

# Appendix C

## Landfill Lease and Operations Specifications

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### **C1. PURPOSE OF THIS RFP**

The City intends to lease the City of San Angelo Landfill and its appurtenant facilities, easements, and features to be operated and maintained through a Lease and Operating Lease.

The City is issuing this RFP for lease and operation of the City of San Angelo Landfill to achieve several goals. The City's primary goals are to maximize revenue to the City through sustained lease fees and royalties over the term of Lease; avoid the operating, construction, and monitoring expenses; reduce or eliminate environmental liability; delegate closure and post-closure costs and responsibility to the Lessee; ensure continued reliability of Solid Waste Disposal service at the City of San Angelo Landfill; provide a cost-effective landfill operation to the residents and businesses in the City; and retain the site and the ability to capitalize on any future uses.

The City seeks a partner in a qualified waste service company that has a need for long-term landfill capacity; can guarantee substantial solid waste tonnage and associated compensation to the City from outside the City throughout the term of Lease; and is committed to helping the City achieve its goals.

### **C2. LANDFILL TOURS AND ACCESS TO LANDFILL DOCUMENTS**

The City will conduct tours of the City of San Angelo Landfill and arrange for prospective Respondents to visit the Landfill after the Pre-Proposal conference. Detailed data and documents regarding the Landfill can be found at [www.cosatx.us/departments-services/purchasing/bid-information](http://www.cosatx.us/departments-services/purchasing/bid-information). Each Respondent is urged, and will be expected, to rely solely on its own due diligence and analyses in connection with submitting its proposal to lease and operate the City of San Angelo Landfill and not rely on the accuracy of any oral or written materials provided to it by the City or City's advisors and consultants, and the City and each of its advisors and consultants hereby expressly disclaim liability for same.

### **C3. QUALIFICATIONS OF RESPONDENTS**

#### **C3.1 General**

The City desires to enter into a long-term, stable relationship with a Respondent that has exhibited a secure and reliable financial standing, extensive and successful service delivery, state-of-the-art equipment and management practices, high customer and client satisfaction, and a strong record of environmental compliance. Proposals will only be accepted from prospective Respondents who are actively engaged in offering the services called for in this RFP.

Respondent shall have experience performing similar work in a satisfactory manner. The City seeks innovative and responsive proposals that meet the City's needs and improve Landfill operating efficiency and life; keep costs down; allow flexibility; reduce adverse impacts on public health and the environment; provide long-term service stability; and ensure sustained revenues to the City.

### **C3.2 Landfill Experience**

Respondent shall identify the names of all the landfills in Texas, or in other jurisdictions with similar regulatory environments, which the Respondent currently operates and is responsible for both operation and cell construction. Additionally, the Respondent shall submit a description of the Respondent's experience in Texas, or in other jurisdictions with similar regulatory environments, operating active landfills and inspecting and maintaining closed landfills, which qualifies Respondent to perform the services being procured through this RFP. This description should be accompanied by at least two detailed citations for landfill operations experience providing services most similar to those requested in this RFP, including:

- The name of the facility operated;
- Annual tons landfilled;
- Description of services provided by Respondent at the facility (e.g., waste screening, scalehouse operations, landfilling, facility repairs and maintenance, cell construction, environmental systems monitoring, landfill closure, closed landfill inspection and maintenance, leachate and landfill gas collection and recovery systems construction and operation);
- Specific experience with permitting, engineering and regulatory compliance related landfill operation;
- The name, address and telephone number of the landfill owner, or jurisdiction representative, responsible for administering the contract (if applicable);
- The name, address and telephone number of the regulatory agency representative responsible for inspection/regulatory oversight of the landfill;
- A description of the regulatory environment, if experience is out of State; and
- Copies of all inspection reports from regulatory agencies for the listed landfills for the last two inspections.

Proposal shall also include a description of the Respondent's experience with the following:

- Use of Alternative Daily Cover ("ADC") (specify name of site, tons per day, the type(s) of ADC used and the relative annual percentage use of ADC versus cover soil);
- Methods employed to maximize in-place solid waste density and average densities for past three years;
- Management and operational activities undertaken for purposes of tracking and minimizing cover soil usage (e.g., development of soil budgets, tracking of cover soil usage, soil scalping, optimal cell construction, etc.);
- Leachate collection system operation and maintenance; and
- Inspection and maintenance of closed landfill sites and closed areas of active sites.

### **C3.3 Experience Operating Landfills Under Lease**

Respondent shall identify its experience, if any, in operating landfills under a Lease and

Operating Agreement to another party, particularly a community or group of communities. Respondent shall identify the lessor and location of the landfill, provide a contact name, address and phone number, and describe the landfill and Respondent's responsibilities under the Lease and Operating Agreement. All such facilities should also be included under Section C4 References, with information required as per that Section.

### **C3.4 Transition Experience**

Respondent shall provide at least one citation for transition experience where the Respondent took over facility operations from another company or public agency, including a brief description of the services, operation transition dates, any obstacles encountered, and how those obstacles were overcome.

### **C3.5 Qualifications of Key Personnel**

All key personnel of Respondent to be used in providing services to the City shall have at least five (5) years experience performing similar work in a satisfactory manner. Details of such experience shall be provided, including employer, position, duties, dates of employment, skills, education, and training for the past five (5) years. The manager of the City of San Angelo Landfill must hold a State Class "A" Certification issued by the TCEQ.

### **C3.6 Community Involvement**

Respondent shall provide examples of their involvement within the communities in which the Respondent operates. Details shall be provided along with the benefits received or incurred by those communities as a result of Respondent's involvement.

## **C4. REFERENCES**

Respondents shall provide references for the communities where similar work was performed or is being performed by Respondent. Respondent shall include the following information for each reference:

- Name of community, contact person (contract administrator) and title, address and phone number, and email address;
- Location of facility;
- Start and completion dates of contract;
- Approximate value of contract (annual and over contract term);
- Types of waste disposed;
- Quantities of waste disposed in last five (5) years of contract;
- Description of equipment permanently assigned to the facility and used for landfill operation;
- Number of employees at the landfill;
- Problems experienced and actions taken to resolve them; specifically indicate any enforcement actions and the resolution with regulators; and
- Evidence of customer/jurisdiction satisfaction with service.

## **C5. FINANCIAL QUALIFICATIONS**

Each proposal must include financial information on the Respondent, any Guarantor, and any member of the Respondent's team. This information relates to the Respondent's ability to perform its obligations under the Lease.

To determine the Respondent's financial soundness qualifications, the City requires the submission of the applicable items listed below:

- A copy of the most recent audited annual financial statements. Copies of subsequent quarterly financial reports.
- A copy of the Respondent's most recent Form 10-K and Form 10-Q filed with the SEC
- or, if Form 10-K is not filed with the SEC, the following:
- Certified audited financial statements for the past three (3) fiscal years
- Copies of all subsequent quarterly financial reports
- A copy of the latest annual report
- Information on any changes in the mode of conducting business, bankruptcy proceedings, filings, and mergers or acquisitions within the past three (3) years
- A description of all major financial commitments, including but not limited to, liabilities and equity contribution obligations of the Respondent and/or Guarantor, and their bearing on the Respondent's and/or Guarantor's ability to secure the Respondent's obligations for the services proposed.
- Information on Respondent's access to bank lines of credit, revolving credit agreements, or other sources of short term liquidity.

The Respondent must also identify the following, with references to the appropriate section of the financial statements or other documents, as applicable:

- Net Book Equity for the three (3) most recent fiscal years. Pre-tax earnings for the three (3) most recent fiscal years.
- A ratio of current assets divided by current liabilities for the three (3) most recent fiscal years.
- Cash and cash equivalents as of the date of its most recent audited annual financial statements.
- Any material adverse changes in its financial position since the end of its most recent business year that would affect the ability to meet the above criteria.
- Long-term debt to capitalization ratio for the three (3) most recent fiscal years. If any of the above information changes significantly subsequent to submission of the Proposal, such changed information shall be provided to the City.
- In the event the Respondent is a subsidiary, the Respondent shall have a Guarantor of its performance and payment obligations and shall provide the foregoing information for its proposed Guarantor. In addition, if the City determines that the Respondent fails to have sufficient financial resources to

perform the obligations under all situations, the City may require the Respondent to provide a creditworthy Guarantor for the purpose of executing the Guaranty Agreement.

## **C6. INFORMATION REGARDING PAST AND PENDING VIOLATIONS AND LITIGATION**

List and provide details there-to if: the Respondent, its members, owners, directors, executives or managers; Respondent's predecessors, any holding company or subsidiary, any parent company or affiliated company, any partner or proposed subcontractor of Respondent, or any of the members, owners, directors, executives or managers thereof (hereinafter collectively "Respondent"); has been or is being sued by a client or has been or is a defendant in any claim, administrative proceeding or any litigation with any Federal, State or Local Government, or private entity, including criminal offenses, ethics violations or violations of Federal, State or local environmental laws and regulations applicable to solid waste management, collection and disposal activities, during the last seven (7) years, and including any tax liens or judgment liens filed on property of Respondent.

## **C7. SCOPE OF SERVICES AND TECHNICAL SPECIFICATIONS**

The following sections provide the scope of services and technical specifications regarding the lease and operation of the City of San Angelo Landfill.

### **C7.1 Term**

The Initial Term of the Lease will **either** be for **1) the life of the existing permit as it exists on the day of this RFP; or 2) a ten-year period commencing on the Operation Commencement Date**; as deemed appropriate by the City. **One (1) optional five-year extension will be offered with Option 2.**

### **C7.2 Scope of Services**

The City will lease the City of San Angelo Landfill, a permitted Type I Municipal Solid Waste Disposal Facility, and its appurtenant facilities, furniture, and features comprising the assets to be leased, operated, and maintained through a Lease and Operating Agreement, substantially in the form of the Lease. The leased assets also include licenses, authorizations, certain easements, monitoring wells, and plans and studies directly related to the operation of the Landfill, to the extent such licenses, authorizations, easements, and other related assets and features can be leased or made available to the Lessee through the Lease. Lessee will have exclusive operational use of the Landfill except for certain easements, certain City needs, and other contract rights. The City will own all leasehold improvements without compensation to Lessee upon expiration or termination of Lease.

Lessee shall maintain diligent operation of the City of San Angelo Landfill to a level agreed upon by the City and the successful Respondent. Lessee shall assume all operational responsibilities including the daily operation and maintenance of the Landfill and all associated property; all monitoring activities; all State, local, and federal reporting responsibilities; be responsible, indemnify, and hold the City of San Angelo harmless, for any and all past, present, and future liabilities regarding the premises; assume all closure and post-closure responsibilities for the City of San Angelo Landfill; and provide disposal of City Waste, Self-Haul Waste, and Non-City Waste.

Lessee shall be responsible for the disposal of all acceptable Commercial, Industrial, and Residential waste in the City of San Angelo and all other acceptable waste generated for disposal in the City as may be delivered by City residents, businesses, and contractors for no less than the term of Lease. The City will direct solid waste collected through its residential and commercial contracts to the Landfill, and the City Collector, will be required

to deliver solid waste collected in the City for disposal to the Landfill. Lessee shall also accept self-haul waste at the Landfill and charge as proposed, negotiated, and subsequently assigned by City Ordinance for disposal of self-haul waste.

The City will make no guarantee of solid waste quantity or composition to the Lessee, and the City may renew or extend any contract or franchise for solid waste collection in the City without consultation with Respondents.

All operations and construction shall conform to the City's TCEQ MSW Permit No. 79 and associated site operating plan, site development plan, fill sequencing plan, and other Landfill design plans and specifications, unless such are modified as agreed to by City and Lessee.

The City will retain the existing and future operating Permits and will review, examine, and, if appropriate, authorize all applications for amendments to such Permits. The City will share the responsibility to seek new Permits, but the Lessee will have sole responsibility to develop and submit permit and amendment applications. Lessee will pay all costs associated with pursuing new or modified Permits incurred by the City. Lessee and City will jointly utilize the City's third-party consulting firm (currently Biggs and Mathews Environmental, Inc.) or Lessee's engineers, as approved by the City, to provide engineering services associated with the Landfill. However, the Lessee will be required to obtain certain licenses, approvals, easements, and other authorizations for operation of the City of San Angelo Landfill, and prospective Respondents should make an independent determination of such requirements.

#### **C7.2.1 Lessee's Obligations**

Lessee's obligations shall include, but not be limited to:

- Operating and maintaining the scales and scalehouse, and managing the gate;

**\*\*\*Note: the 5 acres on the southernmost boundary of the landfill, to include the existing scale, scalehouse, fuel island and fuel tanks tanks, storage and shop buildings, signs, gates, and roadways are owned by TRASHAWAY SERVICES, INC. and not the City.**

- Conducting commercial, industrial and non-resident billing, reporting and record keeping, as applicable;
- Paying **ALL** necessary operational fees including but not limited to Quarterly TCEQ Solid Waste Fees, Air Emissions Fees, and Stormwater Permit Fees;
- Coordinating with any contractors the City may have;
- Providing and maintaining all necessary operations equipment;
- Maintaining service of all site utilities (phone, water, electricity, gas, etc);
- Performing general administration and management tasks including engineering and planning incidental to complete operations, and submitting operation plans to the City;
- Assuming all environmental liability related to operations, construction, closure, and post-closure of the City of San Angelo Landfill;
- Landfilling Acceptable Waste;
- Constructing and utilizing a Citizens' Convenience Center within 12 months of the Operation Commencement Date at a location suitable and agreeable to City and

Lessee;

- Conduct waste screening under appropriate protocol acceptable to TCEQ and the City and prevent the acceptance of solid waste that is Unacceptable Waste and/or not permitted for disposal at the City of San Angelo Landfill.
- Providing sufficient full-time employees at the Landfill, to include the working face, who spot traffic, inspect and check loads of incoming solid waste for Unacceptable Waste consistent with prudent landfill operations practices and industry standards for the size of landfill and types and volume of Solid Waste received, and redirect such loads as appropriate;
- Collecting, storing, and removing from the Landfill all Household Hazardous Waste (“HHW”) diverted from the waste stream (Lessee shall have a contract for the handling, transport, and disposal or final disposition of all diverted HHW in accordance with Applicable Laws.);
- Accepting and properly disposing of liquid waste;
- Accepting and properly disposing of dead animals from the City Animal Shelter;
- Furnishing all labor to perform the service required at Lessee’s own expense;
- Maintaining and monitoring all groundwater and Landfill Gas (LFG) monitoring wells as required by the TCEQ Approved Corrective Action Plan;
- Maintaining the leachate system, and collection and proper disposal of leachate in accordance with all local, State, and Federal restrictions;
- Maintaining existing and future Storm Water Pollution Prevention Plan (SWPPP) including event monitoring;
- Excavating of cover material and obtaining any and all cover material required for the Landfill operation and closure at Lessee’s expense;
- Maintaining diversion programs to include brush, e-waste, and tires as well as diverting metal, including white goods, for Recycling. Lessee shall contract or staff qualified personnel for removing Freon/coolants and compressor oils;
- Maintaining sufficient full-time employees consistent with Applicable Laws, prudent landfill operating practices, health and safety standards, and traffic flow, but at least one full-time employee to staff Citizens Convenience Center (CCC) during operational hours;
- Collecting and removing from site for recycling all materials deposited for recycling at the CCC;
- Preferential use of local business in the purchase of supplies and services, and/or alignment with local providers for operational needs as applicable; and
- Site Maintenance including but not limited to:
  - Maintaining, repairing and/or replacing scales;
  - Controlling and picking up litter;

- Mowing all grass areas on a regular basis according to City ordinance;
- Performing all site security including off-hours;
- Sweeping and cleaning Old Ballinger Highway from Bell Street to Highway 277;
- Debris removal along Old Ballinger Highway from Bell Street to Highway 277;
- Repairing and maintaining all fences;
- Constructing and maintaining drainage facilities;
- Constructing final cover as areas reach final waste grades;
- Maintaining, repairing and replacing as needed all asphalt/concrete paving areas;
- Constructing new cells as they become needed;
- Maintaining of internal water and electrical systems and all related equipment;
- Maintaining and cleaning of access roads;
- Providing housekeeping in all buildings and work areas;
- Constructing any additional roadways within the Landfill, adjacent properties, or buffer as needed;
- Installing and maintaining a wheel wash, or any BMP that accomplishes the same, to lessen the debris deposited on Old Ballinger Highway and City streets;
- Maintaining and repairing as necessary, all interim and final covers including necessary seeding/sod; and
- Making any other repairs, as needed, to any areas in post-closure care.

### **C7.3 Waiver or Reduction of Disposal Fees**

The Lessee will also provide disposal free of charge, or waiver of site processing fees, as may be applicable, for processing of City of San Angelo Waste and solid waste from certain events and clean-ups in the City throughout the term of Lease, including but not limited to:

- City of San Angelo Waste;
- Clean-up events such as Keep San Angelo Beautiful if sponsored by the City; and
- Citizen's Free Dumping Program, up to a maximum amount as proposed, negotiated, and subsequently contracted.

### **C7.4 Environmental Compliance**

The City desires to contract with a Respondent that has a strong, positive environmental record and experience in solving environmental issues in a timely manner. Respondent will be expected to specify how their operation will comply with all applicable local, state, and federal requirements.

The City is also interested in ensuring that the environmental and neighborhood impacts from the Landfill operation are minimized. Specific concerns include traffic, safety, noise, dust, litter, odors, other air quality impacts, and storm water run-off. Respondent shall



describe in its proposal how these impacts will be mitigated to comply with all current and reasonably anticipated Federal and State requirements, and any other strategies for protecting environmental quality, such as clean fuels, modern engines with advanced air pollution control, special vehicle safety features, special Landfill operating techniques and procedures, use of advanced monitoring and detection equipment, sound solid waste screening procedures, employee training, company substance abuse policy, company safety policy and training, etc.

#### **C7.5 Landfill Gas Collection and Control System**

The City of San Angelo currently works with Biggs and Mathews Environmental, Inc. and AEG for the operation of the landfill gas collection and control (LFGCCS) system. Respondent shall provide services, and ensure continued improvements to the groundwater as required by the TCEQ Corrective Action, to include balancing and calibrating the wellfield; monitoring the performance of the flare station and balancing components; monitoring the above-ground portion of the LFG wellheads; and making all repairs and/or replacement as necessary to, and monitoring the performance of, the condensate sumps and pumps. The City will retain the rights to all Landfill Gas generated now and in the future.

The Respondent may identify proposals for the future expansion of the LFGCCS and possible uses for the recovered gas. Any future expansion of the LFGCCS will be at Lessee's expense.

#### **C8. FINANCIAL SECURITY – IRREVOCABLE LETTER OF CREDIT**

The Lessee shall within fifteen (15) days following the Contract Date provide to the City and maintain in force for the term of the Lease an irrevocable, direct pay Letter or Letters of Credit in substantially the form as shown in the Lease as financial security for its true and faithful performance of the Lease. The Letter of Credit shall provide that the City may draw upon it upon a City determination of a Lessee default under the Lease. The City shall be entitled to draw upon the Letter of Credit to provide for its damages (including Liquidated Damages) and other losses, costs or expenses resulting from a default under the Lease. Failure to replace the Letter of Credit with another Letter of Credit or Letters of Credit (or provide evidence satisfactory to the City of renewability of the existing Letter of Credit or Letters of Credit) at least ninety (90) Days prior to the expiration of an existing Letter of Credit shall, among other defaults, constitute a default for which the City may draw upon that existing Letter of Credit or Letters of credit. Upon such a draw for non-replacement the City shall place the proceeds of that draw in a separate fund. That fund shall constitute a guarantee fund, the amounts in which may be used by the City to compensate itself for any damages (including Liquidated Damages) and other losses, costs or expenses resulting from any default under the Lease. The issuing financial institution(s) of the Letter(s) of Credit shall have a credit rating on its long-term debt in one of the three highest categories by a nationally recognized rating agency (e.g. Standard & Poor's rating of AAA, AA, or A).

The Letter(s) of Credit shall be payable in San Angelo, Texas, and shall allow for multiple draws. If the credit rating of the issuing financial institution falls below the required credit rating set forth above, then the Lessee shall obtain a replacement Letter or Letters of Credit within sixty (60) calendar days of being notified from any source of the credit rating change. Any successor Letter of Credit shall be issued for a term of not less than one (1) year, and the Lessee shall provide a new Letter or Letters of Credit, or evidence satisfactory to the City of the renewability of the current Letter or Letters of Credit at least ninety (90) Days before the expiration date of the Letter of Credit then in effect. The Letter of Credit or Letters of Credit shall not require the City to state or clarify to the issuing financial institution that the City has made any demand upon, or taken action against, the Lessee as a condition to draw down on the Letter of Credit.

The provisions of the Letter of Credit or Letters of Credit shall not modify any right of the City or any duty of the Lessee which arises under the provisions of the Lease.

The amount of the Letter of Credit in the first Operating Year under the Lease shall be \$5 million. Thereafter in each Operating Year, the Lessee shall maintain the Letter of Credit in an amount equal to (1) 50 percent of the aggregate of the total Usage Fees, Royalty Fees, and other compensation paid to the City plus the total revenues received by the Lessee for the Disposal of City Waste in the previous Operating Year or (2) \$5 million, whichever is greater, with such amount adjusted annually on the Contract Date by the Adjustment Factor throughout the term of the Lease.

## **C9. Insurance Coverage**

Respondent shall identify the types of insurance and amounts of coverage it currently carries on all its operations, facilities, and equipment. Any self-insurance must be identified and described, including the names and addresses of any third party plan administrators, the written reserve policy, listing of excess coverage, limits of liability, retention amount, and deductibles.

### **C9.1 Indemnification**

- C9.1.1 GENERAL INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF CONTRACTOR OR CITY, BY REASON OF DEATH OR INJURY TO PERSONS, OR LOSS OR DAMAGE TO PROPERTY, RESULTING FROM OR ARISING OUT OF, THE VIOLATION OF ANY LAW OR REGULATION OR IN ANY MANNER ATTRIBUTABLE TO ANY ACT OF COMMISSION, OMISSION, NEGLIGENCE OR FAULT OF CONTRACTOR, ITS AGENTS OR EMPLOYEES, OR THE JOINT NEGLIGENCE OF CONTRACTOR AND ANY OTHER ENTITY, AS A CONSEQUENCE OF ITS EXECUTION OR PERFORMANCE OF THIS CONTRACT OR SUSTAINED IN OR UPON THE PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY CONTRACTOR HEREUNDER. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS CONTRACT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY, DEFEND OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- C9.1.2 ENVIRONMENTAL INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD CITY AND ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ASSERTED BY LOCAL, STATE OR FEDERAL ENVIRONMENTAL AGENCIES OR PRIVATE INDIVIDUALS OR ENTITIES IN CONNECTION WITH OR RESULTING FROM OR ARISING OUT OF CONTRACTOR'S HANDLING, COLLECTION, TRANSPORTATION, STORAGE, DISPOSAL, TREATMENT, RECOVERY, AND/OR REUSE BY ANY PERSON UNDER CONTRACTOR'S DIRECTION OR CONTROL OF WASTE COLLECTED, TRANSPORTED OR LANDFILLED OR ANY CLEANUP ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION, WHETHER SUCH CLEANUP IS OF AIR, SOIL, STRUCTURE, GROUND WATER OR SURFACE WATER CONTAMINATION. CONTRACTOR SPECIFICALLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AGAINST ALL CLAIMS, DAMAGES AND LIABILITIES OF WHATEVER NATURE ASSERTED UNDER CERCLA CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. CONTRACTOR SHALL BE RESPONSIBLE AND LIABLE FOR ANY SPILL, UNDERGROUND POLLUTION OR

ANY OTHER ENVIRONMENTAL IMPAIRMENT INCIDENT CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. IT IS THE INTENT OF THE PARTIES THAT THIS SECTION SHALL IN NO WAY LIMIT OTHER COVERAGE HEREIN AS IT MAY RELATE TO ANY ENVIRONMENTAL CLAIM, DAMAGE, LOSS OR LIABILITY OF ANY KIND.

- C9.1.3 **PROSPECTIVE APPLICATION.** ANY AND ALL INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL SURVIVE THE EXPIRATION OF THIS CONTRACT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS CONTRACT BUT THEREAFTER SO LONG AS ANY LIABILITY (INCLUDING BUT NOT LIMITED TO LIABILITY FOR CLOSURE AND POST CLOSURE COSTS) COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF CONTRACTOR IN PERFORMING UNDER THIS CONTRACT.
- C9.1.4 **RETROACTIVE APPLICATION.** THE INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL EXTEND NOT ONLY TO CLAIMS AND ASSESSMENTS OCCURRING DURING THE TERM OF THIS CONTRACT BUT RETROACTIVELY TO CLAIMS AND ASSESSMENTS WHICH MAY HAVE OCCURRED DURING THE TERM OF PREVIOUS AGREEMENTS BETWEEN CITY AND CONTRACTOR.
- C9.1.5 **APPLICATION TO SURROUNDING PROPERTY.** THE INDEMNIFICATION PROVISIONS OF THIS CONTRACT EXTEND TO CLAIMS AND ASSESSMENTS RELATING TO RUNOFF, LEACHATE, OR OTHER INFILTRATION THAT MAY OCCUR OR HAS OCCURRED AT OR NEAR THE SITE OF LANDFILLS, TRANSFER STATIONS, OR OTHER SOLID WASTE FACILITIES AND SURROUNDING AREAS WHICH ARE OR WERE USED BY THE CONTRACTOR, DURING THE TERM OF THIS CONTRACT OR PREVIOUS AGREEMENTS BETWEEN CITY AND CONTRACTOR. THIS SECTION DOES NOT MAKE CONTRACTOR LIABLE FOR ANY SITE IT HAS NEVER USED, CLOSED, MANAGED OR MONITORED.

## **C9.2 Insurance.**

- C9.2.1 **General Conditions.** The following conditions shall apply to all insurance policies obtained by Contractor for the purpose of complying with this Contract.
- C9.2.1.1 **Satisfactory Companies.** Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.
- C9.2.1.2 **Named Insureds.** All insurance policies required herein shall be drawn in the name of Contractor, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on Workers' Compensation coverage.
- C9.2.1.3 **Waiver of Subrogation.** Contractor shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.
- C9.2.1.4 **Certificates of Insurance.** At or before the time of execution of this Contract, Contractor shall furnish City's Risk Manager and Solid Waste Administrator with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days advance notice

in writing of cancellation, non-renewal or material change in the policy of insurance. In addition, Contractor and insurance company shall immediately provide written notice to City's Risk Manager and Solid Waste Administrator upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations or alterations shall be furnished to City's Risk Manager and Solid Waste Administrator at City Hall, 72 West College Avenue, San Angelo, TX 76903.

**C9.2.1.5** Contractor's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Contractor's liability or as a full performance on its part of the indemnification provisions of this Contract. Contractor's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

**C9.2.1.6** Sub-Contractors' Insurance. Contractor shall cause each Sub-Contractor and Sub-Sub-Contractor of Contractor to purchase and maintain insurance of the types and in the amounts specified below. Contractor shall require Subcontractors and Sub-subcontractors to furnish copies of certificates of insurance to Contractor's Risk Manager evidencing coverage for each Sub-Contractor and Sub-Sub-Contractor.

**C9.2.2** Types and Amounts of Insurance Required. Contractor shall obtain and continuously maintain in effect at all times during the term hereof, at Contractor's sole expense, insurance coverages as follows with limits not less than those set forth below:

**C9.2.2.1** Commercial General Liability. This policy shall be an occurrence-type policy and shall protect the Contractor and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the Contractor's employees) and damage to property of the City or others arising out of the act or omission of the Contractor or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Contractor under the paragraph of this Contract entitled "Indemnification," including completed operations, products liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors (to remain in force for two years after final payment). Coverage shall not be less than:

\$ 5,000,000.00	General Aggregate
\$ 5,000,000.00	Products- Completed Operations
\$ 5,000,000.00	Personal & Advertising Injury
\$ 5,000,000.00	Each Occurrence
\$ 5,000,000.00	Fire Damage (any one fire)

**C9.2.2.2** Business Automobile Liability. This policy shall be written in comprehensive form and shall protect Contractor and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage shall not be less than:

\$ 5,000,000.00	Combined Single Limit
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**C9.2.2.3** Workers' Compensation and Employer's Liability. If Contractor hires any

employees, Contractor shall maintain Workers' Compensation and Employer's Liability insurance, which shall protect the Contractor against all claims under applicable state workers' compensation laws and employer's liability. The insured shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

Statutory Amount	Workers' Compensation
\$ 3,000,000.00	Employer's Liability, Each Accident
\$ 3,000,000.00	Employer's Liability, Disease – Each Employee
\$ 3,000,000.00	Employer's Liability, Disease - Policy Limit

The foregoing requirement will not be applicable if, and so long as, Contractor qualifies as a self-insurer under the rules and regulations of the commission or agency administering the workers' compensation program in Texas and furnishes evidence of such qualification to Lessor in accordance with the notice provisions of this Contract.

If Contractor uses contract labor, Contractor shall require its contractor to maintain the above referenced coverage and furnish copies of certificates of insurance as required herein.

**C9.2.2.4 Environmental Liability.** This insurance shall be maintained in force for the full period of this Contract and cover losses caused by pollution conditions including, but not limited to, any spill, underground pollution or any other environmental impairment. It shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; including, but not limited to, any costs required under CERCLA; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. If coverage is written on a claims made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time the Contract has expired.

\$10,000,000.00	Per loss
\$20,000,000.00	Annual aggregate

## **C10. IMPLEMENTATION SCHEDULE AND TRANSITION PLAN**

The specific Implementation Schedule of services requested in this RFP is to be determined by the City. It is anticipated that services requested in this RFP will commence August 1, 2014.

### **C10.1 Schedule and Plan**

Respondent will describe its proposed strategies to ensure a smooth transition from the current Landfill operator to the successful Respondent and/or service changes. In the transition plan, Respondent must describe the following:

- Individual or group of individuals that will oversee the transition.
- Proposed approach, including equipment, personnel, and schedule, for establishing operations and ensuring a seamless transition to the new Lessee.
- Overall schedule for the transition.

- Proposed strategies for customer communication regarding the potential transition of service providers.

### **C10.2 Existing and Usable Cell**

The City of San Angelo will provide, prior to the Operation Commencement Date, funding for the engineering design, construction, quality assurance, and cell construction for Cell 11A (about 6.5 acres). Available airspace has monetary value; hence the City will sell to the Lessee the available airspace in Cell 11A for an amount as proposed, negotiated, and contracted.

## **C11. LESSEE RESPONSIBILITIES**

The City shall receive payment from the lessee as proposed, negotiated, agreed to, and subsequently contracted for the services, terms, and amounts as follows:

### **C11.1 Services Applicable for Fees**

As negotiated, the City may remit appropriate payment to Lessee for the following services:

- Citizens Free Dumping Program for excesses above a maximum allowable tonnage as negotiated; and
- Third-Party Engineering Fees as applicable

### **C11.2 Fee and Payment Terms**

Lessee shall remit payment on the items and terms listed below. All payments, fees, rebates, and terms will be as proposed, negotiated, and subsequently contracted.

Upon each anniversary of the Operation Commencement Date, throughout the term of the Lease, the Municipal Tipping Fee and Payment, the County Tipping Fee and Payment, Area Tipping Fee and Payment, the Annual Lease Payment, and Liquidated Damages will be adjusted by the Adjustment Factor; provided, however, that in no case shall the amounts be decreased for any Operating Year through application of the Adjustment Factor.

1. **Municipal Tipping Fee Payment:** The City will establish the *Municipal Tipping Fee Payment* as proposed, negotiated, and subsequently contracted. On or before the 20th day of each month following the month in which the Operation Commencement Date occurs, the Lessee shall pay to the City the Municipal Tipping Fee Payment on all tons of solid waste originating within the municipal boundary of San Angelo disposed of at the Landfill during the previous month.
2. **County Tipping Fee Payment:** The City will establish the *County Tipping Fee Payment* as proposed, negotiated, and subsequently contracted. On or before the 20th day of each month following the month in which the Operation Commencement Date occurs, the Lessee shall pay to the City the County Tipping Fee Payment on all tons of solid waste originating outside the municipal boundary of San Angelo, but within Tom Green County, disposed of at the Landfill during the previous month.
3. **Area Tipping Fee Payment:** The City will establish the *Area Tipping Fee Payment* as proposed, negotiated, and subsequently contracted. On or before the 20th day of each month following the month in which the Operation Commencement Date occurs, the Lessee shall pay to the City the Area Tipping Fee Payment on all tons of solid waste originating outside Tom Green County disposed of at the Landfill during the previous month.
4. **Annual Lease Payment:** On or before the Operation Commencement Date, Lessee shall pay to the City the first monthly installment of the Annual Lease Payment as proposed, negotiated, and subsequently contracted. Lessee shall pay the monthly

installment of the Annual Lease Payment to the City each month thereafter throughout the term of Lease on or before the first Business Day of the month.

5. **Closure and Post-Closure Trust Payment:** Not later than the 20th day of each month, an amount equal to the Trust Payment Factor multiplied by the number of tons of solid waste accepted for disposal at the City of San Angelo Landfill during the immediately preceding month. The City will hold such amounts in trust to pay for Closure and Post-Closure Costs, and the Lessee will be authorized and directed to make such payments directly to the Third Party Trustee.
6. **Liquidated Damages:** On or before the 20<sup>th</sup> day of each month, or as otherwise specified, Lessee shall pay any liquidated damages imposed by the Solid Waste Administrator.

### **C11.3 Reporting and Record Keeping**

Lessee shall maintain and submit to the City accurate reports, which detail certain activity related to services pursuant to this RFP in a format approved by the City. These reports shall include, but not be limited to, data for all materials handled from its services to the City.

Monthly reports shall include, but not be limited to, the following current data for the month prior:

- Payment Detail showing:
  - Lessee's Revenue generated by Residential Customers, Commercial Customers, Industrial Customers, County Customers, and Area Customers
  - Tipping Fees owed the City detailed by Residential Customers, Commercial Customers, Industrial Customers, and County Customers, and Area Customers, as applicable
  - If applicable, fees paid to the City's approved and contracted third-party engineer for engineering or other applicable services
- Total tons received by material type, i.e. solid waste, bulk waste, recyclables including single stream, white goods, and brush, mulch, and compost;
- Total tons, if any, rejected as Unacceptable Waste and a description of such Unacceptable Waste, identification of person(s) delivering such Unacceptable Waste, date of rejection, and ultimate disposition (if known);
- Total tons of compacted waste;
- Total tons of non-compacted waste;
- Volume (cubic yards) of cover material used;
- Borrowed soil report;
- All State imposed fees or similar charges based upon received tons, as applicable;
- A full and complete copy of all monitoring reports;
- Written results of any State inspections or inspections by any Governmental Entity or insurance carrier;
- Outages or downtime at the Landfill or affecting the Landfill which prevent receipt

of Acceptable Waste, equipment, supplies, and services or normal operations and the reasons therefore;

- Landfill Gas Collection System and Flare outages and maintenance report;
- Citizens complaint report;
- Results of any and all monitoring and testing of groundwater, surface water, air, landfill gas, condensate, and leachate which have been received or otherwise made known to Lessee during the month; and
- Such other information regarding the operations of the Landfill as the City may reasonably require from time to time.

Annual reports to the City shall include all the above data for each Operating Year, following the same format as the monthly report. In addition, the annual report shall specify the capacity of the City of San Angelo Landfill at the start of the Operating Year covered by the annual report, volume used during that Operating Year, and the estimated remaining permitted capacity of the Landfill. The Lessee shall perform an aerial or ground survey which meets industry standards to determine such available capacity or volume of waste area and cover stockpile used during the period of measurement in each Operating Year and the results (including density calculations) shall be included in the annual report.

Records shall be kept, as appropriate or customary, on a daily, weekly, monthly, cumulative monthly, annual, and cumulative annual basis, and shall be available to the City upon request.

The Lessee shall file reports with the City in a timely manner, but no less frequently than monthly, specifying all inspections by any Governmental Entity during the month of the report as a result of incidents and/or alleged or actual regulatory violations at the Landfill. Reports shall detail the nature and reasons for these occurrences as well as all results, findings and actions taken to resolve such incidents. Lessee shall also notify the City immediately of any fines or penalties levied and any actions that could have an adverse impact on the Lessee or the City, or both. Copies of any inspection reports, notices of violations and correspondence from any regulatory agency regarding the City of San Angelo Landfill shall be included with the monthly report.

Lessee will have the City's approved and contracted third-party engineer, or Lessee's engineer, as negotiated and approved by the City, prepare the annual report to the TCEQ, and submit the report to the City for review, giving reasonable time for such review, prior to the filing deadline. All associated expenses will be paid by the Lessee.

## **C12. CITY RESPONSIBILITIES**

### **C12.1 Lease Administration**

The City shall appoint a representative who will be designated as the Solid Waste Administrator, and will be authorized to act on behalf of the City in any and all matters relating to or resulting from this RFP. The Solid Waste Administrator will review all required reports as defined in Section C11.3, and will approve reports as necessary.

It is expected that this person will work closely with the Lessee's management team in the execution and day-to-day management of the Lease. The Solid Waste Administrator will monitor and resolve any and all questions that may arise as to the quality, quantity, character, and classification of service performed by the Lessee. Responsibilities will



include approving the types of waste to be allowed, permit amendment and modification applications, operating hours, and plans for additional facilities. The Solid Waste Administrator will have complete authority during the term of the Lease.

### **C12.2 Dispute Resolution**

In the event of any dispute between the Solid Waste Administrator and the Lessee as to the Lessee's performance or the Solid Waste Administrator's decisions relative to the Lease, the decision of the Solid Waste Administrator shall be final.

### **C12.3 Monitoring Lessee's Performance**

The City shall monitor the Lessee's performance of its obligations during each Operating Year throughout the term of Lease. The Solid Waste Administrator will maintain the authority to enter, inspect, and inquire about the Landfill site at any time and without notice. The Lessee shall provide timely and complete responses to requests for documents, electronic files, explanations, and access to Lessee's personnel associated with the City's performance monitoring.

The City will consider all relevant aspects of Lessee's performance including without limit: any existing areas of concern; proposed actions necessary to address areas of concern; the actions taken by Lessee to address previously noted areas of concern, if any; any Liquidated Damages imposed on Lessee during the current and prior Operating Year; a summary of any violations and associated penalties imposed by any Governmental Entity relative to the Landfill and any awards or commendations received by, or favorable comments made about, Lessee in the course of performing its duties under the Lease.

### **C12.4 Liquidated Damages**

The City and the public will sustain real and substantial damages as a result of the Lessee's failure to perform its obligations under the Lease in a timely manner. Since it would be impractical or extremely difficult to fix the actual damages so sustained, the following amounts will be imposed as Liquidated Damages under the Lease for the Lessee's failure to timely perform Lessee's obligations under the Lease. Such amounts of Liquidated Damages will be adjusted by the Adjustment Factor in each Operating Year for the Term of the Lease on the anniversary of the Operation Commencement Date. In no case will the liquidated damages reduce from their then-current rate:

- A. General Operational Matters – Liquidated Damages in the following amounts will be imposed with respect to the Landfill where the following failure of performance occurs, for each day of such failure of performance:
1. Cell Construction – Two thousand dollars (\$2,000) shall be imposed for each failure to adhere to cell construction requirements of the Lease.
  2. Staffing of Citizens Convenience Center – One thousand dollars (\$1,000) shall be imposed for each failure to provide sufficient staffing at the Citizens Convenience Center as specified in the Lease.
  3. Daily and Intermediate Cover – One thousand dollars (\$1,000) shall be imposed for each failure to adhere to the daily and intermediate cover requirements of the Landfill Site Operating Plan as referenced in the Lease.
  4. Drainage and Ponding – One thousand dollars (\$1,000) shall be imposed for each failure to provide positive drainage or pump water from retention basins, as specified in the Lease.
  5. Maintenance of Equipment in Operable Manner– Twenty-five hundred dollars (\$2,500) shall be imposed for each failure to provide for substitute equipment, make necessary repairs to, or replace equipment that becomes inoperable, including but

not limited to, the scales and scalehouse, located at the City of San Angelo Landfill as provided for in the Lease.

6. Maximum Turn-Around Time for Waste Delivery Vehicles – One thousand dollars (\$1,000) shall be imposed for each failure to comply with the Maximum Turnaround Time requirements for waste delivery vehicles as specified in the Lease.
  7. Litter Control – Five hundred dollars (\$500) shall be imposed for each failure to effectively implement litter control and clean-up as required in the Lease.
  8. Recyclables Diversion – Five hundred dollars (\$500) shall be imposed for each failure to comply with the operating procedures for all recyclables diversion programs at the Landfill as specified in the Lease.
  9. Submission of Reports/Documents – Three hundred dollars (\$300) shall be imposed for failure to submit required reports and/or documentation, as specified in the Lease, for each day of said violation per report and/or document; provided, however, that if the violation continues beyond five days, the Liquidated Damages shall increase to one thousand dollars (\$1,000) per day of said violation per report and/or document for each day after five days.
  10. Other – It is deemed unreasonable to list each and every task the Lessee is to perform under the terms of the Lease, and to assign a corresponding liquidated damage to be assessed for failure to timely perform such tasks. Therefore, for failure to timely perform any task required of the Lessee by the Lease, which is not specifically listed in this section (either herein above or below), the Lessee shall pay to the City, at the discretion of the Solid Waste Administrator, three hundred dollars (\$300) as Liquidated Damages for each day of said violation at the Landfill.
- B. Failure to Turnover Records on Termination of Lease – In the event Lessee fails to turn over all records relating to the Landfill on termination of the Lease, as required by the Lease, Liquidated Damages in the amount of five hundred thousand dollars (\$ 500,000) shall be assessed and shall be due and payable to the City.
- C. Liquidated Damages Regarding Customer Service – Should Lessee, through repeated actions or inaction, cause formal, written complaints to be received by Lessee or City regarding Lessee's performance of its obligations under the Lease, including without limitation in responding to inquiries, requests for information, or complaints, the following provisions shall apply:
1. Notice – City shall, upon City's reasonable determination as to the legitimacy of such complaint(s); deliver a written notice to Lessee by certified mail, return receipt requested, requesting Lessee's written explanation within seven (7) days and correction within fifteen (15) days, of the issue(s) raised in the complaint.
  2. Liquidated Damages – Lessee shall be assessed Liquidated Damages in the amount equal to three hundred dollars (\$300) per day for the first five (5) days, and one thousand dollars (\$1,000) per day for each day after five (5) days; for each day beyond seven (7) days after receipt of the notice that Lessee fails to respond to City's written request.
- D. Liquidated Damages for Regulatory Violations and Fines – Should Lessee receive any Notice of Violation from the Commission, or be found in violation of Applicable Laws by a Governmental Entity, Lessee shall be assessed Liquidated Damages as applicable to:
1. Notice of Violation without Fine – Five hundred dollars (\$500) for each Notice of

Violation if no fine or monetary penalty is assessed by the Commission or Governmental Entity in conjunction with the notice.

2. Notice of Violation with Fine - One thousand dollars (\$1,000) and two times the amount of such fine or monetary penalty for each Notice of Violation when a fine is assessed by the Commission or Governmental Entity in conjunction with the notice.

E. Failure to Achieve Minimum Effective Density - The efficient use of the available capacity (air space) of the Landfill is of extreme importance to the City. Lessee shall agree to operate the Landfill in such a way as to maximize the amount of solid waste disposed within the available air space by maximizing the compaction of the solid waste and minimizing the use of cover soil within the limits of Applicable Laws and Regulation and the Site Operating Plan. The goal established for the Lease shall be to achieve a Minimum Effective Density (MED) measured in pounds per cubic yard at the Landfill of 1,200.

1. Determination of Effective Density. The City's approved and contracted third-party engineer, shall survey the Landfill area at the beginning and end of the measurement period by standard methods. This survey information shall be used to establish the volume portion (V) of the Effective Density calculation. The Lessee shall continuously track and record the weight of the solid waste being disposed at the Landfill. The solid waste weight used shall be the same weight reported to the City in the monthly and annual reports and as reported to the TCEQ. This information shall be used as the weight portion (W) of the Effective Density calculation.

The Lessee shall have completed an aerial or ground survey of the Landfill prior to the Operation Commencement Date to establish the volume portion of the Effective Density calculation at the start of the first measurement period.

The first Effective Density measurement period shall commence by Lessee within three (3) days following the Operation Commencement Date of the Lease. Each measurement period shall be approximately 12 months in duration and shall follow successively in each Operating Year without lapse throughout the Term of the Lease. Effective Density shall be calculated using the volume measurement (V) in cubic yards and waste weight (W) in tons from the same measurement period.

2. Imposition of Liquidated Damages - If the calculated Effective Density at the Landfill equals or exceeds the Minimum Effective Density (MED) of 1,200 pounds per cubic yard, there will be no Liquidated Damages imposed on the Lessee.

If, however, the calculated Effective Density at the Landfill is less than the Minimum Effective Density (MED) of 1,200 pounds per cubic yard then Liquidated Damages, in the amount determined using the following equation as shown by example in 2.1 below, will be imposed. The compensation amount shall be twenty dollars (\$20) per calculated cubic yard.

$$\text{Liquidated Damages} = [(W) \div (MED)] - (V) \times \$20/\text{cubic yard}$$

#### **2.1 Example Computation of Liquidated Damages for Failure to Achieve Effective Density**

The following is an example of how Liquidated Damages would be determined for Lessee's failure to achieve the Minimum Effective Density requirements.

*Minimum Effective Density (MED)* = 1,200 lbs/cubic yard (0.600 Tons/cubic yard);  
*Weight (W)* = 630,000 tons example input from weigh records

*Volume (V)* = 1,074,627 cubic yards example input from measurement

Average Density Achieved = 1,172 lbs/cubic yard (.586 tons/cubic yard calculated value  $(W) \div (V)$ )

Average Density Achieved is less than the MED; therefore, Lessee is subject to Liquidated Damages calculated as follows:

Liquidated Damages =  $[(W) \div (MED) - V] \times \$20/\text{cubic yard}$

Liquidated Damages =  $[630,000 \text{ Tons} \div .600 \text{ Tons/cubic yard} - 1,074,627 \text{ cubic yards}] \times \$20 / \text{cubic yard}$

Liquidated Damages = \$492,540

- F. Cover Soil Ratio - The goal established for the Lease shall be to achieve a Cover Soil Ratio of no less than six to one (6:1) (six parts Solid Waste to one part Cover Soil) in accordance with the Site Operating Plan (SOP) requirements. The City's approved and contracted third-party engineer shall survey the Landfill at the beginning and end of the measurement period by standard methods. The survey shall be used to determine the total volume portion (V) of the Cover Soil Ratio calculation that shall be the same as the volume portion (V) of the Effective Density calculation. The Cover Soil Volume (CSV) used shall be tracked by the Lessee and reported to the City. The Solid Waste Volume (SWV) shall be the difference between the total volume portion (V) of the Cover Soil Ratio and the Cover Soil Volume (CSV) used.

The measurement period for determining the cover soil ratio achieved by the Lessee shall be the same as that for tracking Effective Density as noted above (12 months) and shall follow successively in each Operating Year without lapse throughout the Term of Lease. Should the measurement period not directly coincide with the tracking of cover soil and ADC Usage, the Lessee shall allocate the periodic cover soil information, as necessary, to provide an accurate total for the measurement period.

If the calculated Cover Soil Ratio at the Landfill falls below six parts solid waste to one part Cover Soil (6:1) the Liquidated Damages, in the amount determined using the following equations as shown by the example below, will be imposed. The compensation amount shall be twenty dollars (\$20) per calculated cubic yard.

*Target Cover Soil Volume (TCSV)* [in cubic yards] =  $(V) \div 7$

*Excess Soil Volume (ESV)* [in cubic yards] =  $(CSV) - (TCSV)$

*Liquidated Damages* =  $(ESV) \times \$ 20.00/\text{cubic yard}$

#### EXAMPLE COMPUTATION OF LIQUIDATED DAMAGES FOR FAILURE TO ACHIEVE COVER SOIL RATIO

The following is an example of how Liquidated Damages would be determined for failure to achieve a cover soil ratio of no less than 6:1

*Volume (V)* = 1,074,627 cubic yards input from measurement

*Cover Soil Volume (CSV)* = 156,102 cubic yards input from Lessee records

*Solid Waste Volume (SWV)* =  $(V) - (CSV) = 1,074,627 \text{ cubic yards} - 156,102 \text{ cubic yards}$   
*Solid Waste Volume (SWV)* = 918,525 cubic yards

*Cover Soil Ratio* = (SWV) ÷ (CSV) = 918,525 cubic yards ÷ 156,102 cubic yards = 5.88:1

Cover Soil Ratio is less than 6:1. Therefore, Lessee is subject to Liquidated Damages calculated as follows:

*Target Cover Soil Volume (TCSV)* = (V) ÷ 7 = 1,074,627 cubic yards ÷ 7

*Target Cover Soil Volume (TCSV)* = 153,518 cubic yards

*Excess Soil Volume (ESV)* = (CSV) – (TCSV) = 156,102 cubic yards – 153,518 cubic yards

*Excess Soil Volume (ESV)* = 2,584 cubic yards

*Liquidated Damages* = (ESV) x \$20.00 = 2,584 x \$ 20.00

*Liquidated Damages* = \$51,680

G. Failure to Begin Operations by Operation Commencement Date - Twenty thousand dollars (\$20,000) shall be imposed for each day Lessee fails to provide the Solid Waste Administrator evidence of the accomplishment of all Conditions Precedent contained in the Lease by the Operation Commencement Date.

### **C13. STEP IN PROVISIONS**

In the event of a breach of the Lease by the Lessee whereby an emergency condition is created and/or public health and safety are endangered, subject to certain procedures, the City shall have the right to step in and take over the Lessee's operations at the Landfill. A contingent lease agreement for takeover of Lessee's equipment in event of such breach is also required as a pre-condition of the Lease.

### **C14. LANDFILL EXPANSION**

Although the City does not currently wish to expand the existing landfill, Respondents may identify in their proposals the Landfill footprint, and elevation and airspace (in cubic yards) they believe is reasonable as a potential expansion of the existing Landfill if the Respondent believes it to be financially and economically feasible.

Current Landfill Permits are issued to the City as the permittee. Should the City choose to approve expansion of the current site, the City will retain the operating permits; however, the Lessee will be required to prepare and file such applications for any necessary Permits or Government approvals as may be required for the Lessee to perform its expansion proposal(s) and to file such applications as necessary for a permit amendment for a Landfill expansion with footprints and heights approved by the City. The City will share the responsibility to seek new Permits, but the Lessee will have sole responsibility to develop permit and amendment applications. Lessee will pay all costs associated with pursuing new or modified permits incurred by the City. Lessee will use the City's contracted third-party engineering firm(s) or the Lessee's engineers, as approved by the City, to provide engineering services associated with the Landfill. However, the Lessee will be required to obtain certain licenses, approvals, easements, and other authorizations for operation and expansion of the City of San Angelo Landfill, and prospective Respondents should make an independent determination of such requirements.

If expansion of the current site is appropriate as deemed by the City, the City will cooperate with the Lessee in submitting applications for Permit Modifications for Government

Approvals. To the extent permitted by law, the City agrees that it will not, in any official capacity, directly or indirectly assist, encourage, fund or otherwise support any individual or other party in opposition to the operation and/or expansion of the City of San Angelo Landfill, specifically including the issuance of a Landfill Expansion Permit.

The Lessee shall, at the Lessee's sole cost, expense, and risk, make all improvements and alterations to the City of San Angelo Landfill, including, but not limited to, the expansion of a leachate collection system and landfill gas collection system, each consistent with prudent landfill management practices and then-current industry standards, the Landfill expansion, and preparation of the City of San Angelo Landfill to receive the acceptable waste tonnage increases anticipated from the Operation Commencement Date and thereafter throughout the term of the Lease.

The Lessee will be responsible for undertaking all monitoring and developing all compliance reports and related documentation associated with the City of San Angelo Landfill as required by the Permits and other Applicable Laws. At the City's option, such documentation shall be submitted to the City or directly to the permitting authority.

#### **C14.1 Additional Expansion Potential**

The City also owns an approximate 320-acre property located north of the existing landfill which is designated as a potential soil borrow source for the existing landfill operations and a potential landfill expansion property. Currently, the City intends to permit and utilize this land as a new greenfield site at the end of the useful life of the existing site.

Respondents may include within their proposals options for permitting and utilizing the additional property prior to the closure of the existing site, if Respondents feel there are financial and economical benefits to doing so. Proposals as such must comprehensively include options for use, the potential returns, benefits, and revenues from each option, the associated costs and assignment of those costs for permitting and establishing the new site, the logistics for establishing and implementing services on the new site, and all other variables that may be applicable.

#### **C14.2 No City Obligation**

The City shall not be deemed to have incurred or assumed any obligation or responsibility in connection with the modification, maintenance, or operation of the City of San Angelo Landfill, or any changes or alterations of the City of San Angelo Landfill, by reason of its review for comment on any designs, plans or specifications, nor shall any such review be deemed a representation by the City of the sufficiency of such designs, plans or specifications, the stability or structural integrity of any part of the City of San Angelo Landfill, or the quality or suitability of any materials or equipment or the adequacy of the designs, plans or specifications for the intended purpose.

#### **C14.3 Financial Assurances**

The City agrees that it shall provide such financial assurances as may be required under Applicable Laws to secure and retain the Landfill Permits, provided that such financial assurances are of the type permitted by Governmental Entities and provided further that such financial assurances do not require the City to deposit money, securities, a surety bond, a letter of credit or any other financial instrument to secure such financial assurances. The City shall retain for its own use all funds it has accrued for closure and post-closure care of the Landfill up to the Operation Commencement Date.

### **C15. CLOSURE AND POST-CLOSURE CARE**

Lessee shall be responsible to deposit required funds for closure and post-closure care and corrective action of the Landfill, as estimated by the City's approved and contracted third-party engineer or Lessee's engineer, as approved by the City, to be a sum of each year

of the Lease, with Third Party Trustee as established in a Trust Instrument in a form approved by the TCEQ. All fees and financial charges relating to the Closure and Post-Closure Trust will be billed directly to the Lessee by the Trustee. Fee and charge amounts can be found at [www.cosatx.us/departments-services/purchasing/bid-information](http://www.cosatx.us/departments-services/purchasing/bid-information).

Reimbursement(s) to the Lessee for expenses related to Landfill closure costs from the Closure and Post-Closure Trust will be initiated by the City after appropriate documentation of such costs is provided. Reimbursement(s) will be made directly to the Lessee by the Trustee.

As of December 2013, the amount required for closure, post-closure, and corrective actions is estimated to be \$8.4 million; noting that such amount established for closure and post-closure care and corrective action, and hence the payments there-to, shall be subject to adjustability as required and justified. All funds previously set aside by the City for such purposes shall revert to the City and shall not be available to the Lessee.

At the end of the term, or when the Lease is terminated by either party, the Lessee shall perform such services as are necessary to physically close the City of San Angelo Landfill in accordance with Applicable Laws and the Landfill Permits then in effect and landscaping as required by the City. In addition, to the extent required under Applicable Laws or the Landfill Permits, prior to the termination of the Lease or the end of the term, the Lessee shall perform Closure activities on a cell by cell basis to the extent practical to do so. The Lessee shall also provide all necessary post-Closure monitoring services and site maintenance, including, but not limited to, surface water, leachate and landfill gas management, mowing, etc., in accordance with Applicable Laws and the Landfill Permits then in force.

In the event that the City of San Angelo Landfill contains unused capacity at the end of the Term, or upon termination of the Lease, the City shall have the right, at its sole option, to keep the Landfill in operation and waive any Lessee Closure and Post-Closure responsibilities. In such event, (i) the City shall have the right to use for its own purposes all amounts held pursuant to any Trust Instruments, and (ii) the City shall perform or cause to be performed the Closure and Post-Closure activities otherwise required to be performed by the Lessee under the Lease and under applicable Landfill Permits, and (iii) Lessee shall be released of any subsequent obligation to perform or cause to be performed the Closure and Post-Closure activities which it would otherwise have been required to perform hereunder and under the applicable Landfill Permits (other than those responsibilities of the Lessee arising prior to the termination of the Lease).

## **C16. EMERGENCY OPERATING PLAN**

The Lessee shall provide to the City at least thirty (30) days prior to the Operation Commencement Date, a written Emergency Management Plan and Emergency Equipment Plan.

1. *Emergency Management Plan:* The Lessee shall be actively involved in planning for and responding to any declared disaster, as appropriate, in the City through an *Emergency Management Plan*. In the event a disaster within the City or a neighboring area is declared, normal operations may be suspended at the Solid Waste Administrator's, or his/her designee's discretion, and Lessee shall respond in accordance with the City's Emergency Management Plan or as directed by the Solid Waste Administrator. Lessee shall use best efforts to maintain primary emergency services and may suspend non-emergency service as required.

The Lessee shall fully staff and make available the Landfill and all equipment, at no additional cost to the City, for activities including disposal, material diversion and/or staging in the event of an emergency. This will include any emergency confirmed by the City's Emergency Operations Center (EOC) and/or by the City's Emergency Management

Coordinator, or his or her designee.

2. *Emergency Equipment Plan*: the Lessee's shall establish an *Emergency Equipment Plan* detailing arrangements to provide equipment and personnel to maintain uninterrupted service during mechanical breakdowns or any other emergency at the Landfill or affecting the Landfill or the Lessee.

## **C17. PERFORMANCE MEASURES**

With respect to all work performed by the Lessee under the Lease, Lessee shall be in compliance with all (and shall meet all standards for the operation of the Landfill contained in any) Applicable Laws. Lessee shall perform all work where no specific performance standard is otherwise provided for in the Lease, to a generally accepted standard of performance expected of a competent and experienced individual who performs work of such nature for his or her livelihood, including maintaining an agreeable, professional relationship with other contractors who may share the site. In addition to any other of its rights, the City may require that the Lessee, at Lessee's sole cost and expense, review and correct any errors or deficiency in any Work that does not meet the above specified standard.

Lessee shall perform engineering and planning services in accordance with generally accepted standards of professional engineering or planning practice. In addition to any other of its rights, the City may require that the Lessee, at Lessee's sole cost and expense, review and correct any errors or deficiency of the Lessee's studies, designs, reports, and/or other engineering or planning services. Further, Lessee shall be responsible for the costs of correction of any faulty physical construction resulting from errors or omissions in its engineering or planning services.

In the event that Lessee utilizes subcontractors in performing any work required to be performed by Lessee under the Lease, Lessee shall require subcontractors to meet the performance standards specified in the Lease. Lessee shall be responsible for such work as though Lessee performed such work without the use of a subcontractor.

Lessee shall be appropriately licensed to perform all work in accordance with Applicable Laws.

Lessee shall have primary responsibility to establish and implement the procedures governing access to the Landfill, the use thereof and operation thereof by the Lessee, City Collector, City contractors and the public. Notwithstanding the foregoing, no such procedure shall conflict with: (i) any Applicable Laws or regulations; (ii) any provision of the Lease; or (iii) any established procedure of the City. Further, the City retains the right, but not the obligation, to review, amend, and disapprove of any such procedure.

## **C18. EQUIPMENT AND EQUIPMENT MAINTENANCE STANDARDS**

Lessee shall maintain all of its properties, facilities and equipment used in providing landfill service under the Lease in a safe, neat, clean and operable condition at all times. Equipment selected for use at the Landfill shall meet or exceed federal emission standards.

Lessee shall inspect each piece of equipment daily to ensure that all equipment is operating properly. Equipment that is not operating properly shall be taken out of service until it is repaired and does operate properly.

Availability of equipment is essential for safe operation of the Landfill and protection of public health and the environment. Lessee shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so-as to maintain all equipment in a safe and operable condition.



Lessee shall have back-up equipment and/or an equipment lease arrangements for expeditious replacement of essential operating equipment if the need arises to take such equipment out of service for emergency repair.

### **C19. PERSONNEL STANDARDS**

Lessee shall furnish such qualified operators, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required in a safe, economical, and efficient manner.

All employees of the Lessee performing work under this Lease, except the Site Manager, shall be uniformed showing their association with the Lessee while onsite during operating hours.

Lessee shall regularly train its employees in customer courtesy, and shall prohibit the use of loud or profane language.

Lessee shall not, nor shall it permit its employees to, demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for services provided under the Lease.

If any employee is found not to be courteous or not to be performing services in the manner required by the Lease, Lessee shall take all appropriate corrective measures. If City has notified Lessee of a complaint related to discourteous or improper behavior, Lessee will consider reassigning the employee to duties not entailing contact with the public while Lessee is pursuing its investigation and corrective action process.

Lessee shall provide suitable operational and safety training for all of its employees who utilize or operate equipment under the Lease. Lessee shall train its employees in solid waste disposal to identify Hazardous Waste and Infectious Medical Waste. All equipment operators shall be suitably trained and qualified in the operation of waste handling equipment.

Lessee shall designate qualified employees as supervisors of field operations. Supervisors will be in the field for inspection of Lessee's work and will be available by radio or phone during the Lessee's hours of operation to handle calls and complaints from the City, or to follow-up on problems and inspect Lessee's operations. Lessee shall provide contact name(s) and information for employees to contact for after-hours emergencies. Supervisors must be able to communicate with and understand employees and Landfill customers. Lessee must have onsite, during all hours of operation, supervisor(s) and employee(s) to comply with all applicable TCEQ regulations.

Lessee shall maintain policies and procedures that promote a drug-free workplace.

Lessee shall provide a list of current supervisory and management employees to the Solid Waste Administrator and provide an updated list to the Solid Waste Administrator within ten (10) days of any employee changes.

### **C20. USE OF SUBCONTRACTORS AND CONSULTANTS BY LESSEE**

The Lessee will not sub-contract, or enter into any consulting or subcontracting agreements pertaining to Lessee's obligations under the Lease, without obtaining approval from the Solid Waste Administrator. In no event will any subcontracting by the Lessee relieve the Lessee from any of the obligations or conditions of the Lease on its part to be performed. Any of the Lessee's subcontractors or consultants will be considered the agent and employee of the Lessee, and the acts or omissions of the subcontractors or consultants and any person directly or indirectly acting for them will be deemed to be the acts or omissions of the Lessee, and the Lessee will remain liable and responsible to the City of San Angelo as if no

subcontract or consulting contract had been made.

The following information must be provided to the Solid Waste Administrator prior to the beginning of any work by a subcontractor or consultant:

Name; Address;  
Point of Contact; Phone Number; Scope of Work; and  
Certificate of Insurance.

## **C21. EVALUATION**

The City will select a committee to evaluate the solicitations. The objective of the proposal review committee is to select the most qualified proposal, utilizing the evaluation criteria set forth in Table C21.1. Proposals will be evaluated in accordance with the following factors.

**Table C21.1 – Proposal Evaluation Criteria**

CRITERIA	WEIGHT
<b>Financial Impact</b>	<b>35 points</b>
<b>Operational Experience and Qualifications</b>	<b>35 points</b>
<b>Financial Qualifications and Stability</b>	<b>10 points</b>
<b>Adherence to Specifications</b>	<b>10 points</b>
<b>Additional Beneficial Criteria Submitted</b>	<b>10 points</b>
<b>TOTAL POINTS</b>	<b>100 points</b>