

ORDINANCE NO. 1971

AN ORDINANCE GRANTING A FRANCHISE TO COMMUNITY WASTE DISPOSAL, L.P. FOR RECYCLING SERVICES FOR THE COLLECTION OF RESIDENTIAL AND APARTMENT RECYCLABLES WITHIN THE CITY OF EULESS; PROVIDING THE TERMS AND CONDITIONS THEREOF; PROVIDING AN EFFECTIVE DATE; PROVIDING A TERMINATION DATE; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, the City Council of the City of Euless has determined that the services, facilities, and equipment utilized by Community Waste Disposal, L.P. are sufficient to provide services, facilities and equipment necessary to fulfill the current and future recycling services of the City; and

WHEREAS, Community Waste Disposal, L.P. and the City of Euless desire to execute an exclusive franchise agreement upon the terms and conditions hereof; and

WHEREAS, the City of Euless, in its desire to provide recycling services, demands a firm or qualified professional organization that provides, but is not limited to, the following services:

- A. Efficient and economical residential curbside and apartment recycling.
- B. Maximized sanitary and aesthetic living conditions for the citizens of the City of Euless.
- C. Maintain positive communications with the City of Euless and the customer.
- D. Collection and transport recyclables from residential and apartment units within the City of Euless to a suitable material recovery facility; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS:

The City of Euless hereby grants to Community Waste Disposal, L.P. the license and privilege to use the public streets, easements, and thoroughfares within the corporate limits of the City of Euless for the purpose of collection and disposal of residential and apartment recyclables, subject to the terms and conditions set forth in this franchise agreement and as allowed by state law.

FRANCHISE AGREEMENT FOR THE COLLECTION OF RESIDENTIAL AND APARTMENT RECYCLABLES

THIS FRANCHISE AGREEMENT (“Agreement”) is entered into by and between the City of Euless, a Home Rule Municipal Corporation located in Tarrant County, Texas, (the “City”) and Community Waste Disposal, L.P. (“Contractor”).

In consideration of the following mutual agreements and covenants, the City and Contractor do hereby agree as follows:

SECTION 1. DEFINITIONS

Wherever used herein, the hereinafter-listed terms shall have the following meanings:

- 1.1 **Apartment Unit.** A multi-family dwelling located within the corporate limits of the City. A separate Apartment Unit shall be deemed a room or suite of rooms arranged, designed or occupied as a residence.
- 1.2 **City.** City of Euless
- 1.3 **Contract.** This Agreement and any addenda or changes thereto agreed to by the City and Contractor.
- 1.4 **Contractor.** Community Waste Disposal, L.P.
- 1.5 **Curbside.** That portion of right-of-way adjacent to paved or traveled City roadways.
- 1.6 **Franchise Fee.** Fee paid by Contractor to the City for the sole and exclusive franchise, license, and privilege within the corporate limits of the City to engage in the business of collecting and disposing of Recyclable Materials.
- 1.7 **Monthly Contractual Rate.** The per customer monthly amount Contractor is entitled to for the collection and processing of Recyclable Materials.
- 1.8 **Net Monthly Contractual Rate.** The Monthly Contractual Rate less a Franchise Fee and other costs incurred by the City.
- 1.9 **Recyclable Buyer.** A buyer or processor, selected by Contractor pursuant to this Agreement, of Recyclable Materials delivered by Contractor.
- 1.10 **Recycling Container.** The container for Recyclable Materials for each Residential Unit or Apartment Unit within the City shall consist of one of the following;
 - 1.10.1 **Blue Bag.** A polyethylene blue bag provided by the resident. These bags will be available for purchase at area retail stores. It is the responsibility of the residents to provide their own Blue Bag container(s) for recycling.

1.10.2 Bin. A plastic receptacle imprinted with Contractor's logo, provided by and the property of Contractor. The Bin shall have a minimum capacity of eighteen (18) gallons. It shall be the responsibility of Contractor to supply, maintain and deliver the Bin container for recycling to those residents who elect Bin service.

1.10.3 Cart. A plastic receptacle imprinted with Contractor's logo, provided by and the property of Contractor. The Cart shall have a minimum capacity of sixty-five (65) gallons, two wheels, and a hinged lid. It shall be the responsibility of Contractor to supply, maintain and deliver the Cart container for recycling to those residents who elect Cart service.

1.10.4 Recycling Dumpster. A metal receptacle bearing Contractor's logo, provided by and the property of Contractor. The Recycling Dumpster shall have a minimum capacity of eight (8) yards and be identifiable as "Recycling Only". It shall be the responsibility of Contractor to supply, maintain and deliver the Recycling Dumpster to Apartment Units.

1.11 Recyclable Materials. The following materials shall be included in the recycling program:

- Office Paper
- Newsprint
- Magazines
- Aluminum Beverage Cans
- Steel/Tin Cans
- Glass: Clear, Brown and Green
- Plastic Containers #1, #2, #3, #4, #5, #7
- Household Paper Products to include junk mail, envelopes, cereal boxes, cardboard, chipboard, and telephone books.

1.12 Residential Unit. A single-family or duplex dwelling located within the corporate limits of the City. A separate Residential Unit shall be deemed occupied when either water or domestic electric power services are being supplied thereto. Each single-family dwelling within any condominium building or group shall be counted separately as a Residential Unit.

SECTION 2. SCOPE OF RECYCLING COLLECTION WORK

2.1 Processing of Recyclable Materials. Subject to the terms and conditions of this Agreement, Contractor shall be responsible for transporting the Recyclable Materials to an approved processing site.

2.2 Frequency of Residential Unit Collection. Contractor shall provide curbside collection service for the collection of Recyclable Materials, on a coinciding garbage collection day, Monday or Thursday, or Tuesday or Friday, from Residential Units one (1) time per week. It is the responsibility of the residents to

place Recycling Containers at curbside by 7:00 a.m. on the designated collection day. No collections shall be made on Sunday. Contractor may propose to the City changes in days of collection. Upon the City Manager's approval of the proposed changes, Contractor shall promptly give written or published notice to the affected Residential Units.

- 2.3 Residential Unit Collection - Where.** Recycling Containers shall be placed at curbside by 7:00 a.m. on the designated collection day. When construction work is being performed in the right-of-way, Recycling Containers shall be placed as close as practicable to the access point for the collection vehicle. Contractor may decline to collect any Recycling Container not so placed. All containers must be returned to the same area as described above.
- 2.4 Residential Unit Collection - How.** Contractor shall make collections with a minimum of noise and disturbance. Work shall be done in a sanitary manner. Any Recyclable Materials spilled by Contractor shall be picked up immediately by Contractor's employees. Residents shall have the opportunity to elect one (1) of three (3) types of Recycling Containers: Blue Bag, Bin or Cart. Contractor will provide an adequate supply of Bin and Cart Recycling Containers. Residential Recycling Container request for service, changes, additions or deletions will be facilitated by the City and supplied, delivered and maintained by Contractor.
- 2.5 Frequency of Apartment Unit Collection.** The Recycling Dumpster shall be serviced on an on-call basis. Within 48 hours of a call by the apartment complex personnel, Contractor will service the dumpster as requested.
- 2.6 Apartment Unit Collection - Where.** A minimum of one Recycling Dumpster will be provided for each apartment complex. Apartment complexes with more than 500 units will receive one Recycling Dumpster per 500 units (example: 2,000 units = four (4) Recycling Dumpsters). The Recycling Dumpster(s) must be readily identifiable as "Recycling Only" and kept in neat and clean appearance. The Recycling Dumpster(s) shall be accessible seven days per week, 24-hours per day by apartment residents.
- 2.7 Apartment Unit Collection - How.** Contractor shall make collections with a minimum of noise and disturbance. Work shall be done in a sanitary manner. Any Recyclable Materials spilled by Contractor shall be picked up immediately by Contractor's employees. Contractor shall make available a minimum of one Recycling Dumpster, slotted to accept the following items: newspapers with slicks, magazines, junk mail, envelopes, cereal boxes, cardboard, chipboard and telephone books, mixed recyclables (plastics #1-7, except 6; aluminum cans, steel cans, glass bottles and containers). The City reserves the right to terminate and/or otherwise alter for further improvements, the apartment recycling service with 30 days prior notice to Contractor. Contractor has the first right of refusal on servicing program changes.

SECTION 3. SPECIAL PROVISIONS

- 3.1 Hauling Rights.** Contractor is hereby granted the sole and exclusive franchise, license, and privilege within the corporate limits of the City to engage in the business of collecting and disposing of Recyclable Materials as specified herein, and the City hereby grants to Contractor permission to use the public streets, alleys, easements, and thoroughfares within the corporate limits of the City for the purpose of such collection and processing. Scavenging or hauling by other individuals or companies on a non-fee basis shall be permitted.
- 3.2 Spillage.** Contractor shall not be responsible for scattered Recyclable Materials unless the same has been caused by its acts or those of any of its employees, subcontractors or agents, in which case all scattered Recyclable Materials shall be picked up immediately by Contractor. Contractor will not be required to clean up or collect scattered Recyclable Material or spillage not caused by the acts of its employees, subcontractors or agents, but shall report the location of such conditions to the City so that proper notice can be given to the customer at the premises to properly contain the Recyclable Material. Apartment Unit Recyclable Material scattering or spillage shall be picked up by Contractor after the customer reloads the Recycling Dumpster.
- 3.3 Improperly Prepared Material.** If Contractor determines that the Recyclable Materials set out by the resident are unacceptable due to incorrect preparation or inappropriateness of materials, Contractor will follow these rejection procedures: upon each instance of improperly prepared materials, Contractor will not collect the items and will leave a sticker-note explaining the proper method of preparation of items. Contractor will not be required to collect Recyclable Materials which are mixed with garbage, trash and rubbish normally collected by solid waste collection crews. Contractor will tag such containers as being unacceptable for recyclable collection.

If Contractor determines that the materials set out by an apartment complex are unacceptable because of a maximum of 10% total contamination, Contractor will follow these procedures: on the first instance of improperly prepared materials, Contractor will pick up the load and contact the apartment manager noting in detail the problem(s); in the second instance, if within 30 days of the first instance of improperly prepared materials, Contractor will pick up the load and contact the apartment manager noting in detail problem(s) and forward a written communication to the City outlining first and second instances; on the third instance within six (6) months of the first instance of improperly prepared materials, Contractor will not pick up the load, will contact the apartment manager and the City, and a garbage collection fee charge will be made to the apartment complex.

- 3.4 Vicious Animals.** Employees of Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Contractor's collection obligations hereunder in any case where the owner or tenants of a Residential Unit or Apartment Complex have animals at large, but Contractor shall

immediately notify the City, in writing, of such condition and of its inability to make collection.

- 3.5 Regular Service for City Owned or Operated Facilities.** Contractor shall provide for, at no charge to the City, the collection, transportation, and processing of Recyclable Materials accumulated by the City at all City owned, operated, or other City designated sites. Regular service shall include the free provision, collection, and hauling of Recycling Container(s) as requested by the City for ongoing and special events.

SECTION 4. CONTRACTOR'S OPERATION

- 4.1 Hours of Operation.** Collection of Recyclable Materials shall not start before 7:00 a.m. or continue after 7:00 p.m. Exceptions to collection hours shall be allowed only upon the mutual agreement, in writing, of the City and Contractor or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances. No collection will be made on Sunday.

- 4.2 Routes of Collection.** Collection routes shall be established by Contractor. Contractor shall submit a map designating the collection routes to the City for approval, which approval shall not be unreasonably withheld. Contractor may propose to the City changes in routes or days of collection. Upon the City Manager's approval of the proposed changes, Contractor shall promptly give written or published notice to the affected Residential Units.

- 4.3 Holidays.** The following shall be holidays for purposes of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Contractor may decide to observe any or all of the above-mentioned holidays by suspension of collection services for the holiday. Make-up days shall be the next business day following the holiday. Contractor shall provide 45 days written notice to the City Manager of its election to observe any such holiday.

- 4.4 Complaints and Non-Performance.** Service complaints shall be handled in the following order:

- 4.4.1 Service Complaints - Contractor.** All service complaints shall initially be directed to Contractor and shall be addressed within 24 hours of receipt of such complaint and shall be promptly resolved. Contractor shall be responsible for maintaining a log of complaints, and shall provide the City on a monthly basis with copies of all complaints indicating the date and

hour of the complaint, nature of the complaint, and the manner and timing of its resolution.

- 4.4.2 Service Complaints - City.** The City shall notify Contractor of each complaint reported to the City. It shall be the duty of Contractor to take whatever steps are necessary to remedy the cause of the complaint and notify the City of its disposition of same by the end of the next business day.
- 4.4.3 Damage - Private Property.** Contractor shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property resulting from actions of Contractor's employees, agents, or subcontractors.
- 4.4.4 Complaint Procedures.** Contractor shall provide the City with information regarding complaint procedures, rules and regulations, and day(s) of collection, etc. Information is to be in the form of printed material distributed by Contractor.
- 4.4.5 Performance Penalties.** Failure or neglect to remedy any missed collection of Recyclable Materials from any premises on the same day if notified by 2 p.m. or within 24 hours with notification after 2 p.m. of missed scheduled service may result in a twenty-five dollar (\$25) penalty for each failure. Additionally, subsequent failure(s) at the same address within any 30-day period may result in a fifty dollar (\$50) penalty per service failure.

In addition to any penalties levied above, failure or neglect to collect twenty-five (25) or more residences by 7 p.m. on any single regularly scheduled collection day two (2) or more times in any thirty (30) day period in any portion of the City may result in a fifty (\$50) penalty per residence for each failure.

In the event that the interruption is caused by an act of God including, but not limited to: flood, tornado, ice, snow, or similar contingency beyond the reasonable control of Contractor, Contractor shall seek consent of the City to temporarily interrupt service and such consent shall not be unreasonably withheld. Consent shall not be given for mechanical failure, labor action, or seasonal volume variations. For a period of service interruption to which the City has consented, performance penalties may be waived.

- 4.5 Reporting Requirements.** Contractor shall provide the City with monthly service reports within two (2) weeks of the end of the reporting period. Monthly reports shall include tonnage of materials collected and set-out rates identified with the City. Contractor shall also provide the City with an annual report no later than May 1, of each year of the Term of this Agreement. Annual reports shall include a summary of the set-out rates including the amounts of recovered material and summary of the public awareness activities and community involvement.

- 4.6 Equipment.** Contractor, at its sole cost and expense, shall provide all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport recyclable material from accounts serviced by Contractor in accordance with this Agreement.
- 4.6.1 Type.** Contractor shall use only equipment kept in good repair and appearance and in a sanitary condition at all times. No trucks utilized pursuant to this Agreement shall be more than ten (10) years old.
- 4.6.2 Amount.** Contractor shall provide sufficient equipment in a proper operating condition so regular schedules and routes of collection can be maintained.
- 4.6.3 Condition.** Equipment is to be maintained in a clean and safe working condition and shall be painted uniformly. No third party advertising shall be permitted on vehicles. Vehicles must have Contractor's name and phone numbers in letters and numbers legible from 150 feet and a unit number. The City shall have the right to inspect all equipment and may require Contractor not to use a piece of equipment for good and reasonable cause.
- 4.6.4 Protection from Scattering.** Each vehicle shall be equipped with a cover, which may be net with mesh not greater than one and one-half (1-1/2) inches, or a tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of Recyclable Material onto public or private property. Such cover shall be kept in good order and used to cover the load while in transit, during loading operations, or when parked if contents are likely to be scattered. Vehicles shall not be overloaded so as to scatter Recyclable Material; however, if Recyclable Material is scattered from Contractor's vehicle for any reason, it shall be picked up immediately.
- 4.6.5 Weight Limits.** Contractor agrees to utilize residential collection vehicles with a 20 or 25 cubic yard Rear Load truck, which will not exceed a 50,000 pound Gross Vehicle Weight, for collections from all Residential Units. Contractor agrees that apartment collection vehicles will not exceed a 54,000 pound Gross Vehicle Weight.
- 4.6.6 Miscellaneous.** Vehicles are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month. Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition. Contractor's vehicles are not to interfere unduly with vehicular or pedestrian traffic, and vehicles are not to be left standing on streets unattended except as made necessary by loading operations. Contractor shall train drivers to protect City's streets and not make sudden, breaking stops that will damage street surfaces.
- 4.7 Office.** Contractor agrees, at its own expense, to keep an office open, to provide a toll-free or metro telephone number and to provide a telephone answered (mechanical answering machine is not acceptable) from 8:00 a.m. to 5:00 p.m., Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturday, excluding legal

holidays, for the purpose of handling complaints and other calls regarding recyclable collection service. Contractor shall keep competent personnel in the office during the time the office is required to be open to the public, and the office personnel shall have authority to represent Contractor in its relations with the public. Contractor shall also provide the City a telephone number by which Contractor can be contacted for after-hours emergencies. Contractor shall keep and maintain in the office a daily log of all the service calls which shall show the nature of the call, complaint, or communication and the disposition thereof by Contractor. The City shall have the right to inspect the daily log at any reasonable time. Throughout the term of this Agreement, Contractor shall establish and maintain an authorized Managing Agent and shall designate in writing to the City Manager the name, telephone number, and address of such agent upon whom all notices shall be served by the City and to whom complaints received from citizens of the City may be directed. Service upon Contractor's Managing Agent shall always constitute service upon Contractor. Contractor agrees to secure an annual listing in the local Mid-Cities telephone directories in both the white and yellow pages under the name by which it conducts business in the City.

4.8 Processing of Recyclable Materials. Subject to the terms and conditions of this Agreement, Contractor shall be responsible for transporting the Recyclable Materials to a processing site and must have established buyers or markets for the Recyclable Materials. Contractor shall be required to identify the buyers of the Recyclable Materials upon request by the City. No more than 15% of Recyclable Materials collected for the purpose of recycling may be deposited in any landfill. To the fullest extent possible, Recyclable Materials should be protected against contaminants that require disposal at the landfill. Contractor shall be totally responsible for the processing and marketing of all Recyclable Materials collected pursuant to this Agreement. It shall be the responsibility of Contractor to dispose of the Recyclable Material it is required to collect hereunder according to City, county, state, and federal regulations at Contractor's expense. Contractor guarantees that it will own, lease, or control adequate processing capacity for the life of this Agreement and all extensions. Title to Recyclable Materials shall pass to Contractor when placed in Contractor's collection vehicle, removed by Contractor from a Recycling Container, or removed by Contractor from the customer's premises.

4.9 Hazardous Weather Force Majeure & Exclusions And Conditions. Contractor may cancel a portion or all of a scheduled service day due to hazardous weather conditions. Contractor will provide immediate written notice to the City via facsimile transmission or e-mail of its cancellation of all or a portion of a scheduled service day. Notwithstanding anything herein to the contrary, Contractor shall not be liable for the failure to perform its duties if such failure is caused by a catastrophe, riot, war, governmental order or regulation, fire, Act of God, or other similar or different contingency beyond the reasonable control of Contractor, excluding mechanical failure or labor actions. In the event of hazardous weather, the City shall grant to Contractor variances in routes and schedules as deemed necessary to maintain the service levels as described in this Agreement.

- 4.10 **Records.** The City and Contractor agree to maintain at their respective places of business adequate books and records relating to the performance of their respective duties under the provisions of this Agreement and such books and records shall be made available at any time during business hours for inspection by the other party, at the inspecting party's expense, upon reasonable advance notice. All Contractor information will be kept confidential unless covered by open-records laws.

SECTION 5. CONTRACTOR'S RELATION TO THE CITY

- 5.1 **Contractor as Independent Contractor.** It is expressly agreed and understood that Contractor is in all respects an independent contractor as to the work, licenses, or privileges granted herein, notwithstanding Contractor is bound to follow the direction of designated City officials, and that Contractor is in no respect an officer, agent, servant or employee of the City. This Agreement specifies the work to be done by Contractor, but the method to be employed to accomplish this work shall be the responsibility of Contractor, unless otherwise provided in this Agreement. It is further understood and agreed that Contractor shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors and licensees; that the doctrine of respondent superior shall not apply as between City and Contractor; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.
- 5.2 **Assignment.** This Agreement, and any and all rights and obligations of Contractor hereunder, may be assigned to any parent company, affiliate or subsidiary of Contractor without the consent of the City. No other assignment of this Agreement or any right accruing under this Agreement shall be made in whole or in part by Contractor without the express written consent of the City, which consent shall not be unreasonably withheld. No such consent will be construed as making the City a party of or to such assignment or subcontract, or subjecting the City to liability of any kind to any subcontractor. No assignment shall, under any circumstances, relieve Contractor of its liability and obligations under this Agreement, and despite any such assignment, the City shall deal through Contractor. Subcontractors will be dealt with as workers and representatives of Contractor, and as such shall be subject to the same requirements as to character and competence as are other employees of Contractor.
- 5.3 **City Manager to be Referee.** To prevent misunderstanding and litigation, the City Manager shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the sufficiency of the performance, and the acceptable fulfillment of this Agreement on the part of Contractor; and the City Manager will determine whether or not the amount, quantity, character, and quality of the work performed is satisfactory. The City Manager shall make such explanation as may be necessary to complete, explain, or make definite the provisions of this Agreement and his reasonable findings and conclusions shall be final and binding on both parties. If at any time during the term

of this Agreement performance of Contractor does not meet the standards set forth herein, Contractor, upon notification by the City, shall increase the forces, tools, or equipment as needed to properly perform this Agreement. The failure of the City to give such notification shall not relieve Contractor of the obligation to perform the work at the time and in the manner specified by this Agreement. Contractor and the City agree that the City Manager will be the final authority for the approval of charges for any service not contemplated by this Agreement and for the disposition of any dispute regarding performance between the City, Contractor, and any customer.

- 5.4 Inspection of Work.** Contractor shall furnish the City Manager or his authorized representative with every reasonable opportunity for ascertaining whether or not the work as performed is in accordance with the requirements of this Agreement. The City Manager may appoint qualified persons to inspect Contractor's operations and equipment at any reasonable time, and Contractor shall allow authorized representatives of the City to make such inspections.
- 5.5 Taxes.** Except as specifically provided otherwise in this Agreement, Contractor shall pay all federal, state, and local taxes including sales tax, social security, worker's compensation, unemployment insurance, ad valorem, and other required taxes which may be chargeable against labor, material, equipment, real estate, and other items necessary to and in performance of this Agreement.
- 5.6 City not Liable for Delays.** It is expressly understood and agreed that, except as otherwise provided herein, in no event shall the City be liable or responsible to Contractor or to any other person for any stoppage or delay in the work herein provided for, by injunction or other legal or equitable proceedings brought against Contractor, or from or on account of any delay from cause over which the City has no control.
- 5.7 Licenses, Permits, and Fees.** Contractor agrees to obtain and pay for all licenses, permits, certificates, inspections, and other fees required by law or otherwise necessary to perform the services prescribed hereunder. Contractor shall also pay, at his own expense, all processing fees associated with the collection, removal, and processing of Recyclable Materials.
- 5.8 Term.** This Agreement shall be for a five (5) year period beginning March 1, 2013, and ending five (5) years thereafter.
- 5.9 Renewal.** This Agreement may be renewed and extended for one (1) additional five (5) year period upon the mutual agreement of both parties.
- 5.10 Termination For Cause.** If at any time Contractor shall fail to substantially perform terms, covenants, obligations or conditions herein set forth, the City shall notify Contractor by registered or certified mail addressed to Contractor at the address set forth herein of specific reasons in support of the City's claim that Contractor has substantially breached the terms and provisions of this Agreement. Contractor shall be allowed a thirty (30) day period from the date of

receipt of said notice from the City to remedy any failure to perform. Should the City deem the failure to perform remedied, no public hearing shall be held.

Should Contractor fail to remedy its performance, after a public hearing described herein, the City may terminate this Agreement and the rights and privileges granted to Contractor herein. A notice shall be sent to Contractor no later than ten (10) days before a public hearing is scheduled. The notice shall specify the time and place of the hearing and shall include the specific reasons in support of the City's claim that Contractor has substantially breached the terms and provisions of this Agreement. Said hearing shall be conducted in public by the City Council, and Contractor shall be allowed to be present and shall be given full opportunity to answer such claims as are set out against it in the aforesaid notice. If, after said public hearing, the City Council makes a finding that Contractor has failed to provide adequate Recyclable Materials collection service for the City, or has otherwise substantially failed to perform its duties hereunder, the City Council may terminate this Agreement.

- 5.11 Nondiscrimination Clause.** Contractor, in the execution, performance, or attempted performance of its service under this Agreement, shall not discriminate against any person because of sex, race, religion, color, national origin or any other protected class under federal or state law. Contractor must be an equal opportunity employer.

SECTION 6. QUALITY OF SERVICE

- 6.1 Character of Workers and Equipment.** The direction and supervision of Recyclable Material collection and processing operations shall be by competent, qualified, properly licensed, drug free, uniformed, and sober personnel and Contractor shall devote sufficient personnel, time and attention to the direction of the operation to assure performance reasonably satisfactory to the City. All subcontractors, superintendents, foremen and workers employed by Contractor shall be careful and competent. Any employee of Contractor who misconducts himself or is incompetent or negligent in the due and proper performance of his duty, or is disorderly, dishonest, under the influence of drugs or alcohol or grossly discourteous, shall be subject to disciplinary measures or termination by Contractor.
- 6.2 Cooperation of Contractor Required.** Contractor shall cooperate with authorized personnel and representatives of the City in every reasonable way in order to facilitate the progress of the work contemplated under this Agreement. Contractor shall have at all times a competent and reliable representative available authorized to receive orders and act on behalf of Contractor.
- 6.2.1 Contractor's Employees.** Contractor shall assure that Contractor's employees serve the public in a courteous, helpful and impartial manner.

6.2.2 Handling of Private Property - Contractor's Employees. Contractor's employees collecting Recyclable Materials will be required to follow the regular walk for pedestrians while on private property. Care shall be taken to prevent damage to property including shrubs, flowers, and other plants.

**SECTION 7.
WORKING CONDITIONS**

- 7.1 Employee Protection.** Contractor shall comply with all applicable state and federal laws relating to wages, hours, and all other applicable laws relating to the employment or protection of employees, now or hereafter in effect.
- 7.2 Employees' Salaries - Contractor.** Contractor is required and hereby agrees by acceptance of this Agreement to pay all employees not less than federal minimum wage and to abide by other applicable requirements of the Fair Labor Standards Act.
- 7.3 Compliance with Laws and Regulations.** Contractor hereby agrees to comply with all applicable federal, state, county and city laws and regulations (including EPA guidelines) applicable to the collection, transportation or processing of Recyclable Materials or the operations of Contractor under this Agreement. Contractor shall indemnify and save harmless the City, all of its officers, representatives, agents and employees against any claim or liability arising from or based upon the violation of any such laws, regulations, ordinances, orders or decrees, whether by Contractor, its officers, agents, servants, employees, licensees, or subcontractors. It is agreed and understood that, if the City calls the attention of Contractor to any such violations on the part of Contractor, its officers, agents, servants, employees, licensees, or subcontractors, then Contractor shall immediately desist from and correct each violation.

**SECTION 8.
INSURANCE, INDEMNIFICATION AND PERFORMANCE BOND**

8.1 Minimum Insurance Coverage. Contractor at its own expense shall purchase, maintain and keep in force insurance for the duration of this Agreement.

Minimum coverage shall be established as of commencement date for this Agreement in the following amounts:

Type of Coverage	Per Occurrence Minimum	Aggregate Minimum
Worker's Compensation	As required by law and shall cover all employees including drivers.	As required by law.
Comprehensive & General Public Liability	\$1,000,000	\$2,000,000
Property Damage	\$1,000,000	\$2,000,000
Comprehensive Auto Liability	\$1,000,000	

Bodily Injury		
Comprehensive Auto Liability Property Damage	\$500,000	

8.2 Requirements of Insurance. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in conjunction with the performance of the work hereunder by Contractor, its officers, agents, servants, employees, licensees and subcontractors. The cost of such insurance shall be borne by Contractor. Upon execution of this Agreement, Contractor shall have the City named as an additional insured on each insurance policy except Worker's Compensation and Employer's Liability, providing written evidence of the same to the City, and shall have each policy including Worker's Compensation and Employer's Liability endorsed to provide a waiver of subrogation in favor of the City. Insurance is to be placed with insurers licensed in the State of Texas and rated A- or better by A.M. Best or A by Standard and Poor's. Such policies of insurance shall provide that in the event of cancellation or material change in the policy affecting the insured, thirty (30) days prior written notice shall be given to the City.

8.3 Proof of Insurance. Contractor shall furnish to the City copies of the required insurance policies or certificates of insurance in a form approved by the Texas Department of Insurance showing proof of the required coverage and conditions of insurance. Such proof of insurance shall be kept current throughout the term of this Agreement or any renewal thereof.

8.4 Indemnification. Contractor will be responsible for any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees arising out of a willful or negligent act or omission of Contractor, its officers, agents, servants, employees, licensees and subcontractors in the performance of this Agreement. The City will not be responsible for the negligence of Contractor, or any of its officers, agents, servants, employees, licensees or subcontractors. Contractor assumes all liability and responsibility for and hereby covenants and agrees to fully indemnify, hold harmless, and defend the City, its officers, agents, servants, and employees from and against any and all claims, suits, judgments, assessments, costs, and expenses (including reasonable attorneys' fees) for property damage or loss and/or personal injury, including death, to any and all persons of whatsoever kind or character, whether real or asserted, arising out of or in connection with the performance, attempted performance, or nonperformance of the work and services described hereunder by Contractor or in any way resulting from or arising out of the collection, transportation, and processing of Recyclable Materials under this Agreement by Contractor, including the work, services, operations, and legal duties of Contractor, its officers, agents, servants, employees, subcontractors or licensees, if any, save and except any damage or loss and/or personal injury, including death, arising out of any acts or omissions of the City or the City's officers, agents, servants, or employees. Contractor shall likewise assume all responsibility and liability for and shall indemnify and hold harmless the City for any and all injury or damage to City property arising out of or in connection

with any and all negligent acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors or licensees, including reasonable attorneys' fees expended by the City in any suit or claim against Contractor for same.

- 8.5 Performance Bond.** Contractor will be required to furnish a performance bond as security for the faithful performance of this Agreement. The performance bond must be in an amount equal to \$15,000 annually for a term of five (5) years. Contractor shall pay any and all premiums for the bonds described above. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond. Such certificate shall be submitted to the City with the bond on an annual basis. Such letter is to be signed by an authorized representative of the surety together with a certified and effectively dated copy of his power of attorney attached thereto. The surety on the bond shall be a corporate surety duly authorized to do business in the State of Texas.

SECTION 9. CONTRACTUAL RATES, BILLING AND FRANCHISE FEES

- 9.1 Contractual Rates.** Contractor shall be paid a Net Monthly Contractual Rate for the collection and processing of Recyclable Materials as follows:
- A. Residential Unit.** Monthly Contractual Rates will be in accordance with the type of Recycling Container service elected by the customer: Blue Bag, Bin or Cart. Net Monthly Contractual Rates for the collection of Recyclable Materials shall be as set forth in the schedule attached hereto as Exhibit "A". Monthly Contractual Rates shall be applied and are due regardless of whether a Residential Unit elects to participate in the city recycling program. In the absence of a customer elected Recycling Container, Blue Bag shall be the default Recycling Container for Residential Units.
 - B. Apartment Unit.** Net Monthly Contractual Rates for the collection of Recyclable Materials from Apartment Units shall be as set forth in the schedule attached hereto as Exhibit "A". Monthly Contractual Rates shall be applied and are due regardless of whether an Apartment Unit elects to participate in the city recycling program.
- 9.2 Billing and Collection.** The City will serve as billing and collection agent for all billings. The City agrees to bill Residential Unit and Apartment Unit customers on a monthly basis. The City agrees to remit to Contractor, on or before the fifteenth (15th) business day following the end of the City's fourth weekly billing cycle in each month, an amount equal to the Net Monthly Contractual Rates set forth in the schedule attached hereto as Exhibit "A" multiplied by the number of customers receiving each type of Recycling Container service for the preceding month. The City shall be entitled to set rates above the Monthly Contractual Rate to compensate administrative costs.

- 9.3 **Franchise Fee.** Contractor agrees to pay the City a 5% Franchise Fee. Such payment will be netted out of the Monthly Contractual payment remitted to Contractor by the City.
- 9.4 **Sales Tax.** The City shall collect and remit all appropriate sales taxes to the State Comptroller's office of the State of Texas.
- 9.5 **Rate Increase.** Contractor will be eligible to receive an increase in Monthly Contractual Rates on March 1, 2014, 2015, 2016, and 2017, as set forth in the schedule attached hereto as Exhibit "A".
- 9.6 **Revenues from the Sale of the Recyclable Materials.** Contractor shall retain all revenues from the sale of Recyclable Materials.

SECTION 10. WORKING POLICIES

- 10.1 **Commencement of Work.** Contractor must commence operations upon the beginning of the term of this Agreement, unless a delay is agreed upon by Contractor and the City.
- 10.2 **Introduction of Cart and Bin Service.** Beginning in December of 2012, the City agrees to market, advertise and otherwise promote the introduction of an "a-la-cart" service to Residential Units. Residents shall have the opportunity to elect one (1) of three (3) types of Recycling Containers: Blue Bag, Bin or Cart. By January 18, 2013, the City shall provide Contractor with the initial demand by type of Recycling Containers. Contractor shall provide an adequate supply of Bin and Cart Recycling Containers. Contractor will distribute the initial allocation of Bin and Cart Recycling Containers to residents in February 2013. Residential Recycling Container request for service, changes, additions or deletions will be facilitated by the City and supplied, delivered and maintained by Contractor.
- 10.3 **Operations During Dispute.** In the event the City Council shall find that Contractor has failed, or is failing to perform obligations under this Agreement, it shall be the duty of the City Council to enter into a formal finding of that fact upon the minutes and send a certified copy of such finding by certified mail to Contractor, or have same delivered to Contractor personally. In such event, Contractor shall have ten (10) days to correct or cure the failures so found by the City Council. Should Contractor fail to correct or cure such failures within such ten (10) day period, Contractor agrees that the City shall thereupon be entitled to take over all operations under this Agreement, and Contractor shall cooperate to the extent necessary to enable the City to do so.
- 10.4 **Amendments.** This written agreement contains the entire agreement of the parties hereto concerning the subject matter hereof, and no other written or verbal agreements or understandings exist. Amendments which are consistent with the purposes of this Agreement may be made with the mutual consent of the parties and in accordance with the City Charter and other applicable laws and ordinances

provided, however, that no amendment hereto shall be effective unless made by written instrument signed by the parties hereto.

10.5 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage paid, certified mail, return receipt requested, addressed to the respective part of the address set forth below:

If to the City: City of Euless
ATTN: City Secretary
201 N. Ector Drive
Euless, Texas 76039-3595

If to the Contractor: Community Waste Disposal
ATTN: Robert D. Medigovich
2010 California Crossing
Dallas, Texas 75220

Or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

10.6 Venue. This Agreement is entered into and wholly performable in Tarrant County, Texas. Should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, or be in any way connected therewith, venue for said action shall be in Tarrant County, Texas.

10.7 Ordinances. The City agrees to pass such ordinances as are necessary to effectuate all terms of this Agreement, including all duties and obligations required of customers, and such ordinances or actions as are necessary to protect the franchise, license and privilege herein granted to Contractor from any infringement of same by third parties.

10.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which will, for all purposes, be deemed to be an original, and all of which are identical.

10.9 Severability. In the event that any provision or portion thereof of this Agreement shall be found to be invalid or unenforceable, then such provision or portion thereof shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of this Agreement shall not affect the validity or enforceability of any other provision or portion of this Agreement.

10.10 Governmental Powers. It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

10.11 Hazardous Material Collection Day. Contractor will pay \$8,000 by April 1, of each year for a hazardous waste collection day once a year for the term of this Agreement.

10.12 Educational Program. Contractor shall invest \$2,000 annually for recycling education. These funds are payable to the City for printed material to be used for educational programs for solid waste and recycling. This payment is due on or before the 15th day of October for each year of this Agreement.

10.13 Special Projects. The City and Contractor agree to discuss and implement certain projects for the continued good service of the citizens of Euless. Any new service standards must first be approved by the Euless City Council.

EXECUTED this _____ day of _____, 2012, in Tarrant County, Texas.

CITY OF EULESS

COMMUNITY WASTE DIPSOSAL

By: _____
Gary McKamie
City Manager

By: _____
Greg Roemer
President

ATTEST:

By: _____
Kim Sutter, TRMC
City Secretary

**SECTION 11.
SEVERABILITY CLAUSE**

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 12.
PUBLICATION**

The City Council further directs that only the caption of this ordinance be published in accordance with Article XI, Section 3 of the City Charter.

**SECTION 13.
EFFECTIVE DATE**

This ordinance shall be in full force and effect thirty (30) days from and after its passage and publication as provided by the Euless City Charter and the laws of the State of Texas.

PRESENTED AND GIVEN FIRST READING at a regular meeting of the Euless City Council on the 25th day of September, 2012, by a vote of _____ ayes, _____ nay, and _____ abstentions.

PRESENTED AND GIVEN SECOND AND FINAL READING and approved at a regular meeting of the Euless City Council on the 13th day of November, 2012, by a vote of _____ ayes, _____ nays, and _____ abstentions.

APPROVED:

APPROVED AS TO FORM:

Mary Lib Saleh, Mayor

Wayne Olson, City Attorney

ATTEST:

Kim Sutter, TRMC, City Secretary

EXHIBIT "A"
NET MONTHLY CONTRACTUAL RATES:
Effective 3/1/13 through 2/28/18

Effective Date	Blue Bag	Bin	Cart	Senior Blue Bag	Senior Bin	Senior Cart	Apartment Unit
3/1/2013	\$1.093	\$1.359	\$2.328	\$0.551	\$0.808	\$1.777	\$0.295
3/1/2014	\$1.131	\$1.397	\$2.394	\$0.561	\$0.836	\$1.834	\$0.304
3/1/2015	\$1.159	\$1.444	\$2.470	\$0.580	\$0.865	\$1.891	\$0.314
3/1/2016	\$1.197	\$1.482	\$2.546	\$0.599	\$0.884	\$1.948	\$0.323
3/1/2017	\$1.235	\$1.530	\$2.622	\$0.618	\$0.912	\$2.005	\$0.333

* These rates are net of the 5% Franchise Fee.