

EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND DISPOSAL OF
MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE,
AND RECYCLABLE MATERIALS
IN THE CITY OF BULVERDE, TEXAS

JUNE 1, 2014

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IN THE CITY OF BULVERDE, TEXAS**

STATE OF TEXAS

COUNTY OF COMAL

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of June 1, 2014, by and between Progressive Waste Solutions of TX, Inc., a Texas Corporation (the "Service Provider"), and the City of Bulverde, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste and Construction and Demolition Waste and Recyclable Materials (as such terms are defined herein) within the City's corporate limits; and

WHEREAS, Service Provider desires to operate and maintain the service of collection and transportation of Municipal Solid Waste and Construction and Demolition Waste and Recyclable Materials over, upon, along and across the present and future streets, alleys, bridges and public properties of the City, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bag - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a Bag and its contents shall not exceed 35 lbs.

Brush – Loose tree limbs, trees, brush growth and shrub trimmings not measuring in excess of six (6) feet in length or two-hundred (200) pounds in weight.

Bulky Item - Any item not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and other similar household items.

Bundles - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers and tree trimmings.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City.

Commercial Unit – Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Commercial Hand Collect Unit - A small Commercial Unit that requires no more than two (2) Roll-Outs for the collection of its Municipal Solid Waste each week.

Construction and Demolition Waste - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste or Bulky Items.

Container - Any receptacle, including, but not limited to, dumpsters, Recycling Container, Roll-Offs and Roll-Outs, provided to the City by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste or Construction and Demolition Waste or Recyclable Materials. Containers are designed to hold between ninety-five (95) gallons and forty (40) cubic yards of Solid Waste.

Fuel Year – Any one year period of time from October 1 to September 30 during the term of this Agreement.

Hazardous Waste - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Handicapped Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste at the curbside, and that generates and accumulates Municipal Solid Waste. The identities of the members of a Handicapped Residential Unit shall be certified by the City Manager and agreed to by the Service Provider.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

Industrial Unit - Any manufacturing, mining or agricultural facility that generates and accumulates Municipal Solid Waste or Construction and Demolition Waste during, or Recyclable Materials as a result of, its operations.

Landfill - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Multi-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste and Recyclable Materials.

Municipal Solid Waste - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

Recyclable Materials -

- (a) Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags or other paper;
- (b) Glass bottles and jars (excluding mirrors, windows, ceramics and other glass products);
- (c) Metal cans composed of tin, steel or aluminum (excluding scrap metal); and
- (d) Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5 and #7.

Recycling Container - A Roll-out Container with ninety-five (95) gallons of capacity that is provided by the Service Provider for the exclusive collection of Recyclable Materials.

Residential Unit - Any residential dwelling that is either a Single-Family Residential Unit or a Multi-Family Residential Unit.

Roll-Off - A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

Roll-Out - A Container with ninety-five (95) gallons of capacity.

Single-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste and Recyclable Materials.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(34) whether such waste is mixed with or constitutes Recyclable Materials.

White Good - Any item not measuring in excess of either three (3) cubic feet in size or fifty (50) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

SECTION 2. EXCLUSIVE FRANCHISE GRANT.

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste and Recyclable Materials, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste and Recyclable Materials over, upon, along and across the City's present and future streets, alleys, bridges and public properties. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the City fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the City against any and all violations of the exclusive-franchise grant described herein.

SECTION 3. OPERATIONS.

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste and Construction and Demolition Waste and Recyclable Materials (as provided herein) (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement,,(the "Services").

B. **Nature of Operations.** The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste and Recyclable Materials, the title to all Municipal Solid Waste and Construction and Demolition Waste and Recyclable Materials collected, hauled and recycled or disposed of by the Service Provider over, upon, along and across the City's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 4. SINGLE-FAMILY RESIDENTIAL UNIT COLLECTIONS.

A. **Single-Family Residential Units.** The Service Provider will collect Municipal Solid Waste once per week from Single-Family Residential Units and Recyclable Materials once every

other week from those Single-Family Residential Units who have elected to have Recyclable Materials collected; provided, that (i) such Municipal Solid Waste is placed in Roll-Outs provided by the Service Provider and up to an aggregate of four (4) additional Bags placed beside the Roll-Out(s), (ii) such Recyclable Materials are placed in Recycling Containers and (iii) such Bags, Roll-Outs and Recycling Containers are placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day. Except as provided for herein, the Service Provider shall only be responsible for collecting, hauling and disposing of (i) Municipal Solid Waste placed inside the Roll-Outs and a maximum of four (4) additional Bags placed beside the Roll-Out and (ii) Recyclable Materials placed inside the Recycling Containers provided by the Service Provider. Municipal Solid Waste in excess of the Roll-Outs' or the four (4) Bags' limits, or placed outside or adjacent to the Roll-Outs, will not be collected by the Service Provider. Recyclable Materials in excess of the Recycling Containers' limits, or placed outside or adjacent to the Recycling Containers, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recyclable Materials may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion. If the excess or misplaced Municipal Solid Waste and/or Recyclable Materials continues, the City shall require the Single-Family Residential Unit to utilize an additional Roll-Out so that the excess or misplaced Municipal Solid Waste and/or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.A. hereof. White Goods containing refrigerants will not be collected by the Service Provider unless such White Goods have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Commercial Hand Collect Units. The Service Provider will collect Municipal Solid Waste and Recyclable Materials from Commercial Hand Collect Units once each week; provided, that (i) such Municipal Solid Waste is placed in Roll-Outs provided by the Service Provider, (ii) such Recyclable Materials are placed in Recycling Containers provided by the Service Provider and (iii) such Roll-Outs and Recycling Containers are placed within five (5) feet of the curbside or right of way adjacent to the Commercial Hand Collect Unit no later than 7:00 a.m. on the scheduled collection day. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste and Recyclable Materials placed inside the Roll-Outs Recycling Containers provided by the Service Provider. Municipal Solid Waste in excess of the Roll-Outs' limits, or placed outside or adjacent to the Roll-Outs, will not be collected by the Service Provider. Recyclable Materials in excess of the Recycling Containers' limits, or placed outside or adjacent to the Recycling Containers, will not be collected by the Service Provider. If the excess or misplaced Municipal Solid Waste or Recyclable Materials continues, the City shall require the Commercial Hand Collect Unit to utilize an additional Roll-Out and/or Recycling Container so that the excess or misplaced Municipal Solid Waste and/or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.B. hereto.

C. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Bags, Roll-Outs and Recycling Containers; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need. The

City shall be solely responsible for all other modifications and accommodations required by the Americans with Disabilities Act or any other applicable law or regulation in connection with the services provided hereunder to Single-Family Residential Units.

SECTION 5. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.

The Service Provider will collect Municipal Solid Waste and Recyclable Materials from Commercial, Industrial and Multi-Family Residential Units as needed each week once, as provided for in Section 9.C. hereof. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste and Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.C. hereof. The parties acknowledge and agree that the Service Provider shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the Services herein contracted and that the Commercial, Industrial or Multi-Family Residential Unit assumes all liabilities for damage to pavement or road surface.

SECTION 6. SPECIAL COLLECTIONS AND SERVICES.

A. Municipal Locations. The Service Provider will provide, at no cost to the City, up to an aggregate number of seven (7) Containers (each up to eight (8) yards in size) to collect Municipal Solid Waste at certain municipal locations within the City once per week, as needed.

B. Special Events. The Service Provider will provide, at no cost to the City, one Container (up to eight (8) cubic yards in size) for up to two City designated special events per calendar year.

C. City-wide Clean Up Events. The Service Provider will provide, at no cost to the City, eight (8) Roll-Offs to collect Municipal Solid Waste for two City special clean up events per year.

D. Disaster Relief Services. Upon request by the City, the Service Provider may provide special collection and disposal services due to damage or destruction resulting from a flood, tornado, hurricane or other similar disaster. For the services provide under this Section 6.C., the Service Provider shall charge the City (i) an amount equal to the rates and fees allowed under the Federal Emergency Management Agency's grant for the disaster relief services provided to the City under this Section 6.C. or (ii) a rate mutually agreed upon by the City and the Service Provider. Nothing contained herein shall be construed as to limit the City's ability to contract with additional vendors to provide the disaster relief services contained in this Section 6.C. Notwithstanding anything to the contrary contained herein, the Franchise Fee shall not apply to the disaster relief services provided for in this Section 6.C.

SECTION 7. Intentional left blank.

SECTION 8. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

SECTION 9. RATES AND FEES.

Subject to adjustment, as provided in Section 10 hereof, the rates and fees to be charged and received by the Service Provider are as follows:

A. Single-Family Residential Unit Services. For the Services provided to Single-Family Residential Units under Section 4.A. hereof, the Service Provider shall charge (i) \$13.98 per month for each Single-Family Residential Unit utilizing one Roll-Out, (ii) plus \$4.98 per month for each Single-Family Residential Unit electing to utilizing one Recycling Container and (iii) \$6.00 per month for each additional Roll-Out utilized by such Single-Family Residential Unit. These rates apply to all Single-Family Residential Units that are located within the City's corporate limits or limited purpose corporate limits, where applicable..

B. Commercial Hand Collect Unit Services. For the Services provided to Commercial Hand Collect Units under Section 4.B. hereof, the Service Provider shall charge (i) \$20.93 per month for each Commercial Hand Collect Unit utilizing one (1) Roll-Out, (ii) plus \$4.98 per month for each Commercial Hand Collect Unit electing to utilizing one Recycling Container or (iii) \$12.00 per month for each Commercial Hand Collect Unit utilizing two (2) Roll-Outs. These rates apply to all Commercial Hand Collect Units that are located within the City's corporate limits or limited purpose corporate limits, where applicable..

C. Commercial, Industrial and Multi-Family Residential Unit Services. For the Services provided to Commercial, Industrial and Multi-Family Residential Units under Section 5 hereof, the Service Provider shall charge per month for each Container utilized the following rates:

Container Size	Lifts Per Week						Extra-Lifts
	1	2	3	4	5	6	
2 Cubic Yd	\$66.99	\$97.99	\$0.00	\$0.00	\$0.00	\$0.00	\$55.00
3 Cubic Yd	\$81.89	\$105.15	\$0.00	\$0.00	\$0.00	\$0.00	\$55.00
4 Cubic Yd	\$92.40	\$175.99	\$245.00	\$0.00	\$0.00	\$0.00	\$65.00
6 Cubic Yd	\$117.60	\$209.14	\$289.00	\$369.00	\$449.00	\$529.00	\$75.00
8 Cubic Yd	\$137.52	\$229.00	\$312.00	\$401.00	\$490.00	\$579.00	\$85.00

Prior to any collection that the Service Provider is required to make in excess of the above weekly figures, the Service Provider shall negotiate with each Commercial, Industrial and Multi-Family Residential Unit the amount payable to the Service Provider for such additional collection. The foregoing rates apply to all Commercial, Industrial and Multi-Family Residential

Units that are located within the City's corporate limits or limited purpose corporate limits, where applicable..

D. Roll-Off Services. The Service Provider will negotiate agreements with each Commercial, Industrial or Residential Unit on an individual basis regarding the Roll-Off Services to be provided. The Roll-Off Services will be billed directly to such Commercial, Industrial or Residential Unit and will be collected by the Service Provider at the rates provided below. The Roll-Offs provided pursuant to this Section 9.D. must be located within the City's corporate limits or limited purpose corporate limits, where applicable in accordance with City ordinances and policies.

Open Top Roll Off Rates

Container Size	Haul	Disposal 3 ton Min	Delivery Charge	Rental fees/mo.	Rental fees/day
20, 30 and 40 CY	\$347.50	\$28.00	\$135.00	\$30.00	\$3.00

Compactor Roll Off Rates

Container Size	Haul	Disposal 3 ton Min	Delivery Charge	Rental fees/mo.	Rental fees/day
20 CY	\$450.00	\$28.00	\$135.00	\$30.00	\$3.00
30 CY	\$450.00	\$28.00	\$135.00	\$30.00	\$3.00
35 CY	\$450.00	\$28.00	\$135.00	\$30.00	\$3.00
40 CY	\$360.00	\$28.00	\$135.00	\$30.00	\$3.00
42 CY	\$360.00	\$28.00	\$135.00	\$30.00	\$3.00

SECTION 10. RATE ADJUSTMENT.

A. CPI-U Adjustment. On each anniversary date of this Agreement, the Service Provider shall have the right, in its sole discretion to request approval from the City to increase or decrease the rates set forth in Section 9 hereof (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the CPI-U published by the Bureau during the month ninety (90) days preceding the anniversary date of this Agreement. The amount of the increase or decrease under this Section 10.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period. Such request shall be sent in the manner required for notices under Section 30 of this agreement. The City Council may by majority vote approve or reject the requested increase or decrease. If the City Council votes to approve the request, or fails to reject the request within thirty (30) days of receipt, the requested increase or decrease in the rates shall become effective thirty (30) days after the date upon which the request was received. If the City Council votes to reject the request, no change in the rates shall occur. In the event the City fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate that such rate increase is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any

previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon one hundred twenty (120) days written notice to the City.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 10.A., prior to each anniversary date of this Agreement, the Service Provider may petition the City for additional rate and price adjustments on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The City shall not unreasonably withhold, condition or delay its consideration of any requested rate increase. In the event the City fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate that such rate increase is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the City.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement will be disposed of by the Service Provider at a Landfill(s) chosen by the Service Provider in its sole discretion (the "Initial Landfill(s)"). In the event that the Service Provider is unable to use the Initial Landfill(s) due to reasons out of its control, the Service Provider (i) shall have the right, in its sole discretion, to dispose of the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement at another Landfill of its choosing, and (ii) shall have the right, beginning on any anniversary date of this Agreement and upon giving prior notice to the City, to increase the Initial Rates by an amount equal to the sum of (x) the amount, if any, that the disposal fees charged to the Service Provider at such other Landfill exceed those previously charged to the Service Provider at the Initial Landfill(s), and (y) the amount, if any, that the transportation costs incurred by the Service Provider in connection with transporting the Municipal Solid Waste and Construction and Demolition Waste to such other Landfill exceed those that would have been incurred by the Service Provider if such Municipal Solid Waste and Construction and Demolition Waste was transported to the Initial Landfill(s).

D. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees. The Service Provider shall promptly provide the City with documents and records in reasonable form and sufficient detail that shows the increase in or imposition of any new Fees, which results in an adjustment to the rates pursuant to this Section 10.D.

E. Fuel Cost Adjustment. Beginning on January 1, 2015, and on each January 1 of this Agreement thereafter, the Service Provider shall adjust all the rates herein for any calendar year in which the average price of diesel fuel during the preceding Fuel Year exceeded \$3.75 per

gallon (the “Base Price”). The average price of diesel fuel will be determined by reference to the U.S. Energy Information Administration’s published price for diesel fuel – gulf coast region. The following website (or any successor website) will be the source for such information: <http://www.eia.gov/petroleum/gasdiesel/>. The average price of diesel fuel for each Fuel Year (each, a “Average Yearly Price”) shall be the average of the weekly fuel prices published for each week during such Fuel Year.

The fuel cost adjustment for any calendar year (each, a “Fuel Cost Adjustment”) shall be the product of (i) 13.20% and (ii) a fraction the numerator of which is equal to the difference between the Base Price and the Average Yearly Price and the denominator of which is the Base Price. In the event the Average Yearly Price is greater than the Base Price, the Fuel Cost Adjustment for the following calendar year shall be an upward adjustment to all rates herein; provided, however, any Fuel Cost Adjustment shall never cause the rates to fall below the Initial Rates. Each Fuel Cost Adjustment shall be effective during the calendar year immediately following the Fuel Year for which such Fuel Cost Adjustment was determined.

Formula:

$$[(\text{Average Yearly Price} - \text{Base Price})/\text{Base Price}] \times 13.20\% = \text{Fuel Cost Adjustment}$$

Example:

Assumptions:

The Average Yearly Price for the Fuel Year ending on December 31, 2014 was \$3.85.

The rate charged to each Single-Family Residential Unit utilizing one (1) Roll-Out and one (1) Recycling Container for the Contract Year ending on December 31, 2014 was \$13.98 per month.

$(3.85 - 3.75)/3.75 = .03$ (rounded to nearest one thousandth) $\times 13.20\% = .40\%$ (rounded to nearest one hundredth of a percent) increase to all the rates contained in Section 9 hereof for the calendar year beginning on January 1, 2015.

$\$13.98 \times .40\% = \0.06 increase to the monthly rate for Single-Family Residential Unit’s utilizing one (1) Roll-Out.

The rate charged to each Single-Family Residential Unit utilizing one (1) Roll-Out for the calendar year beginning January 1, 2015 would be \$14.04.

SECTION 11. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, animal or human, dead animals (excluding the Container located at the City’s animal control location), auto parts or used tires from any Container provided by the Service Provider located at any Commercial, Industrial or Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of Construction and Demolition Waste, auto parts or used tires by utilizing the Service Provider's Roll-Off Services.

SECTION 12. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of five (5) years, commencing on June 1, 2014 and concluding on May 31, 2019. At the expiration of the term of this Agreement, the Agreement will be extended for five successive periods of one (1) year; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least 90 days prior to the expiration date of this Agreement or 90 days prior to any of the then applicable individual one-year extension periods. If either party provides such notice, this Agreement will cease to be renewed and will terminate at the end of either this five (5) year Agreement, or at the end of the subsequent one (1) year extension periods, as applicable.

SECTION 13. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent. The City shall be informed of such assignment, and be provided the opportunity to meet and review the scope of services with the new service provider.

SECTION 14. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The City shall make reasonable efforts to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers. To the maximum extent allowed by applicable law, the City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Commercial, Industrial and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 15. PROCESSING, BILLING AND FEES.

A. Monthly Statement. Commencing on July 1, 2014, on a monthly basis for all Commercial and Industrial Units and on a quarterly basis for all Single-Family Residential Units, the Service Provider agrees to bill and collect the rates and fees charged under Section 9 hereto from units requiring the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits and limited purpose corporate limits, as applicable (each a "Billing Statement"). Thereafter, the Service Provider will remit to the City a franchise fee equal to five percent (5%) of the gross receipts collected from such Billing Statements. Such remittance shall be made by the City on or before the 15th day of each month (for the immediately preceding month's service) commencing on August 15, 2014. Notwithstanding anything to the contrary contained in this Agreement, the Service Provide may, in its sole

discretion, discontinue service to any Residential, Commercial or Industrial Unit that does not pay the full amount set forth herein for the services provided hereunder within thirty (30) days of the date of any invoice delivered to such Residential, Commercial or Industrial Unit.

B. Taxes. In addition to the amounts billed and collected by the Service Provider under Section 15.A., the Service Provider shall also be responsible for billing, collecting and remitting/paying any and all sales, use and service taxes assessed or payable in connection with the Services.

C. Bad Debt; Unpaid Rates/Fees. The City agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider shall not be held responsible for the collection of "bad debt" billed by and owed to Service Provider for the Services, nor shall the Service Provider be penalized for Services rendered that remain unpaid by any Commercial, Industrial Unit.

D. Billings for Roll-Off Services. Notwithstanding the above, the Service Provider will bill and collect all Residential, Commercial and Industrial Units for services performed with respect to Roll-Off Containers (the "Roll-Off Billing"). The Service Provider shall also bill and collect from the City for all services performed with respect to Roll-Off Containers.

E. Roll-Off Franchise Fee. On a quarterly basis, the Service Provider shall remit to the City an amount equal to seven and one-half percent (7.5%) of the gross receipts collected from the Roll-Off Billing during any calendar quarter (the "Roll-Off Franchise Fee"). The Roll-Off Franchise Fee shall be remitted to the City in arrears on or around the last day of the month, immediately following the calendar quarter in which such gross receipts were collected, commencing on April 30, 2014.

SECTION 16. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials placed outside of the Containers by any Commercial, Industrial or Residential Unit. The Service Provider shall report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials. Should excess Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials continue to be placed outside of the Containers, the City shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.B. hereof, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP.

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial or Residential Unit fails to timely place a Container as directed in Sections 4 and 5 hereof, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Commercial, Industrial or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial or Residential Unit's failure to timely place the Containers, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste or Construction and Demolition Waste or and Recycling Materials may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the City is notified by an owner or occupant of a Commercial, Industrial or Residential Unit that Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials has not been removed from such Commercial, Industrial or Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials from the Commercial, Industrial or Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste or Construction and Demolition Waste or Recycling Materials on the day a collection order is issued by the City; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the City, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for any such original non-collection or late collection so long as the Service Provider makes such collection within such time.

SECTION 18. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the immediately following Business Day. The Service Provider will inform the City in writing of all observed Holidays, or changes in Holidays, and waste collection make-up days by January 1st of each year of service.

SECTION 19. CUSTOMER SERVICE.

The Service Provider agrees to field all inquiries and complaints from Commercial, Industrial and Residential Units relating to the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste and Recycling Materials. The Service Provider agrees to provide a written log of all such inquiries and complaints each month and submit them to the City in conjunction with the remittance of the monthly franchise payment. In addition, the Service Provider agrees to maintain a Bulverde-specific email address and local or non-toll phone number for residents to contact the Service Provider with complaints or inquiries. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. Any complaint from a Customer that is not resolved to Customer's satisfaction may be managed by the City, and City staff shall notify the Service Provider of the nature and scope of the complaint. Upon receipt of such notice from the City, the Service Provider shall have five (5) business days from the date City staff contacted them to review the complaint to demonstrate that the complaint was resolved consistent with the performance standards outlined in this agreement. If the Service Provider cannot demonstrate that it met the performance standards outlined in this agreement within the five (5) business day period, then the complaint shall be considered by the City to be unresolved, and City staff shall have the authority to impose an administrative penalty of \$25.00 per day on the Service Provider for a period not to exceed five (5) days. The Service Provider may appeal a penalty assessment to the City Council in writing within five (5) business days of the date of the decision of the City staff. The City Council's decision shall be final. Any administrative penalty assessed under this section shall be promptly remitted by the Service Provider in conjunction with the next regularly scheduled franchise payment due to the City.

SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste and Recycling Materials, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 20.

SECTION 21. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste and Recycling Materials shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste and Construction and Demolition Waste and Recycling Materials onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. The Service Provider shall collect any Municipal Solid Waste and/or Construction and Demolition Waste and Recycling Materials that falls from one of the Service Provider's collection vehicles onto the City's public streets or properties adjacent thereto. All collection vehicles used by the Service Provider shall

be washed and deodorized once per week. Vehicles shall be kept in good working order and professional appearance.

SECTION 22. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved.

SECTION 23. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, or other federally protected category and will ensure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 24. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker's Compensation	Statutory
(2) Employer's Liability	\$500,000
(3) Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 in the aggregate, combined single limit for Bodily Injury and Property Damage Liability
(4) Automobile Liability	\$2,000,000 per occurrence combined single limit for Bodily Injury and Property Damage Liability
(5) Pollution Legal Liability	\$2,000,000 each loss
(6) Excess or Umbrella	\$5,000,000 per occurrence

To the extent permitted by law, any or all of the insurance coverage required by this Section 24 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. Upon the City's request, the Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 24.

SECTION 25. INDEMNITY.

THE SERVICE PROVIDER SHALL INDEMNIFY CITY AGAINST ANY CLAIMS, ACTIONS, OR SUITS, INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES, TO THE EXTENT CAUSED BY C SERVICE PROVIDER'S NEGLIGENT OR WILLFUL MISCONDUCT IN PROVIDING THE SERVICES REQUIRED BY THIS AGREEMENT. UPON OBTAINING KNOWLEDGE OF ANY MATTER GIVING RISE TO POSSIBLE INDEMNIFICATION, THE CITY SHALL NOTIFY THE SERVICE PROVIDER IMMEDIATELY. THE SERVICE PROVIDER SHALL HAVE THE RIGHT TO DEFEND OR CONTEST ANY SUCH CLAIM OR DEMAND IN THE NAME OF THE CITY. THE CITY SHALL PROVIDE SUCH COOPERATION IN CONNECTION THEREWITH AS THE SERVICE PROVIDER MAY REASONABLY REQUEST AND SHALL MAKE AVAILABLE TO THE SERVICE PROVIDER OR ITS REPRESENTATIVES ALL RECORDS AND OTHER MATERIALS REASONABLY REQUIRED IN SUCH DEFENSE. SO LONG AS THE SERVICE PROVIDER IS CONTESTING OR DEFENDING ANY SUCH CLAIM OR DEMAND IN GOOD FAITH, NO AMOUNT RELATED TO THE CLAIM SHALL BE DEEMED TO BE DUE FROM EITHER CITY OR SERVICE PROVIDER HEREUNDER UNLESS THE CITY HAS BEEN REQUIRED BY ORDER OF ANY COURT TO PAY ANY SUM ARISING FROM THE SUBJECT MATTER OF THE SUIT. HOWEVER, THE SERVICE PROVIDER SHALL NOT BE LIABLE FOR ANY LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES AND ATTORNEYS' FEES CAUSED BY A WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS.

SECTION 26. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 27. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

SECTION 28. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied.

Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 29. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in Comal County in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

SECTION 30. NOTICES.

Any notices required or permitted to be delivered hereunder shall be in writing and shall be deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective party at the address set forth below:

If to the City:

City of Bulverde
30360 Cougar Bend
Bulverde, TX, 78163
Attn: Mayor

With a Copy To:

City of Bulverde
30360 Cougar Bend
Bulverde, TX, 78163
Attn: City Administrator

If to the Service Provider:

Progressive Waste Solutions of TX, Inc.
P.O. Box 69
Seguin, TX 78156-0069
Attn: District Manager

With a Copy to:

IESI Corporation
2301 Eagle Parkway, Suite 200
Ft. Worth, TX 76177
Attn: Legal Department

or such other addresses as the parties may hereafter specify by written notice and delivered in accordance herewith. Such notices will be deemed delivered on the date that the United States Postal Service certifies that the notice was delivered to the addressee, as evidenced by return receipt.

SECTION 31. ATTORNEYS' FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

SECTION 32. RECORDS

City and Service Provider agree to maintain at their respective places of business adequate records relating to the performance of their respective duties under this Contract. Such records shall be made available at any time during reasonable business hours for inspection by the other party, at the inspecting party's expense, and upon reasonable advance notice; provided, however, only records directly relating to proper performance of this Contract and necessary to substantiate invoicing must be disclosed to the other party

SECTION 33. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF BULVERDE COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 28 DAY OF May, 2014.

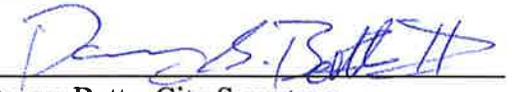
PROGRESSIVE WASTE SOLUTIONS
OF TX, INC.

By: 
John Gustafson, Vice President

CITY OF BULVERDE, TEXAS

By: 
Bill Krawietz, Mayor

ATTEST:

By: 
Danny Batts, City Secretary

