. Waiver. Waiver by CITY of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of CITY, and forbearance or indulgence by CITY in any regard whatsoever shall not constitute a waiver of same to be performed by CONTRACTOR to which the same may apply and, until complete performance by CONTRACTOR of the term, covenant or condition, CITY shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 12. Acceptance. No payment made under this Contract shall be proof of satisfactory performance of the Contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory services.

Sec. 13. Records.

- (a) For purposes of this Section:
 - 1. "CITY" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.
 - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.
- (b) CONTRACTOR shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. CITY shall have a right to examine or audit all Records,

and CONTRACTOR shall provide access to CITY of all Records upon ten (10) days written notice from the CITY.

1. The books, documents and records of CONTRACTOR in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Human Relations and the City department administering this Contract within ten (10) days after the written request is made.

Sec. 14. Affirmative Action. CONTRACTOR shall establish and maintain for the term of this Contract an Affirmative Action Program in accordance with the provisions of Chapter 38 of City's Code, the rules and regulations relating to those Sections, and any additions or amendments thereto. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin, sex, disability, age, sexual orientation or gender identity, in a manner prohibited by Chapter 38 of City's Code. CITY has the right to take action as directed by City's Human Relations Division to enforce this provision. If CONTRACTOR fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and CONTRACTOR may be declared ineligible for any further Contracts funded by CITY for a period of one (1) year.

Sec. 15. Tax Compliance. CONTRACTOR shall provide proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a precondition to the CITY making the first payment under this Contract. CONTRACTOR also shall submit to the CITY proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a condition precedent to the CITY making final payment under the Contract.

Sec. 16. Buy American Preference. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY Contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 17. Notices. All notices to be given hereunder shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Contract from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the CITY: City of Kansas City, Missouri
Public Works Department
414 East 12th Street, 20th Floor
Kansas City, Missouri 64106
Attention: Stan Harris

Telephone: (816) 513-2734

Facsimile: (816) 513-2615

With a copy to: City of Kansas City, Missouri
Public Works Department
414 East 12th Street, 23rd Floor
Kansas City, Missouri 64106
Attention: Michael Shaw
Telephone: (816) 513-3484
Facsimile: (816) 513-1418

If to the CONTRACTOR: Town and Country Disposal
P.O. Box #10
23201 East 235th Street
Harrisonville, Missouri 64701
Attention: Laddie Pesek, Jr.
Telephone: (816) 380-5595
Facsimile: (816) 380-2468

Sec. 18. General Indemnification.

- (a) For purposes of this Section only, the following terms shall have the meanings listed:
1. Claims means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the CITY in the enforcement of this indemnity obligation.
 2. CONTRACTOR's Agents means CONTRACTOR's officers, employees, subcontractors, successors, assigns, invitees, and other agents.
 3. CITY means CITY, its Agencies, its agents, officials, officers and employees.
- (b) CONTRACTOR's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.
- (c) CONTRACTOR shall defend, indemnify and hold harmless CITY from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by CONTRACTOR or CONTRACTOR's Agents, regardless of whether or not caused in part by any act or omission, including negligence,

of CITY. CONTRACTOR is not obligated under this Section to indemnify CITY for the sole negligence of CITY.

Sec. 19. Insurance.

- (a) CONTRACTOR shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. CONTRACTOR must have:
 - 1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Contractual Liability
 - c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000.
 - d. No Contractual Liability Limitation Endorsement
 - e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
 - 2. Workers' Compensation Insurance and Employers Liability Policies as required by Missouri law.
 - 3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by CONTRACTOR.
 - 4. If this Contract is for professional services, CONTRACTOR shall obtain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
- (b) All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the CITY ten (10) days written notice of cancellation in the event that the cancellation is for CONTRACTOR's nonpayment of premiums and thirty (30) days written notice of cancellation to CITY for all other reasons of cancellation.
- (c) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and

employees, while acting within the scope of their authority, will be named as additional insureds for the CONTRACTOR'S services performed under this Contract. CONTRACTOR shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.

- (d) All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.
- (e) Regardless of any approval by CITY, CONTRACTOR shall maintain the required insurance coverage in force at all times during the term of this Contract. CONTRACTOR's failure to maintain the required insurance coverage will not relieve CONTRACTOR of its contractual obligation to indemnify the CITY pursuant to this Section of this Contract. In the event CONTRACTOR fails to maintain the required insurance coverage in effect, CITY may declare CONTRACTOR in default.

Sec. 20. Interpretation of the Contract.

- (a) CITY selected CONTRACTOR through a negotiated procurement process rather than an Invitation for Bids (IFB) solicitation. Unlike the IFB, this process allows the CITY and CONTRACTOR to discuss and negotiate a contract at arms length prior to entering a final contract that is acceptable to both the CITY and the CONTRACTOR. After negotiation and discussion, CONTRACTOR and CITY have incorporated multiple documents into this Contract and the meaning of some of the words used in the Contract may be uncertain, incomplete or duplicative and the Contract may promise something at one place and take that promise away at another. In sum, the Contract may contain words and provisions that are susceptible of more than one meaning so that reasonable persons of average intelligence may fairly and honestly differ in their construction of the words and provisions. It is the intent of the CITY and the CONTRACTOR that the CITY's taxpayers receive the benefit or advantage in the construction and interpretation of this Contract regardless of the normal judicial rules of contract construction, even if the construction and interpretation of the Contract will cost the CONTRACTOR more money and time. CITY and CONTRACTOR agree that CITY's Director of Public Works shall resolve all disagreements as to the meaning of this Contract or any ambiguity in this Contract. The decision of CITY's Director of Public Works shall be presumed final and conclusive if the Director of Public Works acted in good faith. In the event CONTRACTOR declines to accept the decision of CITY'S Director of Public Works, CITY and CONTRACTOR shall submit the matter to mediation, the costs of which shall be shared equally. CITY and CONTRACTOR shall confer in good faith for the

purposes of selecting a mediator that is mutually acceptable to both parties and establishing the rules under which the mediation shall be conducted. The mediation provided by this section shall be a condition precedent to the initiation or pursuit of any other lawful means of resolving the dispute except in any circumstance wherein the parties have been unable, for a period exceeding thirty calendar days, to reach mutual agreement for purposes of selecting a mediator and establishing the rules under which the mediation is to be conducted.

- (b) CONTRACTOR acknowledges and agrees that the CITY has provided CONTRACTOR with an opportunity to have CONTRACTOR's attorney review and advise CONTRACTOR on the Contract and any potential ambiguities or areas of disagreement and the potential adverse legal consequences of CONTRACTOR agreeing to this Section as well as the entire Contract. CONTRACTOR certifies that CONTRACTOR has provided the CITY written notice of all ambiguities, conflicts, errors or discrepancies that it has discovered in the Contract and the written resolution thereof by the CITY as embodied in this final Contract is acceptable to CONTRACTOR.
- (c) CONTRACTOR certifies that CONTRACTOR has either (1) waived its right to have CONTRACTOR's attorney review this Section and Contract; or (2) CONTRACTOR has consulted with an attorney on this Section and Contract.
- (d) CONTRACTOR knowingly and voluntarily agrees to this Section and the entire Contract. CONTRACTOR certifies that this Contract was not procured by fraud, duress or undue influence.

Sec. 21. Contract Execution. This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract shall be effective upon the execution of counterparts by both parties, notwithstanding that both parties may not sign the same counterpart. The parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Contract and shall be acceptable in a court of law.

Sec. 22. Assignment and Subcontracting. CONTRACTOR shall not subcontract, assign or transfer any part or all of CONTRACTOR's obligations or interests without CITY's prior approval. If CONTRACTOR shall subcontract, assign, or transfer any part of CONTRACTOR's interests or obligations under this Contract without the prior approval of CITY, it shall constitute a breach of this Contract. As of the issuance of this Contract, CONTRACTOR is authorized to subcontract with Jim's Disposal Service, LLC.

Sec. 23. Professional Services – Conflict of Interest Certification. If this Contract is for professional services other than for medical doctors or appraisers, CONTRACTOR certifies that CONTRACTOR is not an expert witness for any party in litigation against the CITY at the time of the issuance of this Contract.

Sec. 24. Minority and Women's Business Enterprises. CITY is committed to ensuring that minority and women's business enterprises (M/WBE) participate to the maximum extent possible in the performance of CITY contracts. CONTRACTOR agrees to comply with all requirements of CITY's Minority and Women's Business Enterprise Program as enacted in CITY's Code Sections 38-84 through 38-100.8 and as hereinafter amended. CONTRACTOR has proposed to subcontract fifty percent (50%) of the total monthly value of this Contract to an MBE for each month of the Initial Term and any Renewal Term, which proposal has been accepted and approved by CITY. If CONTRACTOR fails to utilize the listed MBE to the extent approved, or as may subsequently be approved through amendment to the Contractor Utilization Plan, CITY will sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, the monetary difference between the amount of the M/WBE goals as finally approved and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the CONTRACTOR'S payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by CITY'S Director of Human Relations, unless the Director determines that the CONTRACTOR acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the CONTRACTOR, the MBE/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director is not met.

Sec. 25. Attachments. The following documents are attached hereto and incorporated herein by reference:

ATTACHMENT A, SCOPE OF SERVICES
ATTACHMENT B, REFUSE RATE INDEX
ATTACHMENT C, UNRESOLVED COMPLAINTS
ATTACHMENT D, BULKY-EXPRESS
ATTACHMENT E, DISPOSAL FACILITY USAGE
ATTACHMENT F, DEFINITIONS

CONTRACTOR

I hereby certify that I have the authority to execute
this document on behalf of CONTRACTOR.

Contractor: Towps & Coasting Disposal
By: [Signature]
Title: V.P.
Date: 3-12-2010

KANSAS CITY, MISSOURI
By: [Signature]
Title: Director
Date: 3/13/10

MS

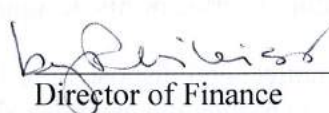
APPROVED AS TO FORM



Assistant City Attorney

(Date)

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred



5/25/10

Director of Finance

ATTACHMENT A, SCOPE OF SERVICES

The CITY is subdivided into three collection zones – North, Central and South. CONTRACTOR shall only be responsible for collecting from the North and South zones. The North Zone is generally that area of the CITY north of the Missouri River. The South Zone is generally that area of the CITY south of 63rd Street and east of Blueridge Cut-Off. CITY has provided CONTRACTOR with maps more accurately delineating the boundaries of CONTRACTOR's zones prior to the execution of this Contract. Those maps are incorporated herein by reference. CONTRACTOR agrees that it has had opportunity to review the maps and request and receive clarification as to any ambiguities therein, and that the eligible dwelling unit count as of the commencement of this Contract is sufficiently accurate and fairly represents the areas to be served. In the event CONTRACTOR is uncertain as to whether a particular street(s), subdivision or dwelling unit is within the zones it is to service, it shall request clarification from CITY'S Director of Public Works, or his designee, and shall proceed in accordance therewith.

CONTRACTOR shall collect and dispose of refuse from each eligible dwelling unit within the North and South zones on a schedule established by CITY. CITY has provided CONTRACTOR with information regarding its refuse collection program and CONTRACTOR agrees that it has had opportunity to review this information and request and receive clarification as to any ambiguities therein. In the event CONTRACTOR is uncertain as to what day of the week an eligible dwelling unit receives its refuse collection, it shall request clarification from CITY'S Director of Public Works, or his designee, and shall proceed in accordance therewith.

The numbering of the below-listed paragraphs and categorization of the same into identifiable subcategories is for convenience purposes only and shall not be construed as having any substantive impact. Thus, the failure to delineate something within any particular subcategory below shall not relieve CONTRACTOR from fulfilling any obligation which has otherwise been set forth within this Contract.

A. COLLECTION SERVICES AND REQUIREMENTS

1. Contractor shall collect properly prepared refuse appropriately placed at the front curb of eligible dwelling units once each week, on a schedule established by City's Director of Public Works, within the North and South zones of the City. Each route shall be collected on the same day of the week for the duration of this Contract unless otherwise modified by the City's Director of Public Works.
2. Contractor shall collect up to two (2) securely-tied disposable refuse bags, placed loosed at the curbside, and weighing no more than forty (40) pound apiece. Contractor shall also collect, at no additional cost to City, each and every additional securely-tied disposal refuse bag weighing no more than forty (40) pounds and bearing an excess refuse tag.
3. Notwithstanding the foregoing, Contractor shall, at no additional cost to City, collect excess refuse not bearing an excess refuse tag on "No Tag" weeks as established from time-to-time by City's Director of Public Works, and at any other time the City's Director of Public Works determines, in his sole discretion, that the public health and welfare would be served by the collection of such excess refuse.

4. The City's Director of Public Works may, from time-to-time, establish a "No Tag" week, during which time each eligible dwelling unit is entitled to receive collection of up to five hundred (500) pounds of properly prepared excess refuse without utilizing excess refuse tags. As of the date of this Contract, the City has established the weeks immediately following Christmas and the Fourth of July as "No Tag" weeks. Contractor shall collect excess trash during these weeks, at no additional cost to City. In the event City elects to provide additional "No Tag" weeks or to modify the scheduled time of the "No Tag" weeks, City shall provide Contractor no less than thirty (30) days written notice of the addition and/or modification and Contractor shall implement such addition and/or modification at no additional cost to City.
5. Contractor shall, no less than three (3) times per calendar year on dates selected by City's Director of Public Works, work in conjunction with City personnel to collect and dispose of refuse and bulky items in targeted areas within the City, which areas may also be within the Central collection zone notwithstanding the fact that such zone is not within the areas serviced by Contractor under the terms of this Contract. These services shall be in addition to the regularly scheduled refuse collections Contractor is required to provide under this Contract and shall include the collection and disposal of refuse and bulky items in unlimited quantities at no additional cost to City. The use of excess refuse tags shall not be required during these targeted sweeps.
6. Contractor shall collect properly prepared refuse placed within ten (10) feet of the front curb of each eligible dwelling unit, with exception of city approved disability stops which may require Contractor to collect from an area further behind the curb as identified by City and at no additional cost to City.
7. Contractor shall not collect from exempt dwelling units. Notwithstanding the foregoing, Contractor understands that dwelling units which are currently classified as exempt dwelling units based upon the fact that they contain seven or more dwelling units under a common roof may, at some point during the term of this Contract, be declared by the Director to be eligible dwelling units based upon his determination that collection from the same is necessary for the preservation of public health and safety. In the event the Director of Public Works requires Contractor to begin collecting from units which are classified as exempt dwelling units as of the commencement date of this Contract, he shall notify Contractor in writing at least ninety (90) days in advance. In such an event, the parties agree that Contractor shall be entitled to additional compensation and an intervening adjustment shall be made as provided in Section 3(g), Compensation.
8. Contractor shall observe City ordinances relating to obstructing streets, keeping passageways open and protecting same, and shall obey all laws and City ordinances controlling or limiting those engaged in the work.
9. Contractor is not granted exclusive use of City streets. Contractor shall pull aside at the first opportunity to allow waiting vehicles to pass if Contractor's vehicle blocks passage.
10. Contractor shall use good faith efforts to handle collection of refuse in a manner that will minimize inconvenience and annoyance to the general public and property owners.
11. At such time as City elects to acquire a route management system, Contractor, if required to do so by City at any point, shall procure, install and maintain a mobile truck manager on its refuse collection vehicles at no additional cost to City. The system shall be compatible with the City's network operating system and software requirements and shall provide the City with access to real time information

pertaining to the geographic locations of each refuse collection vehicle while performing services under this Contract.

12. Contractor shall not collect fees or otherwise solicit from City residents for services under this Contract with the sole exception of any "bulky-express" service specifically requested by the resident as detailed in ATTACHMENT D.

13. Contractor shall, at no additional cost to City, collect and dispose of excess refuse tagged as a violation (or which should have been tagged as a violation) within a week, and shall do so in a manner that will minimize inconvenience and annoyance to the general public and property owners.

B. VIOLATIONS OF PREPARATION REQUIREMENTS

1. Contractor shall not collect any refuse not approved for collection or otherwise failing to meet, in any regard, the requirements of Chapter 62 of City's Code of Ordinances and the rules and regulations adopted thereunder.

2. In the event of an improperly prepared set out, Contractor shall leave unacceptable refuse with a City approved tag, sticker or other approved communication specifying the violation and which has been provided to Contractor by City for that purpose.

3. Contractor shall notify City of each violation via email, or other format mutually agreed upon by City and Contractor, within twenty-four hours after it first becomes aware of the violation. Such notification shall identify the nature of the violation.

C. COLLECTION SCHEDULE

1. Contractor shall be prohibited from collecting from any eligible dwelling unit prior to 7:00 a.m. or after 6:00 p.m. on the scheduled day of collection. No regular collection shall take place on a Saturday or Sunday, except on holiday weeks wherein the refuse collection has been postponed accordingly. Contractor shall not collect refuse on major traffic thoroughfares as identified by the City between the hours of 7:00 a.m. and 9:00 a.m., and between the hours of 4:00 p.m. and 6:00 p.m.

2. Contractor shall not change the scheduled refuse collection day without prior written approval from City, with the exception of holidays as provided immediately below.

3. Contractor shall not collect refuse on the following City observed holidays: New Year's, Memorial Day, Veteran's Day, Martin Luther King, Jr., Day, Independence Day, Thanksgiving Day, President's Day, Labor Day, and Christmas Day. Holidays occurring on a Saturday will not impact the collection schedule. Holidays occurring on Sunday are observed on Monday. All scheduled collection days from the day of the observed holiday through the remainder of the week, shall be collected one (1) day later. For example: If a holiday is observed on a Wednesday, the Wednesday collection will occur on Thursday, the Thursday collection will occur on Friday, and the Friday collection will occur on Saturday.

4. Contractor shall, if deemed appropriate by City, provide written notice to each eligible dwelling unit having a City-approved change in collection day or week, except for changes due to a holiday. Delivery of such notice shall be by hand delivery to the front door or by United States Postal Service. Notices shall be delivered not less than seven (7) days prior to change in collection day or week.

5. Contractor shall not overprint, enclose or provide any other additional information on collection change notifications without prior written approval from City.
6. Contractor shall use good faith efforts to provide service in advance or as soon as access is available, during normal working hours, to eligible dwelling units, when access is temporarily delayed due to street repair, street resurfacing, utility repair, utility installation, police action, and the like.
7. Contractor shall, with prior approval from City, be granted a variance from regular routes and schedules in the event of a tornado, major storm, natural disaster, or other such calamity normally and customarily referred to as *force majeure*. As soon as practicable after such event, Contractor shall advise City when normal routes and schedules are anticipated to resume. City shall make an effort through the local news media or by other appropriate means to inform the public when regular services may be resumed.
8. Contractor shall notify City, or City shall notify Contractor, when it is apparent that there may be a delay in the normal collection schedule that will result in one or more routes not being completed on schedule. Contractor may request assistance from City for the collection of refuse. If City determines that the conditions warrant the provision of such assistance, it shall be provided by City but paid for by Contractor as follows:

Contractor shall be charged \$300.00 per packer per hour and the rate to be charged for a packer with operator only shall be \$200.00 per hour. After 3:00 p.m., the rate charged for a crew shall be \$400.00 per packer per hour and the rate for a packer with operator only shall be \$250.00 per hour. Time shall begin when city crews depart their last scheduled city stop or division headquarters, and shall end fifteen (15) minutes after city crews arrive at division headquarters.

D. COLLECTION AND DISPOSAL

1. Contractor shall not commingle refuse collected pursuant to the terms and conditions of this Contract with refuse of any sort from any other sources located outside of the City.
2. Contractor shall properly dispose of all refuse in a manner not prohibited under the laws of the jurisdiction in which such refuse is disposed.
3. Contractor shall ensure refuse is not spilled, blown, dropped, or littered during the collection and transportation of such refuse. If refuse is spilled, blown, or littered during collection and transportation, Contractor shall, at the time of occurrence, clean up such refuse.
4. Any liquid resulting from Contractor's equipment during operations and/or repairs shall be covered immediately with an absorptive material and removed from the street surface.
5. Contractor shall deliver collected refuse to a disposal facility which is legally permitted to operate as such and which is operating in compliance with all applicable federal, state and local laws regulating the disposal and management of refuse. City reserves the unilateral right, for as long as this Contract remains in effect, to designate the facility which Contractor must use and to require that Contractor utilize such facility, at no additional cost to City, in disposing of any refuse collected within the City pursuant to this Contract. If City designates a facility other than that which Contractor is using at the time and which results in additional disposal or demonstrated trucking costs to Contractor, City shall increase the monthly compensation to Contractor in an amount sufficient to satisfy the difference and shall continue to do so until May 1 of the calendar year which immediately follows the calendar year in which the designation

was made so that the change may be captured by the RRI. However, if the cost of disposal or trucking is reduced, the contractor shall decrease the monthly cost to the City in an amount sufficient to satisfy the difference and shall continue to do so until May 1 of the calendar year which immediately follows the calendar year in which the designation was made so that the change may be captured by the RRI.

E. Reporting

1. Contractor shall report to City on the tons of refuse collected by route, geographic area, and by month. Monthly reports are due to City's Director of Public Works, or his designee, by the 10th day of each month. An annual report is due to City's Director of Public Works, or his designee, by January 15th of each year. Monthly and annual reports shall follow the format as mutually agreed upon by City and Contractor.
2. Contractor shall maintain a current collection map showing the street-by-street path that each refuse collection vehicle will take in collecting each route and shall provide the same to City's Director of Public Works.

F. *CONTRACTOR'S PERSONNEL*

1. Contractor shall prohibit the use of offensive language, illegal drugs, alcohol, and/or any other substance that is deemed illegal and/or impedes employees' ability to safely collect refuse.
2. Contractor shall employ and assign qualified personnel to perform refuse collection services. Contractor shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state, and local requirements related to their employment and position.
3. Contractor shall require all employees to wear clothing that is clean and neat as circumstances permit. Shirts must be worn at all times.
4. Contractor shall not allow employees to trespass, litter, or cross property to adjoining premises. Absolutely no scavenging is allowed.
5. Contractor shall, upon request of City, remove any employee from collection who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his/her duties.
6. Contractor shall require all drivers of a collection vehicle to carry at all times a valid commercial driver's license.

G. *CONTRACTOR'S EQUIPMENT*

1. Contractor shall, upon execution of Contract, and annually thereafter, provide to City a list of equipment used by Contractor to provide refuse collection services related to this Contract.
2. Contractor shall have access to reserve equipment than can be placed into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size, capacity, and signage to the equipment used by Contractor to perform refuse collection services.
3. Contractor shall have collection equipment in good working order as to permit Contractor to adequately and efficiently perform the refuse collection services. In addition, Contractor's equipment shall be kept well painted and in good appearance, subject to normal wear and tear.

4. Contractor shall have on all collection vehicles Contractor's name, telephone number, and vehicle number painted or otherwise affixed in letters of contrasting color, at least four (4) inches high, on each side of vehicle.
5. Contractor shall not permit any refuse collection vehicle to display the word or any form of the word "recycle" so as to avoid any concern that recyclable materials are being collected and/or commingled with other refuse.
6. Failure to keep collection vehicles in acceptable condition and appearance, as required herein, shall cause the exclusion of that collection vehicle from the performance of refuse collection services, after inspection and written notice from City.
7. City reserves the right to inspect Contractor collection vehicles at any time upon reasonable notice and during normal business hours.

H. CONTRACTOR'S OFFICE, COMMUNICATIONS, AND COMPLAINTS

1. Contractor shall maintain an office and appropriate office hours where communication from City can be received. Such office shall be equipped with internet capabilities with a valid e-mail address, telephone, and responsible persons in charge during collection hours on those days Contractor is providing refuse collection services to City.
2. Contractor shall provide a liaison between field crews and City for purposes of effectively communicating with regard to any issue impacting the refuse collection services being provided under this Contract.
3. Contractor shall provide City with an emergency phone number where Contractor can be reached outside of the required office hours.
4. Contractor shall be available to provide services necessary to resolving service complaints. All service complaints shall be handled by Contractor in a prompt and efficient manner.
5. Contractor shall, at the conclusion of each service day, provide to City a listing of all service issues received that day and information on the status and/or resolution of each issue. In reporting the action taken, irregularities such as late setouts or violations should be noted to distinguish between valid and invalid complaints. As a general rule, all issues should be resolved by the end of the service day. If not resolved that day, any outstanding issue must receive prompt attention the beginning of the next work-day. Notwithstanding the foregoing, any issue not resolved as provided in ATTACHMENT D is subject to the imposition of an administrative charge as provided therein.
6. Contractor shall confer with the Director of Public Works, or his designee, for purposes of resolving any question as to whether any particular residential dwelling unit is entitled to receive collection services under this Contract or the boundaries of the zones.

I. ADDITIONAL SERVICES

1. Nothing within this ATTACHMENT A shall be construed to require Contractor to collect bulky items, leaves and brush, hazardous materials or recyclable materials which have been separated by a resident from their general refuse and placed curbside for separate

collection. To the extent Contractor provides any "bulky-express" service, such service is governed by ATTACHMENT D.

ATTACHMENT B, REFUSE RATE INDEX

Using the most recent publications of the source documents identified below, the "Refuse Rate Index" adjustment shall be calculated in the following manner:

1. The expenses of performing residential refuse collection and disposal services for the designated period shall be prepared in the attached format (Operating Cost Statement – Description) of this Attachment.
2. The expenses of performing residential refuse collection and disposal services shall be broken down into the following five cost categories: Labor; Fuel; Vehicle Replacement; Maintenance; and All Other. Each cost category is assigned a weighted percentage factor on that cost category's proportionate share of the total of the cost shown for all cost categories.
3. The following indices are used to calculate the adjustment for each cost category. The change in each index is calculated on a twelve-month period in accordance with the terms of the Contract.

<u>Cost Category</u>	<u>Index of Source Documents</u>
Labor	Employment Cost Index, Compensation for Service Producing Industries. Source: <u>Monthly Labor Review</u> , U.S. Bureau of Labor Statistics.
Fuel	Producer Price Index, Light Fuels Oils - #2 Diesel Fuel (0573-03). Source: <u>Producer Price Index</u> , U.S. Bureau of Labor Statistics.
Vehicle Replacement	Producer Price Index, Truck & Bus Bodies – Refuse & Garbage (Packer Type) (3713-139). Source: <u>Producer Price Index</u> , U.S. Bureau of Labor Statistics.
Vehicle Maintenance	Producer Price Index, Industrial Trucks & Tractors – Parts (3537-3). Source: <u>Producer Price Index</u> , U.S. Bureau of Labor Statistics.
All Other	3/4 Consumer Price Index, U.S. City Average, (Unadjusted, All Urban Consumers, All Items.) Source: <u>Consumer Price Index Detailed Report</u> , U.S. Bureau of Labor Statistics.

4. The percentage weight for each cost category is multiplied by the change in each appropriate index to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (see example, attached).

Refuse Rate Index

Operating Cost Statement – Description

Operating Costs

Labor: List all administrative, officer, operation and maintenance salary accounts.

List payroll tax accounts directly related to the above salary accounts.

Fuel: List all fuel and oil accounts.

Vehicle Replacement: List all Collection and Collection related vehicle depreciation accounts.

List all vehicles lease or rental accounts related to Collection or Collection related vehicles.

Vehicle Maintenance: List all Collection or Collection related vehicle parts accounts.

All Other: List all other expense accounts related to the services provided under this Contract. This category includes all insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; office supplies; postage; trade association dues and subscriptions; advertising; employee retirement or profit sharing contributions; and miscellaneous other expenses.

REFUSE RATE INDEX "RRI"

Example Company

Cost Category	Weight	Index	Source	% Change from Dec. 2009 to Dec. 2010	Weighted Percentage Change
Labor	42.13%	Employment Cost Index, Compensation for Service Producing Industries	Monthly Labor Review, Bureau of Labor Statistics	0.75%	0.31%
Fuel	5.75%	Producer Price Index, Light Fuel Oils - #2 Diesel Fuel	Producer Price Index, Bureau of Labor Statistics	-6.09%	-0.35%
Vehicle Replacement	7.89%	Producer Price Index, Trucks & Bus Bodies – Refuse & Garbage (Packer Type)	Producer Price Index, Bureau of Labor Statistics	5.15%	0.41%
Vehicle Maintenance	8.28%	Producer Price Index, Industrial Trucks & Tractors	Producer Price Index, Bureau of Labor Statistics	3.28%	0.27%
All Other	35.95%	3/4 Consumer Price Index, U.S. City Average (unadjusted), All Urban Consumers, All Items	Consumer Price Index Detailed Report, Bureau of Labor Statistics	2.52%	0.68%
Total	100.00%				1.32%

ATTACHMENT C, UNRESOLVED COMPLAINTS

It is the intent of City to ensure that Contractor provides quality service in the performance of the City's refuse collection and disposal program. To this end, the following process will be used to accomplish quality performance.

Upon receipt of a complaint regarding the services provided by Contractor, City staff will notify Contractor of the complaint. Contractor will investigate the complaint and respond to the City regarding the resolution of the complaint. This level of communication constitutes routine quality assurance and quality control for the program.

After two (2) late collections have been made on successive days or on the same collection day in two (2) successive weeks, Contractor may be required to submit, within five (5) days of notification, a written outline of the steps Contractor will take to avoid future late collections.

If a service problem is not resolved through regular oral communication, City staff may choose to issue a written notification. If the problem continues after receipt of the written notice advising Contractor of the problem and establishing a timeframe for resolution, Contractor and the City shall meet in a good faith effort to resolve the problem.

SPECIAL INSTRUCTIONS AND CONDITIONS

It is the intent of City to ensure that contractor provides quality service in the performance of this program. To this end, the following process will be used to accomplish quality performance:

1. City staff will twice a day notify Contractor via e-mail of any complaints it has received regarding the services provided by Contractor. All complaint notifications sent by City at 9:30 a.m. or earlier will be resolved by Contractor and reported to City by 3:30 p.m. on that same calendar day. All complaint notifications sent by City at 9:31 a.m. or later will be resolved by Contractor and reported to City by 2:00 p.m. the following calendar day. This level of communication constitutes routine quality assurance and quality control for the program.
2. Contractor shall twice a day (9:00 a.m. and 2:00 p.m.), provide to City a listing of all service issues received that day and information on the status and/or resolution of each issue in a format acceptable to City. In reporting the action taken, irregularities such as late setouts or violations should be noted to distinguish between valid and invalid complaints.
3. Failure to remedy the complaint(s) after City notifies Contractor of a complaint or otherwise violating certain provisions of this Contract will result in an administrative charge against the Contractor. In such an event, it is hereby agreed that the City may withhold from any monies due or which may become due to the Contractor or otherwise invoice Contractor administrative charge in the following amounts:
 - a. Failure or neglect to resolve collection complaints by 3:30 p.m. the same calendar day, if the complaint was sent to Contractor by City at 9:30 a.m. or earlier -- **\$150 per dwelling unit**
 - b. Failure or neglect to resolve collection complaints by 2:00 p.m. the following calendar day, if the complaint was sent to Contractor by City at 9:31 a.m. or later -- **\$150 per dwelling unit**

- c. Failure to repair and/or replace damaged refuse cart if damage is caused by Contractor (only to be applicable if refuse carts are implemented in any areas serviced by contractor at a future date) -- **\$25 per cart or cost of repair/replacement, whichever is greater**
 - d. Failure or neglect to fully complete a route on the regular scheduled day -- **\$1,500 per route**
 - e. Failure to clean up spillage caused by Contractor -- **\$500 per incident**
 - f. Failure to collect any portion of a route on day of scheduled collection -- **\$5,000 per incident**
 - g. Failure to repair damage to customer property caused by Contractor -- **Cost of Repair to City**
 - h. Failure to maintain equipment in a clean, safe, and sanitary manner -- **\$500 per incident**
 - i. Failure to have vehicle operators properly licensed -- **\$500 per incident**
 - j. Failure to display Contractor's name and phone number on each collection vehicle -- **\$500 per vehicle**
 - k. Failure to comply with the hours of operation as required by this Contract -- **\$500 per incident**
 - l. Failure to provide proper notification of collection day changes -- **\$1,000 per incident**
 - m. Failure to deliver refuse to the appropriate designated facility -- **\$1,000 per incident**
 - n. Failure to segregate refuse collected within the City from other sources -- **\$1,000 per incident.**
4. If City determines that Contractor's performance or handling of complaints is not satisfactory and is affecting the City's refuse collection and disposal program, City may require Contractor to either: 1) submit, within five (5) days of notification, a written outline of the steps Contractor will take to avoid future late collections or problems or 2) to meet with City to discuss service problems and provide a correction plan to the City's satisfaction. This requirement is in addition to other requirements or consequences outlined in this Contract.
 5. In the event that Contractor's record of performance shows that Contractor has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required by this Contract, and even if Contractor has been assessed administrative charges or has corrected each condition of default, Contractor shall be deemed a "habitual violator." All defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. City shall notify Contractor in writing that a further violation will result in Contract termination and City may invoke any legal remedy that may apply.
 6. Nothing within this ATTACHMENT C shall be construed to prohibit City from electing to pursue any and all remedies that might otherwise be available to it, whether in law or equity, in the event Contractor shall be in material default or breach of any material provision of this Contract, or in the event that Contractor's actions or inaction in performing under this Contract results in the City's incurring any liability to a third party which cannot be satisfied by the administrative charge(s) specifically set forth herein.

ATTACHMENT D, BULKY-EXPRESS

City provides curbside bulky item collections and disposal services on a periodic basis to eligible dwelling units. The City wishes to increase the availability and ease of bulky item collection so that residents wishing to lawfully dispose of bulky items have additional options in the event they do not want to wait for their City-scheduled collection date. This is an entirely optional service, hereinafter referred to as "Bulky-Express," and is in addition to the periodic curbside bulky items collection services already being provided by City. Residents may utilize Bulky-Express service in their sole discretion, but are under no obligation to do so. Residents may also use other providers of their choice in disposing of bulky items and City makes no representation to Contractor of any nature with regards to the extent to which "bulky-express" service may or may not be utilized by City's residents.

Contractor has agreed to provide "Bulky-Express" service to eligible dwelling units electing to request such service from Contractor. Bulky-express service shall include the following optional components and rates for the lifetime of this Contract:

FOR ELIGIBLE DWELLING UNITS REQUESTING DELIVERY OF THE SERVICE(S) ON THEIR REGULARLY SCHEDULED REFUSE COLLECTION DAY:

Collection of up to five (5) bulky items	- \$50.00
Appliances containing Freon	- \$20.00 per item
Rental of 6 yd. box	- \$75.00 per fill
Rental of 8 y. box	- \$100.00 per fill
Rental of 20yd. box	- \$200.00 per fill
Rental of 40 yd. box	- \$320.00 per fill

FOR ELIGIBLE DWELLING UNITS REQUESTING DELIVERY OF THE SERVICE(S) ON A DAY OTHER THAN THEIR REGULARLY SCHEDULED REFUSE COLLECTION DAY:

Collection of up to five (5) bulky items	- \$100.00
Appliances containing Freon	- \$40.00 per item
Rental of 6 yd. box	- \$75.00 per fill
Rental of 8 yd. box	- \$100.00 per fill
Rental of 20 yd. box	- \$200.00 per fill
Rental of 40 yd. box	- \$320.00 per fill

Bulky-express service is not a service provided by the City. Contractor shall be responsible for coordinating the provision of any bulky-express service with the resident requesting such service and for billing the resident, collecting from the resident, and/or enforcing any right to payment from the resident. Contractor shall be entitled to establish restrictions on the types and weights of materials that may be placed in any box rented by an eligible dwelling unit. Contractor shall not receive assistance from City in collecting any amounts Contractor believes are due it, or in resolving any dispute between Contractor and any resident electing to utilize the bulky-express service.

Contractor shall work in conjunction with the City's Director of Public Works to promote the availability of bulky-express service and to implement methods by which residents can schedule bulky-express service directly with the Contractor. Contractor shall, upon the effective date of this Contract, schedule bulky-express service by telephone. No later than six (6) months following the effective date of this Contract, Contractor shall provide an on-line scheduling option and shall permit the City to post a link to Contractor's website for purposes of assisting residents in scheduling bulky-express service with Contractor. No less than once per calendar year, Contractor shall send each eligible dwelling unit a one-page flyer informing residents of the availability of Contractor's bulky-express service, noting the prices as established herein, and instructing residents on the methods by which they can schedule and pay for such service. The flyer shall be provided to City at least fifteen business days in advance of its printing and distribution and shall be modified if required by City and in the manner required by City. The flyer shall be prepared and delivered to each eligible dwelling unit within the North, Central and South collection zones at no additional cost to the City, using a mailing list provided by City. Notwithstanding any of the foregoing, City shall not be obligated to promote Contractor's bulky-express service over similar services provided by any other vendor. City reserves the right to identify other providers of similar collection services and to provide such information to City's residents, in whatever format City deems desirable, for purposes of providing the residents additional options.

City and Contractor may, at a future date, seek to implement additional methods by which residents can more efficiently obtain bulky-express service. Such methods may include, but are not necessarily limited to, the operation of bulky items drop-off sites and the availability of "bulky tags" that would be made available for purchase alongside excess refuse tags. City and Contractor reserve the right to enter into negotiations at a future date and to amend this ATTACHMENT D as appropriate in the event the parties mutually agree that modifications to bulky-express service are appropriate.

CONTRACTOR SHALL NOT BE ENTITLED TO ANY COMPENSATION FROM CITY, FINANCIAL OR OTHERWISE, FOR THE PROVISION OF ANY BULKY-EXPRESS SERVICE OR FOR ANY INJURY OR LOSSES, FINANCIAL OR OTHERWISE, THAT MAY ARISE, DIRECTLY OR INDIRECTLY, FROM THE PROVISION OF ANY BULKY-EXPRESS SERVICE.

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RESULTING FROM ALL ACTS OR OMISSIONS IN CONNECTION WITH THE PROVISION OF BULKY-EXPRESS SERVICE CAUSED IN WHOLE OR IN PART BY CONTRACTOR OR BY CONTRACTOR'S OFFICERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, INVITEES AND OTHER AGENTS.

ATTACHMENT E, DISPOSAL FACILITY USAGE

A. Contractor shall permit City to deliver and dispose of refuse collected by City personnel within the Central collection zone and elsewhere to its transfer station in Harrisonville, Missouri at the following rates to be paid Contractor by City:

Compacted Trucks/trash	\$28.50 per ton
Clam Trucks/bulky	\$33.00 per ton

City may, but shall not be required to, utilize or discontinue utilizing Contractor's transfer station as City deems appropriate and to the extent City deems desirable in City's sole discretion. City's obligation to compensate Contractor for use of its transfer facility is applicable only to refuse and bulky items collected, delivered and disposed of at such transfer facility by City personnel. Refuse and bulky items collected by Contractor and its subcontractor within the North and South collection zones shall be collected, delivered and disposed of at no cost to City beyond that specified in Section 3, Compensation.

B. In the event Contractor negotiates with any other party for the use of any other transfer station or material recovery facility during the lifetime of this Contract, Contractor shall provide as a written term of any agreement with such party that City may utilize such facility to dispose of refuse and bulky items collected and delivered by City personnel to such disposal facility at the same rates available to Contractor and shall provide a copy of any such agreement to City. City may, but shall not be required to, utilize or discontinue utilizing such disposal facility as City deems appropriate and to the extent City deems desirable in its sole discretion.

C. If at any point during the lifetime of this Contract City shall construct and operate, whether individually or in conjunction with any other entity, a transfer station or material recovery facility accepting a mixed solid waste stream (i.e., Dirty MRF), Contractor and City shall renegotiate the compensation due Contractor as set forth in Section 3, Compensation, and Contractor shall immediately thereafter deliver and tip all refuse and bulky items collected within the North and South collection zones at such facility to the exclusion of all others. In the event City and Contractor are unable to renegotiate the compensation due Contractor in good faith prior to the date such facility begins operating, City shall be entitled to deduct from any payment due Contractor under the terms of this Contract a reasonable cost for accepting such materials tipped at such facility. For purposes of this paragraph, a "reasonable cost" shall be the City's actual costs incurred in accepting such materials tipped at such facility, or the costs Contractor would have otherwise incurred for tipping such materials at the facility it used immediately prior to the date on which the City's Dirty MRF began operating, whichever is less.

D. Contractor shall provide refuse and bulky item collection and disposal services to any municipality, county, state, governmentally public utility, non-profit hospital, educational institute, special governmental agency, and non-profit corporation performing governmental functions that participates in or is represented by the Mid-America Council of Public Purchasing (MACPP) in the greater Kansas City Metropolitan Trade Area and any member of the Mid-America Regional Council (MARC) assuming such entity has entered into a contract with Contractor. If at any point during the lifetime of this Contract City shall construct and operate,

whether individually or in conjunction with any other entity, a transfer station or material recovery facility accepting a mixed solid waste stream (i.e., Dirty MRF), Contractor hereby agrees to deliver and tip all refuse and bulky items collected by it from any such entity at such facility to the exclusion of all others and to compensate City at the rates negotiated by Contractor and City for use of such facility. Notwithstanding the foregoing, the requirement to deliver and tip exclusively at the City's Dirty MRF shall not be applicable to refuse and bulky items collected from any entity located outside of the City provided such entity has not in whole or in part utilized or intended to utilize this Contract and this cooperative clause as the basis for obtaining its services.

ATTACHMENT F, DEFINITIONS

For the purpose of this Contract, the definitions contained in this Attachment shall apply unless otherwise specifically stated.

Bulky items. Items to be discarded, common to a household, which weigh more than 40 pounds or have a combined dimension of length, plus width, plus height that exceeds one-hundred (100) inches.

Dwelling unit. Any room or group of rooms located within a dwelling, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking, and eating.

Eligible dwelling unit. Six (6) or fewer dwelling units housed under a common roof, subject to the inclusions or exclusions set forth in Section 62-41 of City's Code of Ordinances. The term includes all current and new Kansas City, Missouri fire stations within the North and South collection zones.

Excess refuse. Refuse placed curbside for collection and disposal services in excess of two (2) securely-tied disposal refuse bags weighing more than forty (40) pounds apiece.

Excess refuse tag. An adhesive tag in a form approved by the City and distributed by outlets approved by the City which, when affixed to a securely-tied disposable refuse bag weighing no more than forty (40) pounds, entitles the eligible dwelling unit to dispose of the additional bag(s) on the regular scheduled collection day.

Exempt dwelling unit. Buildings containing seven (7) or more dwelling units housed under a common roof and dwelling units exempt from collection services pursuant to Section 62-41 of City's Code of Ordinances, unless otherwise specifically included in the definition of eligible dwelling unit

Hazardous materials. Materials that, by law, are banned from local landfills and/or from curbside collection.

Leaves and Brush. Organic, compostable materials, excluding grass clippings, generated from residential property within the City.

Refuse. Unwanted or discarded waste materials in a solid or semi-liquid state, consisting of garbage, rubbish, or a combination thereof, all as defined in Section 62-2 of City's Code of Ordinances.

Route. The geographical area to be collected by a refuse collection vehicle on a particular day. For example, the Wednesday route includes every eligible dwelling unit entitled to receive collection of its refuse on Wednesday.