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June 4, 2010

TO WHOM IT MAY CONCERN:

The City of Seguin is accepting sealed proposals for **Collection and Disposal of Commercial Solid Waste**, until 2:30 p.m. (CDST), Tuesday, July 20, 2010. At 3:00 p.m. the name of all Vendors submitting a Proposal will be read publicly but no contents of the Proposals will be disclosed. Proposal Package No. 99-2010-24 is available on the City of Seguin website <http://www.ci.seguin.tx.us/purchase/bids.htm> or by request made to the City of Seguin Purchasing Department. Vendors shall return their proposals to the Office of the City Manager, City of Seguin, 205 N. River, Seguin, Texas 78155.

A proposal bond or certified check must accompany the proposal.

A pre-proposal conference meeting will be held at 10:00 a.m. CDST, Wednesday, June 16, 2010 at the Seguin City Hall, 205 N. River Street, Seguin, Texas.

IT IS UNDERSTOOD THAT the City of Seguin reserves the right to reject any and all Proposals, and to waive informalities. The City Council's decision will be final.

IT IS ALSO UNDERSTOOD that Proponents are prohibited from directly or indirectly communicating with City Council members regarding the Proponent's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFP. Proponents are prohibited from contacting City staff members or selection committee members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member. Any violation will result in immediate disqualification of the Proponent from the selection process.

The City of Seguin appreciates your time and effort in preparing this proposal.

Willa Hagemann  
Assistant Director of Finance

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**CITY OF SEGUIN**  
**205 N. RIVER**  
**SEGUIN, TEXAS 78155**



**REQUEST FOR PROPOSALS**  
**Collection and Disposal of Commercial Solid Waste**  
**Proposal No. 99-2010-24**  
**June 4, 2010**

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## 1.0 INFORMATION FOR VENDORS

### 1.1 Notice

The City of Seguin, Texas ("City") is requesting sealed proposals from qualified firms ("vendors") to provide **Collection and Disposal of Commercial Solid Waste** in the City of Seguin. The contract period will be for five (5) years, beginning on January 1, 2011 and continuing through December 31, 2016, with the option to extend the contract for two (2) additional five (5) year periods.

### 1.2 Background

Seguin is a city of approximately 25,000 located in the heart of Central Texas on Interstate 10, approximately 30 miles north of San Antonio. Seguin is the seat of government of Guadalupe County. There are within the City approximately 541 commercial accounts, which includes 8 multifamily accounts. The majority of the multi-family, commercial, and industrial accounts are containerized accounts

### 1.3 Restrictions on Lobbying Activity

The City is committed to maintaining fair and open competition as required by local, state, and federal laws and statutes. Every effort is made to maintain the highest level of ethical conduct in every aspect of the procurement process. Sharp business practice or high-pressure tactics will not be tolerated. Qualification and selection of vendors is based on those vendors who share the same high standards of ethical conduct.

**Proponents are prohibited from directly or indirectly communicating with City Council members regarding the Proponent's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFP. Proponents are prohibited from contacting City staff members or selection committee members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member. Any violation will result in immediate disqualification of the Proponent from the selection process.**

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Upon issuance of the RFP, all proponent communications and requests for clarification or objections shall be directed in writing to Willa Hagemann, Assistant Director of Finance, for response, determination and dissemination to all proponents. Any communication by proponents or their representatives toward other city officers or employees regarding this RFP or the award of a contract are prohibited and will constitute grounds for disqualification of a proponent.

A lobbyist or a proponent or any of their agents may not do any act or refrain from any act for the express purpose and intent of placing any City official under personal obligation to the lobbyist or proponent.

#### **1.4 Definition of Terms**

“Proponent“ or Vendor” shall mean a person, firm or corporation who submits a Proposal to provide equipment, material, and/or services necessary in the performance of these specifications.

“City”, “Purchaser”, or “Owner” shall refer to:

City of Seguin  
PO Box 591  
Seguin, Texas 78156-0591

“RFP” shall refer to this Request for Proposals (No. 99-2010-24). “Proposal” shall mean a written offer to perform the requirements specified herein. “Furnish” or “provide” shall mean to supply, equip, and deliver the specified equipment, material and/or services to the Purchaser.

“Local Presence” shall refer to operations existing within the city limits of Seguin including, but not limited to, office operations, service centers or places where equipment is domiciled.

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“Residential Unit” shall include all structures used primarily for residences, including multi-family residential structures, that utilize 90 gallon, or smaller, containers for their waste service. Residential Unit shall also include those specific, enumerated multi-family complexes that are currently serviced under the City of Seguin Residential Waste Collection Contract.

### **1.5 Receipt and Opening of Proposals**

The Proponent shall provide itemized price quotations for the specified items/services outlined in this RFP. Sealed proposals should be addressed to the City Manager’s Office, City of Seguin, 205 N. River St., Seguin, Texas 78155. Proposals will be received until 2:30 p.m., Tuesday, August 17, 2010. At 3:00 p.m. the name of all Vendors submitting a Proposal will be read publicly but no contents of the Proposals will be disclosed. Proposals will be evaluated and awarded at a later date. All Proponents must submit an original and six (6) copies of their Proposal, properly signed with a manual signature of an authorized representative of the firm. Proposals are to be delivered in **two separately sealed packages**, with the due date and time on the outside of the packages. **(Package 1-Technical Proposal and Package 2- Cost Component Proposal)**. Sealed packages shall be clearly marked as follows:

#### **Package 1:**

##### **SEALED TECHNICAL PROPOSAL**

Collection and Disposal of Commercial Solid Waste  
City of Seguin RFP Package No 99-2010-24  
To be opened at 3:00 p.m., Tuesday, July 20, 2010  
Submitted By: (respondent’s name and address)

#### **Package 2:**

##### **SEALED COST COMPONENT PROPOSAL**

Collection and Disposal of Commercial Solid Waste  
City of Seguin RFP Package No 99-2010-24  
To be opened at 3:00 p.m., Tuesday, July 20, 2010  
Submitted By: (respondent’s name and address)

Proposals which are received after the specified time and date will not be considered and will be returned unopened.

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## **1.6 Exceptions**

In cases where the Proponents wish to take exception to any part of this specification, they shall so state on the front of their Proposal. Any exceptions contained in the Proposal shall be listed in a "Statement of Exceptions."

## **1.7 Addendum**

Any clarification of the proposal documents will be made by written addendum issued by the Assistant Director of Finance and signed by the City of Seguin, Any and all other changes are unauthorized and will be considered invalid. Addenda to the proposal documents may be issued in response to a request for clarification or objection, or for any other reason the City considers advisable. Once issued, an addendum becomes a part of the proposal documents. A copy of the addendum will be mailed to each proponent that received a set of original proposal documents, and may be viewed and downloaded at [www.ci.seguin.tx.us](http://www.ci.seguin.tx.us).

No verbal or written information, which is obtained other than through this RFP or its addenda, shall be binding on the City of Seguin. No employee of City of Seguin is authorized to interpret any portion of this RFP or give information as to the requirements of the RFP in addition to that contained in or amended to this written RFP document, except as stated in 1.7 of this RFP.

## **1.8 Vendor Qualifications**

The City of Seguin reserves the right to reject any Proposal or part of any Proposal, if indication or review of any services or equipment proposed is deemed to have an unsatisfactory performance record or does not completely meet the requirements stated herein. The City may reject a proposal if (a) the proponent misrepresents or conceals any material fact in the proposal, (b) the proposal does not strictly conform to this request for proposals, (c) the proponent is delinquent in the payment of taxes to any governmental entity, (d) it is deemed in the best interest of the City to do so, or (e) the Proponent lobbies or otherwise

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discussed the proposal or the Proponent's abilities with any City Official or evaluation committee member.

Purchaser may make such investigation as is deemed necessary to determine the ability of the Proponent to provide the equipment, material, and/or services as required by this RFP and to determine the adequacy of the proposed equipment, material, and/or services. The Proponent shall furnish, upon request and in a timely manner, all such data and information requested for this purpose.

### **1.9 Obligation of Proponent**

Proponents are required to submit their Proposals upon the following express conditions:

- a. Proponents shall thoroughly examine all drawings, specifications, plans, instructions, and all other contract documents pertaining to this RFP.
- b. Each proponent must fully acquaint itself with conditions relating to the scope of the work and restrictions pertaining to the execution of the work under the contract.
- c. Each proponent must thoroughly examine and be familiar with the contract documents.
- d. No plea of ignorance by the Proponent of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Proponent to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City of Seguin. The failure or omission of any proponent to receive or examine any form, instrument, addendum or other document, or to acquaint itself with the conditions relating to the scope of work, will in no way relieve the proponent of any obligations with respect to their proposal of to the contract.

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e. The Proponent/Contractor certifies that Proponent is not debarred or excluded from bidding by any Federal agency; has not been convicted within a three year period or had a civil judgment against them for commission of fraud in obtaining or performing a public contract, has not within a three year period been terminated on a public contract for cause or default.

f. Right of Withdrawal: A proposal may be withdrawn only by a written request received by the Assistant Director of Finance prior to the time set for proposal opening. Proposals may not be withdrawn after the time set for proposal opening.

g. Each proponent agrees that its price will remain firm and subject to acceptance by the City for a period of one hundred twenty (120) calendar days from the proposal opening date.

h. The City will not reimburse the Proponent for any costs associated with the preparation and submittal of any proposal, or for any travel and/or per diem costs that are incurred.

i. Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Conflict of Interest Questionnaires shall be submitted with your proposal.

j. In case of ambiguity or lack of clarity in stating prices in the Proposal, Purchaser reserves the right to adopt the price written in words or reject the Proposal.

## **1.10 Clarification or Objection to Proposal Documents**

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a. If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications, other bid documents, or any part thereof, he/she may submit to the Assistant Director of Finance on or before seven calendar days prior to scheduled opening, a request for clarification. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery.

b. Any objections to the proposal documents must be in writing and received by the Assistant Director of Finance on or before seven calendar days prior to the scheduled opening.

### **1.11 Proposal Security**

Each Proposal must be accompanied by a certified or cashier's check, or an approved bond issued by a surety in an amount not less than 5% of the maximum total Proposal cost, but in no case in excess of \$20,000.00, payable to the City of Seguin without recourse. The bond must be conditioned on the successful proponent supplying an executed contract, an executed performance bond, and insurance certificates within 10 calendar days after the date of the notice of award. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to and subject to investigation by the Owner.

The Proposal Security of the successful Vendor will be retained until such Vendor has furnished the required contract security, whereupon the Proposal security will be returned. The Proposal security of other Proponents whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the Owner and the accepted Proponent have executed the Contract, or if no award has been made within ninety (90) days after the date of the opening of proposals, upon demand of the Proponent at any time thereafter, so long as he has not been notified of the acceptance of his proposal. Proposal security with Proposals which are not competitive will be returned within fifteen (15) days after the Proposal Opening.

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### **1.12 Performance Bond**

Within 10 days following the Contractor's receipt of a fully executed contract and before commencing any work under this Contract, and annually thereafter, the successful Vendor shall provide a performance bond as security for faithful performance of this contract. The performance bond must be in the amount of \$500,000.00. The surety on the bond will be a duly authorized corporate surety authorized to do business in the State of Texas. The attorney-in-fact who signs performance bonds must file with each bond a certified and effectively dated copy of a power of attorney.

### **1.13 Indemnification and Insurance Requirements**

Proponents must review the requirements set forth in Section 5.0 of this Request for Proposal. The successful Vendor must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval. A Vendor's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

### **1.14 Award and Execution of Contract**

The City reserves the right to accept or reject any and all proposals and to re-solicit for proposals, as it shall deem to be in the best interest of the City. Receipt of any proposal shall under no circumstances obligate the City to accept the lowest cost proposal. The award of this contract shall be made to the Vendor whose proposal is determined to be the best evaluated offer, taking into consideration demonstrated competence and qualifications to perform the service solicited in the RFP. The City may conduct post-proposal discussions with all vendors deemed by the City to be reasonably qualified for selection for award. "Post-Proposal discussions" include, but are not limited to: requests for additional information, interviews, requests for proposal modifications or revisions and requests for "best-and-final" offers. The City may reject any part of any, or all, proposals.

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State law (§2252.002, Texas Government Code) prohibits award to a non-resident proponent unless the non-resident's cost proposal is lower than the lowest proposal submitted by a responsible Texas resident proponent by the same amount that a Texas resident proponent would be required to underbid the non-resident proponent to obtain a comparable contract in the state in which the non-resident proponent's principal place of business is located. This provision does not apply to a contract involving federal funds.

### **1.15 Single Point of Contact**

The City has designated the following individual as the single point of contact for this Request for Proposal:

Willa Hagemann  
Assistant Director of Finance  
PO Box 591  
Seguin, Texas 78156-0591  
(830)-401-2451  
Email: whagemann@seguintexas.gov

### **1.16 Pre-Proposal Conference**

The City will conduct a Pre-Proposal Conference for all interested parties.

Date: June 16, 2010  
Time: 10:00 a.m.  
Location: Seguin City Hall - City Council chambers  
205 N. River St.  
Seguin, TX 78155

Attendance at this conference is not required to submit a proposal. The purpose of the pre-proposal conference is to ensure (a) a clear understanding of the City's needs, (b) the accuracy of specifications, descriptions, and solicitation terms, conditions, and documents, and (c) identification of any problems which might prevent obtaining the proper services at a fair and reasonable price, or any issue that inhibit a fair and accurate solicitation or restrict competition.

Vendors will be required to mail or fax any pertinent questions as indicated below, no later than two (2) days prior to the conference, in order to allow the

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City to prepare adequate responses. Questions should be addressed in writing to:

Willa Hagemann  
Assistant Director of Finance  
PO Box 591  
Seguin, Texas 78156-0591  
FAX (830)-401-2499  
Email: whagemann@seguintexas.gov

Any changes resulting from the pre-proposal conference affecting specifications, the scope of work, or which may require an extension to the proposal due date will be reduced to writing in the form of an addendum to this RFP. The addendum will be distributed to all prospective proponents.

### **1.17 Projected Schedule**

The projected schedule of events for this Request for Proposal is as follows:

1 <sup>st</sup> Advertisement of Request for Proposals	June 4, 2010
2 <sup>nd</sup> Advertisement of Request for Proposals	June 11, 2010
Pre-proposal Conference 10:00 a.m., City Hall, 205 N. River St., Seguin, Texas 78155	June 16, 2010
Receive RFP Responses	July 20, 2010
Proposal evaluation and conduct discussions (if necessary)	July 21-August 25, 2010
Present recommendation to City Council	September 7, 2010
Notify vendor of award	September 8, 2010
Commencement of Commercial Solid Waste contract	January 1, 2011

### **1.18 Preparation of Proposal**

Proponents must prepare proposals in accordance with the following:

- a. All information required by the proposal documents will be furnished. The proponent will print or type its name, in ink, and

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manually sign the proposal sheet. The proposal sheet, with original signatures, must be submitted.

b. Unit prices will be shown when called for on the proposal sheet, and where there is a conflict between the unit price and total price, the unit price will govern.

c. Alternate proposals will not be considered unless expressly authorized by the proposal documents.

d. The City is exempt from payment of State and Local sales, excise and use taxes under section 151.309 of the Texas Tax Code.

e. By submitting a proposal, each proponent certifies that it is a duly qualified, capable, and bondable business entity, that it is not in or contemplating bankruptcy or receivership and that it is not currently delinquent with respect to payment of taxes assessed by any political subdivision.

### **1.19 Proposal Contents**

Proponents are encouraged to submit concise and clear proposals. Proposals of excessive length or complexity are discouraged. The City reserves the right to reference a proposal or any part or parts of a proposal in the final contract. Proponents will prepare proposals according to the provisions of this section and all other provisions of this RFP. **All documents and information required by the RFP, including without limitation, the following, must be furnished with each proposal.**

#### **1.19.1 Technical Component Requirements**

The Technical Component of the proposal must contain, but is not limited to, the following:

1. A Vendor Profile which describes the Vendor's contact individuals, the background and experience of the Vendor's firm

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and all associated proposed subcontractors. For a sole proprietorship, list the name and address of the owner. For a partnership, attach information indicating the names and addresses of all partners. For a corporation, attach information indicating the names and addresses of the officers and of each person or entity holding 10% or more of the stock of the corporation, where incorporated, and attach a certificate of good standing issued by place of incorporation. For all proponents, list the federal employer identification number.

## 2. Municipal References - Past Five Years

Attach information indicating the names and addresses of **ALL** municipalities or other governmental entities for which the proponent has provided solid waste collection and disposal services in the past five years. Include the population of the area served and the number of commercial units served, and the name and phone number of a contact person familiar with the proponent's performance history. No proponent will use the City of Seguin as a reference. The City may utilize other references to evaluate a proponent's responsibility or performance history. A single negative reference, in the City's sole discretion, may be cause for disqualification of a proponent. An itemized list of the proponent's equipment available, or to be available, for use in the work.

## 3. Municipal References - Current

Attach information indicating the names and addresses of **ALL** full-service (residential and commercial) solid waste collection and disposal contracts entered into by the proponent with a municipality in the State of Texas during the past five years, and **ALL** municipalities or other governmental entities with which the proponent is now under contract to provide solid waste collection and disposal services. Include the population of the area served and the number of commercial units served, the period covered by

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the agreement, and the name and phone number of a contact person familiar with the proponent's performance history. The City may utilize other references to evaluate a proponent's responsibility or performance history. A single negative reference, in the City's sole discretion, may be cause for disqualification of a proponent.

4. A list of equipment to be used in the performance of this contract, in the format indicated in Attachment A. Indicate where the equipment will be domiciled.

5. A copy of the latest available financial statements of the proponent (or its parent company if individual, subsidiary or division financial statement are not prepared and generally available).

6. References from banking institutions in the State of Texas regarding the proponent's financial standing. Include a list of names, addresses and banking officers to contact.

7. Credit References

Provide a list of names, addresses and contact person to verify credit history on fuel and equipment accounts.

8. If the proponent is a corporation, evidence that the proponent is in good standing with the State of Texas, and in the case of a corporation organized under the laws of any other State, evidence that the proponent is licensed to do business in the State of Texas, or a sworn statement that it will take all necessary action to become so licensed if its proposal is accepted.

9. Evidence that the proponent is capable of performing the requirements set forth in the contract documents.

10. Evidence in form and substance satisfactory to the City that the proponent has been in existence for a minimum of five years, and possesses not less than five years actual operating experience in

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commercial solid waste collection and disposal in the State of Texas.

11. Evidence in form and substance satisfactory to the City, that the proponent possesses the managerial and financial capabilities necessary to perform all phases of the work called for in this RFP.

12. Evidence in form and substance satisfactory to the City that the proponent's experience in commercial solid waste collection and disposal is of a comparable size to that which is contemplated by this RFP.

13. List of recently disposed and pending litigation

Provide the style and cite of any current pending litigation and any litigation settled or disposed within the past five (5) years against the proposer, including its parent, sister or subsidiary companies.

14. History of Regulatory Compliance

Provide a list of any current pending administrative orders or violations of federal, state and local, laws, rules and codes for which the proposer has been cited, punished or reprimanded, including its parent, sister or subsidiary companies. Also include any administrative proceedings or violations settled or disposed of within the past five-(5) years.

### **1.19.2 Cost Component Requirements**

1. Cost proposals will be submitted on the forms provided in these proposal documents. If not submitted on the forms provided, the proposal will be rejected. Facsimile proposals will not be accepted.

2. The cost proposal submitted on the enclosed forms will constitute an official offer to undertake the proposed work at the quoted prices. Each proponent agrees that its price will remain firm

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and subject to acceptance by the City for a period of 120 calendar days from the proposal opening date.

## **1.20 Submission of Proposals**

All Proponents must submit an original and six (6) copies of their Proposal, properly signed with a manual signature of an authorized representative of the firm. Proposals are to be delivered in **two separately sealed packages**, with the due date and time on the outside of each of the packages. **(Package 1- Technical Proposal and Package 2- Cost Component Proposal)**. Sealed packages shall be clearly marked as follows:

### **Package 1:**

#### **SEALED TECHNICAL PROPOSAL**

Collection and Disposal of Commercial Solid Waste  
City of Seguin RFP Package No 99-2010-24

To be opened at 3:00 p.m., Tuesday, July 20, 2010

Submitted By: (respondent's name and address)

### **Package 2:**

#### **SEALED COST COMPONENT PROPOSAL**

Collection and Disposal of Commercial Solid Waste  
City of Seguin RFP Package No 99-2010-24

To be opened at 3:00 p.m., Tuesday, July 20, 2010

Any proposal submission which lacks any of these components will not constitute a proposal, will not be evaluated, and will not be eligible for contract award. Proposals which are received after the specified time and date will not be considered and will be returned unopened.

The City's proposed contract for these services is included in this RFP at Section 6.0. Each proponent is responsible for thoroughly reviewing this contract, and by submitting a proposal, a proponent acknowledges that it has reviewed and understands all of the contract provisions proposed by the City. If any of these contract provisions is of concern to a proponent, or if a proponent wishes to submit alternative language for the City's consideration, a list of the concerns and

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the wording of proposed alternative language must be included in the proponent's proposal.

**1.21 Review and Evaluation of Proposals**

All proposals will be reviewed for completeness and those found to be either incomplete or non-responsive will be rejected from further consideration. The evaluation team will determine if a reply is “non-responsive” and their decision will be conclusive. Responsive and complete proposals will be evaluated by the City’s evaluation team. The evaluation team will conduct a technical evaluation to determine the technical compliance of each proposal. They will provide an evaluation of cost proposals and selection of Vendors for further evaluation and/or negotiations.

The evaluation team will review the proposals and rank each from best-to-least-desirable based on compliance with the Evaluation Criteria specified in Section 1.22 of this RFP. Discussions may be conducted individually with vendors who submit responsive proposals and who are determined reasonably qualified for award of the contract. The City makes no commitment to any proponent beyond consideration of the proposals.

**1.22 Evaluation Criteria**

Proposals will be evaluated in the following areas, listed in relative order of importance with respect to the requirements as outlined in this document. The proposal receiving the highest overall score by the evaluation committee will be recommended to the City Council for contract award.

- 1. Safety and environmental record of proponent ..... 30%
- 2. Local presence ..... 20%
- 3. Availability of resources, staffing, and quality of equipment and facilities to be used by proponent ..... 15%

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4. Company stability, financial capacity ..... 15%
  5. Quality of service/performance record in servicing other similar municipal contracts ..... 10%
  6. Experience of proponent..... 10%

**1.23 Pre-Award Survey**

After proposal opening and prior to award, City reserves the right to make a pre-award survey of any or all proponents’ facilities and equipment to be used in the performance of work under this solicitation. The proponent agrees to allow all reasonable requests for inspection of such facilities with two days advance notice. Failure to allow such an inspection will be cause for rejection of a proposal as non-responsive. The City reserves the right to reject facilities or equipment as unacceptable for performance under this RFP as a result of such pre-award survey.

**1.24 Negotiations**

In the event the negotiations between the firm selected and the City cannot be completed as a result of an inability to reach agreement on the cost for services, the scope of work to be performed, or the terms of the contract, then at the option of the City, the contract may be awarded to the second most qualified proponent. Negotiations will continue in this sequence until a contract is finalized or all proposals are rejected.

**2.0 GENERAL TERMS AND CONDITIONS**

The City Council and City Manager have established the Purchasing Department as the City’s agency for entering into procurement contracts, under their direction.

The City may make such investigation as is deemed necessary to determine the ability of the Vendor to provide the equipment, material, and/or services as required by this specification and to determine the adequacy of the proposed

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equipment, material, and/or services. The Vendor shall furnish, upon request and in a timely manner, all such data and information requested for this purpose.

The City shall consider, as a competent vendor, only those vendors who are fully capable of complying with all terms and conditions set forth in this RFP. All terms and conditions set forth in this RFP shall become a part of the final contract.

## **2.1 Contract Document Hierarchy**

The Contract, Statement of Work, RFP, Vendor's best-and-final offer, and Vendor's proposal and any subsequent, approved amendments will constitute the contract documents. All requirements, terms and conditions stated in the RFP will apply unless specifically superseded by the Contract, Statement of Work or other higher precedent document. Any inconsistencies will be resolved in the following order of precedence:

- a. Contract
- b. Statement of Work
- c. RFP
- d. Vendor's best-and-final offer
- e. Vendor's proposal

## **2.2 Notices**

All notices required by any of the Contract documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested, to the addresses specified in the Contract.

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**3.0 ACKNOWLEDGEMENT OF ADDENDA**

This acknowledgement must be included in Proposal if Addenda have been issued to the Request for Proposals.

**COLLECTION AND DISPOSAL OF COMMERCIAL SOLID WASTE  
DUE DATE: JULY 20, 2010 AT 2:30 P.M.**

The following Addenda to City of Seguin Request for Proposal 99-2010-24 have been received.

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Proponent Name / Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Phone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email address \_\_\_\_\_

## 4.0 PROPOSAL SHEET

**COLLECTION AND DISPOSAL OF COMMERCIAL SOLID WASTE**  
**DUE DATE: July 20, 2010 at 2:30 P.M.**

**BASE RATES BASED ON A 5% FRANCHISE FEE AND A 3%  
MUNICIPAL ADMINISTRATIVE FEE  
BASED ON GROSS BILLINGS**

	Description							
	<b>Collection and Disposal of Commercial Solid Waste</b>							
	<b>Size/Frequency/Price per Container</b>							
	Size	1x/wk	2x/wk	3x/wk	4x/wk	5x/wk	6x/wk	extra
	90g	_____	_____	_____	_____	_____	_____	_____
	2yd	_____	_____	_____	_____	_____	_____	_____
	3yd	_____	_____	_____	_____	_____	_____	_____
	4yd	_____	_____	_____	_____	_____	_____	_____
	6yd	_____	_____	_____	_____	_____	_____	_____
	8yd	_____	_____	_____	_____	_____	_____	_____
	10yd	_____	_____	_____	_____	_____	_____	_____
	Roll-off Service:							
	Size	Delivery	Rental	Haul	Deposit			
	20yd	_____	_____/day	_____	_____			
	30yd	_____	_____/day	_____	_____			
	40yd	_____	_____/day	_____	_____			

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**THE UNDERSIGNED AFFIRMS THAT IT IS DULY AUTHORIZED TO SUBMIT THIS PROPOSAL, THAT THIS PROPOSAL HAS NOT BEEN PREPARED IN COLLUSION WITH ANY OTHER PROPONENT, AND THAT THE CONTENT OF THIS PROPOSAL HAS NOT BEEN COMMUNICATED TO ANY OTHER PROPONENT PRIOR TO THE OFFICIAL OPENING OF THIS PROPOSAL. THE CONTRACT WILL BE AWARDED TO THE PROPONENT WHOSE PROPOSAL IS DETERMINED TO BE THE MOST ADVANTAGEOUS TO THE CITY, CONSIDERING THE PRICE AND OTHER EVALUATION FACTORS. THE CITY OF SEGUIN RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS.**

Proponent Name / Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Phone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email address \_\_\_\_\_

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## 5.0 INSURANCE REQUIREMENTS

The vendor shall, at all times during the period in which contract is in force and effect, provide and maintain insurance of the type and in limits as set forth below. Such insurance shall name the parties required to secure same as insured and shall include the City of Seguin as an "additional insured" and provide City of Seguin with waiver of subrogation. An original Certificate of Insurance must be furnished to the City of Seguin before the commencement of any service under this contract. If requested by the City of Seguin, the vendor shall furnish the City of Seguin with true copies of each policy required of him/her.

Liability Insurance: The Vendor shall carry Comprehensive Automobile and General Liability Insurance, at his/her own cost and expense, covering all operations under this contract whether such operations be by himself/herself or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such liability insurance shall be as follows: \$1,000,000 combined single limit. The General Liability Insurance required by the preceding sentence shall include the following extensions of coverage: a) Contractual Liability endorsement; (b) Products and Completed Operations Liability endorsement; c) City of Seguin as an "Additional Insured" endorsement.

Automobile Liability Insurance: The minimum acceptable limits of liability to be provided by such automobile liability insurance shall be as follows: \$500,000 combined single limit. Said Automobile Liability Insurance shall provide coverage for owned, unowned and hired vehicles.

Workers Compensation Insurance: Such insurance will provide applicable statutory workers compensation coverage pursuant to the Workers Compensation Act, State of Texas, including employer's liability protection with a minimum limit of \$100,000 per occurrence.

Cancellation of Insurance: The Vendor shall not cause any insurance policy to be cancelled or permit it to lapse and all insurance policies shall include an endorsement to the effect that the insurance policy shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance until notice has been mailed to the City of Seguin, ATTN: Director of Finance, P.O. Box 591, Seguin, TX 78156-0591. The notice shall state the date when such cancellation or reduction shall be effective. The cancellation date shall not be less than thirty (30) days after such notice.

Hold Harmless Agreement: The Vendor shall indemnify and save harmless the City of Seguin (including their officers, directors, agents, and employees) from any and all losses, costs, damages, liability and expenses in connection with claims or suits for damage to property and or injury to persons, including death, through or willful act, by or through the performance of the work or operations incidental to the work, by the Vendor, caused by the negligent acts, errors, or omissions or the willful acts or any activities of the Vendor, Vendor's agents, employees and invitees of the vendor; and the Vendor shall at the request of the City of Seguin undertake to investigate and defend any and all such claims or suits against the City of Seguin.

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## 6. Proposed Form of Contract

### CONTRACT FOR COLLECTION AND DISPOSAL OF COMMERCIAL SOLID WASTE

This Contract is made on \_\_\_\_\_ between the City of Seguin, Texas (the “City”), 205 N. River St., Seguin, Texas 78156 and \_\_\_\_\_ (the “Contractor”), for the provision of commercial solid waste collection and disposal services.

The City and the Contractor agree as follows:

#### ARTICLE 1 CONTRACTOR'S SERVICES AND RESPONSIBILITIES

##### Section 1.1 Standards of Performance

1.1.1 The Contractor is responsible for providing comprehensive solid waste collection and disposal services within the City of Seguin, including but not limited to commercial solid waste collection and disposal in accordance with the terms and conditions of this Contract in a good and workmanlike manner. These services will include furnishing all labor, equipment, tools, materials, insurance, supervision, and all other items necessary to complete the work as specified. No work under this Contract will be subcontracted by the Contractor without prior written approval from the City. Any subcontracts will be in writing and will be subject to each provision of this Contract.

1.1.2 The Contractor certifies that it has fully acquainted itself with all conditions related to this Contract and will complete its services in and under any conditions it may encounter or create, without additional cost to the City or to the commercial solid waste customers, except for material changes in conditions or requirements of the work occurring during the term of this Contract without the fault of the Contractor.

1.1.3 The Contractor certifies that it is not now nor will it become delinquent in the payment of taxes to any governmental entity.

##### Section 1.2 Definitions

In this Contract, the following terms will have the following meanings:

1.2.1 *Collection* - The removal and transportation of materials from the pickup point to the approved processing or disposal site.

1.2.2 *Commercial Customer* - The owner or occupant of a commercial unit.

1.2.3 *Commercial solid waste* - All bulky waste, construction debris, garbage, rubbish or stable matter, generated by a producer at a commercial or industrial unit.

1.2.4 *Commercial unit* - Any premise, location or entity, public or private, other than a residential unit, that requires solid waste collection within the contract area. Commercial unit includes commercial, industrial and multi-family uses, and all other uses that do not qualify as residential units.

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1.2.5 *Container* – A metal bin used to store solid waste, designed to be lifted and emptied mechanically.

1.2.6 *Contract or Contract Documents* - Includes the following: This Contract, the request for proposals, the Contractor's proposal, addenda, the performance bond, contract area maps, insurance certificates, and supplemental agreements or amendments. The terms *Contract* and *Contract Documents* have the same meaning.

1.2.7 *Contract area* - The Seguin city limits, as they now exist or may be amended in the future.

1.2.8 *Director* – [ACM] The Director of the Department of Public Works or a person authorized to act for the Director.

1.2.9 *Disposal site* - A solid waste depository, including but not limited to sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction, and requiring such licenses, permits or approvals to receive for processing or final disposal of solid waste or dead animals.

1.2.10 *Garbage* - Readily decayable solid waste, including dead animals, animal and vegetable waste, food containers, and all other waste matter which is likely to attract flies or vermin, except any matter included in the definitions of bulky waste, construction debris, dead animal, hazardous waste, rubbish or stable matter.

1.2.11 *Hazardous waste* - any chemical, compound, mixture, substance or article designated as a “hazardous material” under state or federal law.

1.2.12 *Producer or customer* - An occupant of a commercial or industrial unit or a residential unit who generates solid waste.

1.2.13 *Receptacle* - A container used to store solid waste, designed to accept liners that are to be emptied manually.

1.2.14 *Residential unit* – shall include all structures used primarily for residences, including multi-family residential structures, that utilize 90 gallon, or smaller, containers for their solid waste service. Residential Unit shall also include those specific, enumerated multi-family complexes that are currently serviced under the City of Seguin Residential Waste Collection Contract.

1.2.15 *Rubbish* - Solid waste that is not readily decayable, including wood, wood products, grass cuttings, plants, leaves, paper, cardboard, cloth, leather, footwear, ashes, cinders, floor sweepings, glass, mineral or metallic materials, and all other waste materials other than bulky waste, construction debris, garbage, hazardous waste, stable matter, tree trimmings or yard waste.

1.2.16 *Solid waste* - Garbage, rubbish, bulky waste, construction debris, stable matter, tree trimmings and yard waste.

1.2.17 *Stable matter* - All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock, or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.

1.1.18 *Unacceptable Waste* - Any and all waste that is either:

A. Waste which is now or in the future prohibited from disposal at a sanitary landfill by state or federal laws or the regulations promulgated thereunder;

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- B. hazardous waste, as defined herein;
  - C. special waste, as defined by the laws of the United States or the State of Texas or the regulations promulgated thereunder;
  - D. tires, concrete, and bulk petroleum or chemical products or by-products;
  - E. septic tank pumping and grease and grit trap wastes;
  - F. sludge waste, including water supply treatment plant sludges and stabilized and/or unstabilized sludges from municipal or industrial wastewater treatment plants;
  - G. medical waste, including infectious or pathological waste from laboratories, research facilities, and health and veterinary facilities;
  - H. sludge waste, including water supply treatment plant sludges and stabilized and/or unstabilized sludges from municipal or industrial wastewater treatment plants;
  - I. liquid waste, which for the purposes of this Contract means any waste material that is determined to be or contain "free liquid" by the paint filter test (EPA Method 9095);
  - J. waste from an industrial process;
  - K. waste from a pollution control process;
  - L. waste transported in a bulk tanker;
  - M. friable and/or nonfriable asbestos waste;
  - N. empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides; or containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in this definition;
  - O. residue or debris from the cleanup of a spill or release of chemical substances, commercial products or other wastes listed in this definition;
  - P. soil, water, residue, debris or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in this definition, including soil contaminated from underground storage tanks used or formerly used for the storage of petroleum products;
  - Q. any waste that requires other than normal handling, storage, management and/or disposal, as determined by the Director;
  - R. dead animals and/or slaughterhouse waste, except for animals euthanized under the authority and direction of the City; or
  - S. any waste which because of its quantity, concentration, frequency of disposal, required disposal procedures, regulatory status, or physical, chemical infectious or other characteristics jeopardizes or may jeopardize the environmentally sound operation of a disposal site, as determined by the Director.

1.2.19 *Work* - The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract and the carrying out of all duties and obligations imposed by this Contract on the Contractor.

### **Section 1.3 Solid Waste Collection**

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### 1.3.1 Commercial Solid Waste

- A. The Contractor will collect all solid waste generated at all commercial units in the contract area, including temporary units and construction sites. The Contractor will make containers and collection service available to all commercial units in the contract area. The Contractor will be responsible for negotiating the nature and frequency of collections with each commercial customer based upon the needs of the customer. The Contractor will accomplish all commercial solid waste collections Monday-Saturday between the hours of 7:00 AM and 7:00 PM.
- B. The Contractor will provide containers for solid waste storage which are available upon the request of the owner or occupant of any commercial unit within the contract area. The types of containers provided by the Contractor will be subject to review and approval by the Director. The containers provided by the Contractor will be equipped with suitable covers to prevent blowing or scattering of solid waste materials. The Contractor will maintain all containers in good repair, appearance, and in a sanitary condition, and clearly marked with the Contractor's name and telephone number, and emptied not less than one time per week. The Contractor will provide to each commercial customer, containers sufficient in number and size to hold all of the customer's solid waste that is generated between collections. (See section 1.4.1, Quality)
- C. The Contractor will be performing all commercial customer ordering, billing, and collections.
- D. The Contractor will charge commercial customers for all collections by size of container and frequency of service, in accordance with the prices contained in subsection 3.1.2.
- E. Special Service needs shall be proposed and provided on a case-by-case basis.

## **Section 1.4 Operation of Collection Services**

### 1.4.1 Quality

- A. The Contractor will not spill or leave garbage or rubbish remaining when making pickups. If the Contractor spills garbage or rubbish it will clean the spill by whatever means necessary before the truck leaves the premises. The Contractor will clean up liquid and hydraulic spills with an absorbent that will be carried on all trucks. If a spill leaves a stain on a roadway, building, or other similar surface, the Contractor will use all reasonable means available to remove the stain and restore the facility to the satisfaction of the Director.
- B. The Contractor will be responsible for injuries to any person and damage to any property, including City-owned property caused by willful or negligent acts or accidents related to the Contractor's operations and activities under this Contract.
- C. The Contractor will pick up all items placed for regular solid waste collection, whether contained in the provided commercial container or not, and regardless of the mode of collection utilized.
- D. All damaged commercial containers shall be replaced with a clean container in good repair and appearance.

### 1.4.2 Complaints

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- A. The City will serve as the contact point for all customer complaints about the Contractor's services. The City will provide the Contractor with contact information for this purpose. If the Contractor receives a complaint directly from a customer, the Contractor will respond courteously and direct the customer to the contact point identified for this purpose by the City.
  - B. The Contractor will respond promptly and courteously to investigate and provide resolution to all complaints it receives from the City. The Contractor will respond promptly to City telephone or email inquiries regarding the status of complaints and complaint resolution.
  - C. The Contractor will investigate all alleged missed scheduled collections, and if such allegations are verified by the Contractor or by the City, the Contractor will arrange for the collection of the uncollected solid waste within 24 hours after the complaint is received.
  - D. The Contractor will notify the City of all commercial solid waste the Contractor declines to collect and the reason for it. The Director may investigate "no pickup" complaints and advise the customer of the reasons, or require the Contractor to collect the material.
  - E. The City will keep a record of the dates and times complaints are received and the dates and times the complaints were resolved by the Contractor.

#### 1.4.3 Complaint Resolution and Penalties

- A. The Contractor will be charged an administrative penalty of not less than \$25.00 nor more than \$500.00 for each customer complaint or other violation of this contract that is not resolved to the satisfaction of the City Manager. The Contractor may appeal a penalty assessment to the City Council by filing a written notice with the City Manager within 10 days of the date of the City Manager's decision. The City Council will hear the appeal at its next regular meeting that is ten days or more after the date the appeal notice is filed. The City Council's decision will be final.

#### 1.4.4 Equipment

- A. With the exception of construction roll-offs, the Contractor will operate only enclosed packer type trucks suitable to keep the solid waste or recyclable materials from falling or blowing from the trucks. Solid waste or recyclable materials hauled by the Contractor will be contained, tied or enclosed so that leaking, spilling and blowing is prevented. All of the Contractor's equipment will be in good mechanical condition and possess current federal and TXDOT certifications.
- B. The Contractor will provide radio communication to all trucks from a base station.
- C. The Contractor will utilize only that equipment approved for use under this Contract and specified in Attachment A to this Contract. The Contractor may make changes to the equipment list with the written consent of the Director. The Contractor will not use equipment which is more than seven years old to provide the services required under this Contract. The Contractor will use only equipment manufactured by a nationally known manufacturer.
- D. The Contractor will keep all equipment clean and in a good state of repair.

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- E. The Contractor will not allow the noise level for the collection vehicles during the stationary collection or compaction process to exceed 75 decibels at a distance of 25 feet from the collection vehicle and at an elevation of five feet from the horizontal base plane of the vehicle.
  - F. The Contractor will identify its vehicles and other equipment with the name, address, and phone number of the Contractor's local office on each of its passenger doors so that the information is clearly readable from a distance of 100 feet.
  - G. The Contractor will provide access at any time for the City to inspect the equipment to ensure that all equipment meets the requirements of this Contract and has the proper TXDOT certification.

#### 1.4.5 Personnel

- A. The Contractor will provide properly trained, capable drivers with current drivers licenses of the proper classification for the trucks being driven.
- B. The Contractor will ensure that all of its employees, permanent or temporary, present a neat appearance and can be easily recognized while performing work under this contract. All of its employees will wear appropriate identification badges or uniforms.
- C. The Contractor will ensure that any persons employed who are not United States citizens have valid work permits.
- D. The Contractor will remove from service under this Contract and replace any of its employees for just cause as requested by the City.

#### 1.4.6 Customer Service/Office Facilities

The Contractor will maintain an office within the City limits, or provide other facilities through which it can be contacted. The Contractor will provide sufficient local or toll free telephones and office staff in order to provide necessary services from 8:00 a.m. to 5:00 p.m. on regular collection days. In addition, the Contractor will provide for voice mail receipt of after-hours inquiries and communications.

#### 1.4.7 Disposal

The Contractor will haul and dispose of all solid waste collected by it in the contract area at a disposal site licensed by the State of Texas for that purpose. The disposal site must have adequate capacity to accommodate the requirements of this Contract. The Contractor is responsible for payment of all costs of disposal, including without limitation, tipping, environmental, inspection or other fees charged by disposal site operators or governmental authorities in connection with disposal activities.

#### 1.4.8 Ownership of Collected Solid Waste

The Contractor accepts title to all solid waste placed in the Contractor's collection vehicles, removed by the Contractor from a container, or removed by the Contractor from the customer's premises. The City does not accept ownership or title to any such items.

#### 1.4.9 Notifications and Disposal Site Reports

- A. The Contractor will notify all customers of complaint procedures and regulations.

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- B. The Contractor will forward to the City at its request, copies of all Texas Health Department Inspection Reports for the sites being used for the disposal of solid waste collected under this Contract.

#### 1.4.10 Interruption of Service

In the event the collection and disposal of solid waste or recyclable materials is interrupted for any reason within the Contractor's reasonable control for more than 48 hours, the City will have the right to make temporary independent arrangements for continuing these services to its citizens to provide and protect the public health and safety. In the event of this type of interruption, the Contractor will bear all expenses incurred for collection and disposal. Notwithstanding any other provision of this Contract, if an interruption in service continues for a period of ten days, the City will have the right to immediately terminate this Contract and to seek any remedy provided by law.

#### 1.4.11 Natural Disaster

In the case of excessive amounts of solid waste caused by a tornado, severe storm, high winds, flooding, hurricane, ice storm or similar natural occurrence, the City may dispose of the solid waste in whatever manner it may elect; provided however, that the City will attempt in good faith to use the Contractor's services if they can be used at the same or lower cost than other methods available to the City.

#### 1.4.12 Place of Collection

Commercial: The Contractor will place and store all containers entirely off of streets, alleys or other public property and into any existing enclosure.

#### 1.4.14 Miscellaneous

The Contractor will have sole and exclusive right to provide collection and disposal services for solid waste and recyclable materials from within the contract area, subject to Section 1.3.1.B regarding service in newly annexed areas.

## **ARTICLE 2 THE CITY'S RESPONSIBILITIES**

### **Section 2.1**

The City will designate the Assistant to the City Manager to act as the City's authorized representative with respect to this Contract.

## **ARTICLE 3 PAYMENTS**

### **Section 3.1 Rates and Billing**

3.1.1 The Contractor will perform all billing and collection of commercial accounts.

3.1.2 The rates charged by the Contractor will be as follows:

[insert table of services and rates per Proposal Sheet]

### **Section 3.2 Modification of Rates**

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3.2.1 The fees which may be charged by the Contractor for the second and subsequent years of the contract term may be adjusted upward or downward to reflect the net percentage change from the previous year in the Consumer Price Index for Urban Wage Earners and Clerical Workers (all items), and the Consumer Price Index for Urban Wage Earners and Clerical Workers, Expenditures Category "Gasoline," both as published by the United States Department of Labor, Bureau of Labor Statistics. The fees may be increased or decreased in a percentage amount equal to 90 percent of the net percentage change of the All Items Index plus 10 percent of the net percentage change of the Gasoline Index.

3.2.2 On November 1<sup>st</sup> of each year of this Contract will be the Rate Modification Index Date. As soon as possible after a Rate Modification Index Date, the Contractor will send the City a comparative statement setting out for both the All Items Index and the Gasoline Index a) the composite percentage change equal to the net percentage change in the All Items Index plus the net percentage change in the Gasoline Index; and b) the increase or decrease in the fees which may be charged by the Contractor. The rate change based on this information will be implemented by an amendment to this Contract, approved by the City Council, effective on the next ensuing anniversary date of this Contract.

3.2.3 In addition to the above, the Contractor may petition the City for additional rate and price adjustments at reasonable times based on increases in cost of operations, caused by factors such as revised laws, ordinances, regulations, changes in disposal sites, disposal costs, and for other similar reasons. The Contractor's petition will specifically identify the reasons for the requested adjustment, and its impact upon the Contractor's cost of operations, in unit terms, with an explanation of the methodology used to calculate such impact. The City may request additional information it considers necessary to evaluate the requested adjustment. The City may grant such adjustments through amendments to the contract. If the Contractor and the City do not agree on any rate increase requested by the Contractor, the Contractor may elect to continue the contract at the current rate, or may terminate the contract effective upon 365 calendar days written notice. No such failure to approve will relieve the City from any obligation under the Contract to pay increased rates approved by the City Council under subsection 3.3.2.

### **Section 3.3 Franchise Fee Payments**

In consideration of the Contractor's use of City streets for performing its services the Contractor agrees to pay the City a franchise fee in an amount equal to 5% of the Contractor's gross billings (excluding all appropriate sales taxes) for commercial solid waste services in the contract area. The Contractor will provide written notification to the City by the 10<sup>th</sup> of each month of the amount of its gross billings for these services for that month, and the fee, based on these amounts shall be paid by the 15<sup>th</sup> day of the next month.

### **Section 3.4 Administrative Fee Payments**

In consideration of the City's tracking complaints and providing other administrative services under this contract, in addition to the 5% franchise fee the Contractor shall pay a 3% administrative fee based on the Contractor's gross billings (excluding appropriate sales taxes) for solid waste services in the contract area. The contractor will provide written notification to the City by the 10<sup>th</sup> of each month of the amount of its gross billings for these services that month, and the fee, based on these amounts, shall be paid by the 15<sup>th</sup> day of the next month.

## **ARTICLE 4 RECORDS AND REPORTS**

**Section 4.1** The Contractor will file the following records and reports with the City monthly.

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4.1.1 Reports of all actions taken by the Contractor to resolve complaints.

4.1.2 Report of commercial accounts which includes number of accounts, container(s) size, frequency, and volume.

**Section 4.2** The Contractor will retain all records and supporting documentation applicable to this Contract, and not delivered to the City, for a period of three years except in the event that the Contractor goes out of business, it will deliver to the City all of its records relating to this Contract for retention by the City.

## **ARTICLE 5 TERM OF CONTRACT**

### **Section 5.1 Contract Term**

This Contract will be effective January 1, 2011, and will continue until December 31, 2016. The Contract may be extended for two additional five-year periods, provided all terms and conditions remain in full force and effect except for the Contract being extended and a modification to rates as specified in Section 3.1.2 of this Contract. This option, if exercised, is to be executed in the form of a letter agreement, to be executed no sooner than 180 days prior to expiration of the Contract, nor later than the final day of the contract period. This option to renew requires the mutual agreement of the City and the Contractor. Refusal by either party to exercise this option to renew, will cause the Contract to expire on the original or mutually agreed upon date. The total period of the Contract, including the extension as a result of exercising this option, will not exceed a maximum combined period of 15 years.

### **Section 5.2 Breach/Default**

Failure by either party to this Contract to perform any of its provisions will constitute a breach of Contract, in which case, either party may require corrective action within ten days from date of receipt of written notice citing the exact nature of such breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the prescribed ten days will constitute a default of Contract. The defaulting party will be given a 20 day period within which to show cause why the Contract should not be terminated for default. The City Council may take whatever action as its interest may appear, resulting from such notice. The City reserves the right to enforce the performance of the Contract in any manner prescribed by law in the event of breach or default of the Contract, and may contract with another party with or without solicitation of proposals or further notification to the Contractor. At a minimum, the Contractor will be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the City derived hereunder should it become necessary to contract with another source because of this default, plus reasonable administrative costs and attorney's fees. In the event of termination, the City, its agents or representatives, will not be liable for loss of any profits anticipated to be made under this Contract.

### **Section 5.3 Termination By City**

The City reserves the right to terminate this Contract upon 30 days written notice for any reason deemed by City Council to serve the public interest, or resulting from any governmental law, ordinance, regulations, or court order. No termination for convenience will be taken with the intention of awarding the same or a similar Contract to another source. In the event of such termination the City will pay the Contractor those costs directly attributable to work done or supplies obtained in preparation for completion or compliance with this Contract prior to termination. Provided, however, that no costs will be

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paid which are recoverable in the normal course of doing business in which the Contractor is engaged, or costs which can be mitigated through the sale of supplies or inventories. In the event City pays for the cost of supplies or materials obtained for use under this Contract, these supplies or materials will become the property of City and will be delivered to the City at the place designated by the Director. The City will not be liable for loss of any profits anticipated to be made under this Contract.

## **ARTICLE 6 MISCELLANEOUS PROVISIONS**

### **Section 6.1 Governing Law and Venue**

This Contract is governed by the laws of the State of Texas. Exclusive venue for any dispute arising under this Contract is in Guadalupe County, Texas.

### **Section 6.2 Limitations**

As to all acts or failures to act by either party to this Contract, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

### **Section 6.3 Gratuities**

The City may terminate this contract if the City finds that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City to secure favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Contract. In the event this Contract is terminated under this section, the City may collect, in addition to any other damages or remedies to which it may be entitled by law, exemplary damages in an amount not less than three nor more than ten times the value of the gratuity offered or given to any city officer or employee.

### **Section 6.4 Nondiscrimination**

In performing the services required under this Contract, the Contractor will not discriminate against any person on the basis of race, color, religion, sex, national origin, age or disability. The Contractor will comply with all laws and regulations prohibiting discriminating against employees or prospective employees because of age, religion, race, color, sex, disability, or national origin. The Contractor will submit reports at the City's request to assure compliance.

### **Section 6.5 Construction**

All references in this Contract to any particular gender are for convenience only and will be construed and interpreted to be of the neuter gender. The term "will" is mandatory in this Contract.

### **Section 6.6 Severability**

Should any provision in this Contract be found or deemed to be invalid, this Contract will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Contract are declared to be severable.

### **Section 6.7 Compliance With Laws**

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In performing this Contract, the Contractor, its subcontractors, successors and assigns will comply with all local, state and federal laws.

#### **Section 6.8 Public Information Act**

The City of Seguin is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Contract and all written information generated under this Contract may be subject to release under the Act. The Contractor shall not make any reports, information, data, etc. generated under this Contract available to any individual or organization without the written approval of the City.

#### **Section 6.9 Waiver/Renunciation**

No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by both parties.

#### **Section 6.10 Contractor Name Change**

The Contractor is responsible for the performance of the Contract. In the event the Contractor changes its name, the Contractor will notify the City Manager in writing prior to the change taking effect, and the Contractor will publish notice of the change in a newspaper circulated in the contract area prior to the change taking effect. A fee of \$100.00, payable to the City, will be charged the Contractor for administrative costs in processing each name change under this provision. The Contract will then be modified to reflect the change.

#### **Section 6.11 Force Majeure**

In the event that the performance by either party of any of its obligations under the Contract is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

#### **Section 6.12 Successors and Assigns; Assignment**

The City and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the City nor the Contractor will assign, sublet or transfer any interest in this Contract without the written consent of the other, which will not be unreasonably withheld.

#### **Section 6.13 Entire Agreement**

This Contract represents the entire and integrated Contract between the City and the Contractor and supersedes all prior negotiations, representations or agreements either written or oral.

#### **Section 6.14 Written Assurances**

Whenever one party to this Contract, in good faith, has reason to question the other party's intent to perform, the former may demand that the other party give written assurance of intent to perform. In the event that a demand is made and no such assurance is received within 5 working days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.

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**ARTICLE 7  
INSURANCE, INDEMNITY AND BONDS**

**Section 7.1 Indemnity**

**THE CONTRACTOR WILL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND ITS EMPLOYEES, AGENTS, OFFICERS AND SERVANTS FROM ANY AND ALL LAWSUITS, CLAIMS, DEMANDS AND CAUSES OF ACTION OF ANY KIND ARISING FROM THE NEGLIGENT OR INTENTIONAL WRONGFUL ACTS OF THE CONTRACTOR, ITS EMPLOYEES, SUBCONTRACTORS OR AGENTS. THIS WILL INCLUDE, BUT NOT BE LIMITED TO, THE AMOUNTS OF JUDGMENTS, PENALTIES, INTEREST, COURT COSTS, LEGAL FEES, AND ALL OTHER EXPENSES INCURRED BY THE CITY ARISING IN FAVOR OF ANY PARTY, INCLUDING THE AMOUNTS OF ANY DAMAGES OR AWARDS RESULTING FROM CLAIMS DEMANDS AND CAUSES OF ACTION FOR PERSONAL INJURIES, DEATH OR DAMAGES TO PROPERTY, ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, AND TRADEMARKS AND WITHOUT LIMITATION BY ENUMERATION, ALL OTHER CLAIMS, DEMANDS, OR CAUSES OF ACTION OF EVERY CHARACTER OCCURRING, RESULTING, OR ARISING FROM ANY NEGLIGENT OR INTENTIONAL WRONGFUL ACT, ERROR OR OMISSION OF THE CONTRACTOR AND/OR ITS AGENTS AND/OR EMPLOYEES. THIS OBLIGATION OF THE CONTRACTOR WILL NOT BE LIMITED BY REASON OF THE SPECIFICATION OF ANY PARTICULAR INSURANCE COVERAGE IN THIS CONTRACT.**

**Section 7.2 Insurance**

The Contractor will procure and maintain at its expense insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of Texas, covering all operations under this Contract, whether performed by the Contractor or its agents, subcontractors or employees. Before commencing the work, the Contractor will furnish to the City a certificate or certificates in form satisfactory to the City, showing that the Contractor has complied with this paragraph. All certificates will provide that the policy will not be materially changed or canceled until at least 30 days written notice will have been given to the City, and will name the City as an additional insured on all policies except workers' compensation. The kinds and minimum amounts of insurance required are as follows:

<u>Workers' Compensation Insurance:</u>	Statutory amounts, also to include employer's liability protection with minimum \$100,000 per occurrence.
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Commercial General Liability insurance

Combined single limit	\$1,000,000
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Automobile Liability:

Combined Single Limit	\$500,000
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The stated limits of insurance required by this Paragraph are MINIMUM ONLY and it will be the Contractor's responsibility to determine what limits are adequate. These minimum limits may be basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of Certificates

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of Insurance that in any respect do not comply with the requirements of this Contract does not release the Contractor from compliance herewith.

**Section 7.3 Bonds**

The Contractor will furnish a performance bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) as security for the performance of the contract within 10 days following the Contractor's receipt of a fully executed contract and before commencing any work under this Contract, and annually thereafter. The performance bond must be an amount equal to the remaining contract amount. The Contractor will pay the premium for this bond. The surety on the bond will be a duly authorized corporate surety authorized to do business in the State of Texas. The attorney-in-fact who signs performance bonds must file with each bond a certified and effectively dated copy of a power of attorney.

This Contract will be effective as of the date executed by the City.

City of Seguin

Contractor:



