

AGREEMENT BETWEEN  
THE CITY OF SAN ANGELO, TEXAS  
AND  
TRASHAWAY SERVICE, INC.

WITNESSETH, THIS AGREEMENT made and entered into this 21<sup>st</sup> day of February, 1989, by and between THE CITY OF SAN ANGELO, TEXAS, a municipal corporation, acting by and through its duly authorized Mayor, hereinafter referred to as "City" and TRASHAWAY SERVICE, INC., a corporation, acting by and through its duly authorized President, hereinafter referred to as "Contractor", for and in consideration of the mutual promises contained herein.

I.

City does hereby grant to Contractor the right, privilege and permit to use the streets and alleys of City to collect and remove all combustible or non-combustible solid waste of the residents, and small businesses using residential service, of the City of San Angelo from the streets and alleys within the city limits of said City for a term of ten (10) years, commencing on the 13th day of February, 1989, and ending on the 13th day of February 1999.

Contractor agrees to furnish all labor and equipment necessary to accomplish said residential solid waste collection and disposal for the term of this Agreement for all residents paying the rates therefor as set forth herein.

If not in default hereunder Contractor shall have the option of renewing this Agreement on the same terms and conditions (with the exception of the landfill rental fee which shall be renegotiated as so provided in section VIII A.4.) for two successive terms of five years each, with the first renewed term beginning at the expiration hereof and the second term beginning five years thereafter. Should Contractor elect not to exercise these options it shall so notify City in writing at least ninety days (90) prior to the beginning of each renewed term.

II.

Each residential service customer of Contractor shall pay a sum

for the collection and disposal by the Contractor of noncontainerized solid waste placed for collection as may be established by ordinance or resolution of the City Council of the City of San Angelo.

III.

City agrees to submit along with its water bill each month a bill, based on rates established with City, to each customer of Contractor for regular noncontainerized solid waste collection service, and the customer will remit payment to the City through its Water Department. Subject to the deductions hereinafter set forth, and exclusive of any sales taxes collected for noncontainerized solid waste collection service, the City will pay over to Contractor all sums billed by it for noncontainerized solid waste collection service, as follows:

Within ten days after the first of the month, the City will pay to the Contractor ninety per cent (90%) of the amount paid to Contractor for the previous month. After the billing cycle books are closed, and the amount of current billing is determined, the balance owed to Contractor (if any) shall be paid, less the following:

- A. An amount equal to all noncontainerized solid waste collection bills unpaid within sixty (60) days after the date of the first billing to customer. If after 60 days said bills are paid, the amount collected shall be paid to Contractor less the deductions specified in the following Subparagraph B, and 3% of the amount collected after it is reduced by the amount withheld under Subparagraph B and 2% (or any amount authorized under Subparagraph D) of the amount collected after it is reduced by the amount withheld under Subparagraph B.
- B. An amount equal to sanitary inspection fees billed for the current month and an amount equal to landfill expansion surcharge fees billed for the current month, both as provided by ordinance.

- C. An amount equal to three per cent (3%) of the current billing after it is reduced by the amounts withheld under Subparagraph A and B above, for the City's fees for billing and collecting.
- D. An amount equal to two percent (2%) of the current billing after it is reduced by the amounts withheld under Subparagraph A and B above, as a fee for granting a permit evidenced by this Agreement, which fee shall be in lieu of any permit fees authorized by City ordinance. The City, through its City Council, may from time to time after due notice to Contractor revise the permit fee, but in no event shall it exceed applicable State law. It is expressly understood that should the fee for granting such franchise permit by the City to the electrical, gas and cable companies increase to three percent (3%), Contractor's fee shall then be raised to three percent (3%) after thirty (30) days notice by the City to the Contractor. The City also reserves the right to provide for the addition of new fees as provided for by new state laws and/or City ordinances.

Should Contractor fail to carry out its obligations hereunder, then City may, at its option and after thirty (30) days written notice to Contractor, retain all noncontainerized solid waste fees collected and hold same in suspense until Contractor corrects its defaults under this contract.

IV.

Contractor will be responsible for billing and collection of all charges for commercial service and other special solid waste collection services based on rates established with the City. The Contractor further agrees to collect from such customers and remit to the City, sanitary inspection, landfill expansion and any other related add-on fees which may be hereinafter enacted by the City. The Contractor also agrees to remit to the City an amount equal to two (2%) percent (or such percentage allowed under Section III D) of amounts billed under this Section 4 excluding any add-on fees authorized by the City.

V.

Contractor will collect the solid waste from residential customers not less than twice a week, provided however, during inclement weather or other emergency situations Contractor may suspend service with concurrence of the City Manager or his designate. When service is suspended Contractor will notify the radio, television and print news media of said suspension as soon as possible after the decision to suspend is made. Such collection shall be made on designated days. Contractor agrees to maintain a high standard of service for the protection of the health and welfare of the public, and in the performance of this Contract, will use the number of trucks and personnel as required by the amount of residential solid waste it is required to collect.

VI.

City shall have the sole responsibility for the maintenance of all public alleys within the corporate limits of the City, including alley surfaces, and the removal of overhanging brush and other obstructions in alleys which prevent Contractor's equipment from passing through the alleys. Contractor agrees to cooperate with City by notifying City of any problem areas in alleys. Contractor shall notify the City Manager in writing of any alley which is impassable, and, thereafter, Contractor shall be relieved of providing service in such alley until it is made passable by City.

VII.

Contractor will furnish to City annual operating statements, balance sheets and audits prepared and certified to by a Certified Public Accountant, which reports shall be based on Contractor's fiscal year, and, shall be furnished to City within one hundred and twenty (120) days after the end of each fiscal year.

VIII.

During the term of this Agreement and any optional extensions thereof, City agrees to lease and does hereby lease to Contractor the sanitary landfill site owned and designated as such by City

upon the following terms and conditions, to-wit:

- A. Contractor shall pay the following amounts to the City per month for the use of a landfill site:
  - 1. Contract Year 1 - Two thousand one hundred (\$2,100.00) per month.
  - 2. Contract Year 2 - Two thousand two hundred twenty-six (\$2,226.00) per month.
  - 3. Contract year 3-10 - Increasing annually at a six percent (6%) rate from two thousand three hundred sixty (\$2,360.00) in Year 3 to three thousand five hundred forty eight (\$3,548.00) per month in Year 10.
  - 4. Extensions beyond Contract Year 10 - The amount of the annual landfill use fee shall be negotiated by the City and Contractor at least one hundred twenty (120) days prior to the expiration of the primary lease term and any extensions thereof.
- B. Contractor will be responsible for the operation of the landfill and shall keep it open at the following times, to-wit:
  - 1. Monday through Friday -- from 7 o'clock A.M. until 6 o'clock P.M.
  - 2. Saturday - from 7:00 o'clock A.M. until 3:00 o'clock P.M.; closed on Sundays.
  - 3. The landfill may be closed on the following holidays, to-wit:
    - a. Labor Day
    - b. Thanksgiving Day
    - c. Christmas Day
    - d. New Year's Day
    - e. The Fourth of July

4. The landfill may be closed on other days for inclement weather or other emergency situations with the concurrence of the City Manager or his designate.

- C. Contractor is responsible for adhering to design requirements of City and the Texas Department of Health and for the operation and maintenance of the landfill, in accordance with applicable Federal, State and local regulations and the requirements of the City's landfill permit.
- D. City shall have the right to dispose of any solid waste allowed under the City landfill permit, free of charge.
- E. Contractor shall be responsible for cleaning up any refuse blown from the landfill by wind or other natural forces. Contractor shall not be responsible for cleaning up the garbage or refuse dumped or blown along the street leading to the landfill unless it is dumped by Contractor or is blown from the landfill.
- F. Contractor shall maintain all-weather roads in the landfill from entrance to dumping area.
- G. During the term of this Agreement or the term of any extensions hereof, the City agrees to provide a sanitary landfill site that is in compliance with applicable State and Federal laws. In the event the City fails to provide such sanitary landfill site the Contractor may, at its option, be relieved of providing any further services under this Agreement. Any landfill site furnished by the City shall be leased to Contractor for the remainder of the term of this Agreement or extensions hereof and shall be maintained by Contractor according to the above provisions.

H. It is expressly understood that the Contractor shall dump or deposit or cause to be dumped or deposited at the landfill, solid waste collected outside of the City limits only with the prior written approval of the City. It is further understood that City may prescribe additional landfill use charges if it chooses to approve the dumping of solid waste collected out the city limits of San Angelo.

IX.

Contractor shall secure and maintain policies of comprehensive general and automobile liability insurance with the City named as additional insured by endorsement in the amount of not less than One Million (\$1,000,000) dollars per occurrence and Three Million (\$3,000,000) dollars annual aggregate limit per policy. Contractor shall also secure and maintain during the life of this contract, adequate Worker's Compensation Insurance covering all persons employed by Contractor. Contractor shall furnish City with certificates showing that all required insurance is in effect and shall notify City within five (5) days of the cancellation of any required insurance.

Contractor shall carry out the terms of this Agreement as an independent contractor and not as an agent, servant or employee of City. The Contractor hereby agrees to protect, indemnify and save harmless the City from and against any and all loss, expense, damage, charges and costs, including attorney fees, for injury to or death of persons and injury to or destruction of property suffered or alleged to have been suffered as a result of any act or omission on the part of the Contractor or others whose services are engaged by the Contractor or anyone directly or indirectly employed or controlled by Contractor in the course of the performance of the work provided for in the Contract.

X.

Contractor shall do all work and maintain the landfill in compliance with the City's permit and any and all City, County, State and Federal laws, ordinances or regulations which are now in effect or which may become effective in the future which regulate the collection or disposal of solid waste. If any violations of such regulations or permit occur, Contractor shall be responsible for remedying such violations and paying any penalties assessed. Contractor agrees to protect, indemnify and save harmless the City from and against any and all loss, expense, damage, charges and costs, including attorney fees, for violation or alleged violations of any Federal, State or local regulations or landfill permit requirements which occurred, or are alleged to have occurred, and for injury to or death of persons and injury to or destruction of property suffered, or alleged to have been suffered, as a result of any act or omission on the part of the Contractor or others whose services are engaged by the Contractor or anyone directly or indirectly employed or controlled by Contractor in the course of the operation and maintenance of the landfill.

XI.

It is recognized by the parties that for the health, safety and well-being of the people of San Angelo it is necessary to have an efficient, regular and continuous municipal solid waste collection service. It is further recognized that deterioration or cessation of such service even for a short period could materially affect the health of the people and the sanitation of the City.

It is further understood that circumstances can arise which will either prevent or materially affect the ability of Contractor to perform its obligations under this Contract.

With the above facts in mind, it is further agreed as follows:

- A. If City, through its City Council at public hearing, after due notice to Contractor, makes a determination



that Contractor is unable or unwilling to perform its obligation hereunder, then City may cancel this contract and permit.

- B. If City, through its City officials, finds that Contractor is not properly performing its collection services according to the terms of this contract, or is in default in other provisions hereof, then City shall notify Contractor and specify the violations. If within ten (10) days after said notice said violations have not been corrected, the City through its Council may after public hearing cancel this contract and permit.
- C. The above provisions for termination and cancellation shall control notwithstanding the provisions providing that this contract shall extend for a period of ten (10) years with options for renewal.
- D. All rights, options and remedies of City contained in this Agreement or otherwise shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and City shall have the right to pursue any one or all such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.  

No waiver by City of a breach of any of the obligations of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other obligation herein contained.

Any termination of this Agreement shall not relieve City or Contractor from payment of any sum or sums that shall then be due and payable to either party hereunder.
- E. Until this contract is terminated as above set forth or until the expiration of its term the parties agree to perform all of the obligations hereunder to the best of their ability.

## XII.

It is understood that the rights and privileges granted herein for the collection and disposal of residential or commercial hand load service solid waste are non-exclusive as to Contractor. Contractor agrees to collect the solid waste from any commercial business in the City upon request and payment for its services. It is expressly understood that Contractor shall contract directly with its commercial customers as to the terms of removal and disposal of solid waste. The commercial collection privilege is non-exclusive as to Contractor.

## XIII.

In the performance of its obligations under this Agreement, Contractor shall be directly responsible to the City Manager of City.

## XIV.

Nothing contained in this Agreement shall limit the right of Contractor to request adjustments in its rates for service and to receive such adjustments as are justified in the discretion of the City Council of the City of San Angelo.

## XV.

Contractor may not assign this Agreement or any rights hereunder without the written consent of City. The prohibition of assignment without consent shall extend to and include assignment of the proceeds as well as performance.

## XVI.

Whenever in this Agreement it shall be required or permitted that notice or demand be given or served by any party hereto upon another, such service or demand shall be given or served in writing and delivered personally or forwarded by certified mail, postage prepaid, addressed as follows:

To the City: City Manager  
P.O. Box 1751  
San Angelo, Texas 76902

To the Contractor: Vice President  
Trashaway Services  
1422 Hughes  
San Angelo, Texas 76903

Such addresses may be changed from time to time by any party hereto by serving notice as above provided.

XVII.

All sums payable under this Agreement are payable in U.S. Currency and shall be paid to Contractor or City at the places provided herein for service of notice on Contractor and City.

EXECUTED this 21<sup>st</sup> day of February, 1989.

THE CITY OF SAN ANGELO, TEXAS

BY: *Dick Funk*  
Dick Funk, Mayor

ATTEST:

*Carol R. Matthews*  
Carol R. Matthews, City Secretary

TRASHAWAY SERVICE, INC.

BY: *[Signature]*

ATTEST:

*Jan Mulkey*  
Secretary