



CITY COMMISSION MEETING
 AGENDA FOR JANUARY 12, 2016
 5:30 P.M.
 CITY HALL COMMISSION CHAMBERS
 300 SOUTH FIFTH STREET

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE - Flynn Mudd, St. Mary Junior

ADDITIONS/DELETIONS

PRESENTATION: Audit Report (CAFR) for FY2015 – Kemper CPA Group, LLP

| | | |
|--|-------|---|
| | I. | <u>MINUTES</u> |
| | II. | <u>APPOINTMENT</u> |
| | | A. Commissioners of Water Works |
| | III. | <u>MOTION</u> |
| | | A. R & F Documents |
| | IV. | <u>MUNICIPAL ORDERS</u> |
| | | A. Personnel Actions |
| | V. | <u>ORDINANCES - INTRODUCTION</u> |
| | | A. JSA Sewer Rate Adjustment Approval – J. Hodges |
| | | B. Change Order No. 1 for Contract 2 for 432 Broadway – S. ERVIN |
| | | C. Accept Bid for Contract 3 Masonry Closure Wall for 432 Broadway – S. ERVIN |
| | | D. Approve Amendment to Chapter 106, Taxation of the Paducah Code of Ordinances – J. PERKINS |
| | | E. Approve Change Order #1 for Self-Contained Breathing Apparatus for Fire Department – FIRE CHIEF KYLE |
| | | F. Contract for Solid Waste & Recycling Services – CITY MGR |
| | VI. | <u>CITY MANAGER REPORT</u> |
| | VII. | <u>MAYOR & COMMISSIONER COMMENTS</u> |
| | VIII. | <u>PUBLIC COMMENTS</u> |
| | IX. | <u>EXECUTIVE SESSION</u> |

At a Regular Meeting of the Board of Commissioners, held on Tuesday, December 15, 2015, at 5:30 p.m., in the Commission Chambers of City Hall located at 300 South 5th Street, Mayor Kaler presided, and upon call of the roll by the City Clerk, the following answered to their names: Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5).

PLEDGE OF ALLEGIANCE

Landon Rutherford, Junior at Paducah Tilghman High School, led the pledge.

PRESENTATION

DUKE OF PADUCAH

Mayor Kaler presented a Duke of Paducah to William Baxter. Mr. Baxter directs and manages the Tilghman Museum.

MINUTES

Commissioner Abraham offered motion, seconded by Commissioner Gault, that the reading of the Minutes for the December 8, 2015, City Commission meeting be waived and the Minutes of said meeting prepared by the City Clerk be approved as written.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5).

MOTION

R & F BIDS

Commissioner Gault offered motion, seconded by Commissioner Abraham, that the following bids be received and filed:

BIDS

ENGINEERING-PUBLIC WORKS DEPARTMENT

DOME RELOCATION PROJECT

1. A & K Construction*
2. MP Lawson Construction
3. Pinnacle, Inc.

*denotes recommended bid

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5).

MUNICIPAL ORDER

PERSONNEL ACTIONS

Commissioner Rhodes offered motion, seconded by Commissioner Wilson, that upon the recommendation of the City Manager, the Board of Commissioners of the City of Paducah order that the personnel changes on the attached list be approved.

(SEE MUNICIPAL ORDER BOOK)

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5).

APPROVE USER AGREEMENT WITH ST. MARY HIGH SCHOOL FOR THE NOBLE PARK TENNIS COURTS

Commissioner Wilson offered motion, seconded by Commissioner Rhodes, that a Municipal Order entitled, "A MUNICIPAL ORDER OF THE CITY OF PADUCAH, KENTUCKY, AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF PADUCAH, KENTUCKY, AND THE PADUCAH TENNIS ASSOCIATION, WITH RESPECT TO USE OF THE NOBLE PARK TENNIS COURTS BY ST. MARY HIGH SCHOOL; AUTHORIZING THE EXECUTION OF THE AGREEMENT," be adopted.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5). MO#1876; BK 9

EXTENSION OF TIME FOR THE HOTEL DEVELOPMENT AGREEMENT

Commissioner Abraham offered motion, seconded by Commissioner Gault, that a Municipal Order entitled, "A MUNICIPAL ORDER OF THE CITY OF PADUCAH, KENTUCKY, AUTHORIZING A SECOND EXTENSION UNDER THE HOTEL DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PADUCAH, KENTUCKY, AND PADUCAH RIVERFRONT HOTEL LP, WITH RESPECT TO A PUBLIC PROJECT; AUTHORIZING THE EXECUTION OF THE AGREEMENT," be adopted.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5). MO#1877; BK 9

ORDINANCE – ADOPTION

AUDIT PROPOSAL ACCEPTANCE FOR PADUCAH POWER SYSTEM

Commissioner Gault offered motion, seconded by Commissioner Abraham, that the Board of Commissioners adopt an ordinance entitled, "AN ORDINANCE ACCEPTING THE PROPOSAL FOR FINANCIAL AUDITS FOR ELECTRIC PLANT BOARD DBA PADUCAH POWER SYSTEM FOR FISCAL YEARS ENDING JUNE 30, 2016, 2017, 2018 AND 2019, AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATING TO SAME." This ordinance is summarized as follows: That the City of Paducah accepts the proposal of Williams, Williams, & Lentz, LLP Certified Public Accountants for financial audits for Electric Plant Board DBA Paducah Power System for Fiscal Years ending June 30, 2016, 2017, 2018 and 2019 for a total sum not to exceed \$61,000, and authorizing the Mayor to execute all documents relating to same.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5). ORD.#2015-12-8334; BK 34

PURCHASE VEHICLES FOR POLICE DEPARTMENT

Commissioner Rhodes offered motion, seconded by Commissioner Wilson, that the Board of Commissioners adopt an ordinance entitled, "AN ORDINANCE ACCEPTING THE BID OF PADUCAH FORD FOR SALE TO THE CITY OF TEN (10) 2016 POLICE PURSUIT RATED SUV'S FOR USE BY THE PADUCAH POLICE DEPARTMENT, AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME." This ordinance is summarized as

follows: The City of Paducah accepts the bid of Paducah Ford in the total amount of \$331,844.00, for the purchase of ten (10) 2016 Police Pursuit Rated SUV's for use by the Paducah Police Department, and authorizes the Mayor to execute a contract for same.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5). ORD.#2015-12-8335; BK 34

ACCEPTANCE OF FUEL BID

Commissioner Wilson offered motion, seconded by Commissioner Rhodes, that the Board of Commissioners adopt an ordinance entitled, "AN ORDINANCE ACCEPTING THE BID OF JSC TERMINAL, LLC, D.B.A. MID WEST TERMINAL FOR THE CITY'S FUEL SUPPLY FOR THE 2016 AND 2017 CALENDAR YEARS, AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME." This ordinance is summarized as follows: The City of Paducah hereby accepts the bid JSC Terminal, LLC d.b.a. Mid West Terminal for the City supply of gasoline, diesel fuel, and diesel fuel off-road at OPIS (Oil Price Information Service) price plus a daily adjustment of \$0.09 per gallon and authorizes the Mayor to execute a contract for same. Said contract is for a period of two years and contains two additional one-year options to renew if both parties agree.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5). ORD.#2015-12-8336; BK 34

AUTHORIZE SUPPLEMENTAL AGREEMENT NO. 1 WITH KENTUCKY TRANSPORTATION CABINET, DEPT. OF HIGHWAYS FOR THE RIVERFRONT REDEVELOPMENT PROJECT PHASE 1-B

Commissioner Abraham offered motion, seconded by Commissioner Gault, that the Board of Commissioners adopt an ordinance entitled, "AN ORDINANCE APPROVING SUPPLEMENTAL AGREEMENT NO. 1 BETWEEN THE COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS AND THE CITY OF PADUCAH, KENTUCKY, FOR THE RIVERFRONT IMPROVEMENT PROJECT PHASE 1-B, AND AUTHORIZING THE MAYOR TO EXECUTE SAME." This ordinance is summarized as follows: That the City of Paducah hereby approves and authorizes the Mayor to execute Supplemental Agreement No.1 with the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways for additional reimbursable funding in the amount of \$1,525,000 for completion of the Riverfront Redevelopment Project Phase 1-B. This additional funding increases the total funding to \$5,445,000.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5). ORD.#2015-12-8337; BK 34

ACCEPT BID TO PURCHASE MOBILE SURVEILLANCE CAMERA SYSTEM FOR THE PADUCAH POLICE DEPARTMENT

Commissioner Gault offered motion, seconded by Commissioner Abraham, that the Board of Commissioners adopt an ordinance entitled, "AN ORDINANCE AUTHORIZING THE PURCHASE OF A MOBILE SURVEILLANCE CAMERA SYSTEM FOR THE CITY OF PADUCAH, KENTUCKY FOR USE BY THE PADUCAH POLICE DEPARTMENT, AND

AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME.” This ordinance is summarized as follows: That the City of Paducah accepts the bid of Netvision 360 Group in the total amount of \$45,643.50 for the purchase of a mobile surveillance camera system for use by the Paducah Police Department, and authorizes the Mayor to execute a contract for same.

Adopted on call of the roll, yeas, Commissioners Abraham, Gault, Rhodes, Wilson and Mayor Kaler (5). ORD.#2015-12-8338; BK 34

ORDINANCES – INTRODUCTION

ACCEPT CONTRACT FOR THE PADUCAH PAVILION RELOCATION PROJECT

Commissioner Rhodes offered motion, seconded by Commissioner Wilson, that the Board of Commissioners introduce an ordinance entitled, “AN ORDINANCE ACCEPTING THE BID FOR THE DOME RELOCATION PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME.” This ordinance is summarized as follows: That the City of Paducah accepts the bid of A & K Construction, Inc., in the amount of \$878,153.00, plus perspective incentive amount, for the Dome Relocation Project. The perspective amount is in compliance with the Incentive Schedule contained in the contract documents and shall not exceed \$34,500. Further, the Mayor is authorized to execute the contract with A & K for the Dome Relocation Project.

ADOPT REVISED BUDGET FOR FY2015

Commissioner Wilson offered motion, seconded by Commissioner Rhodes, that the Board of Commissioners introduce an ordinance entitled, “AN ORDINANCE REPEALING ORDINANCE 2014-6-8155 AND ADOPTING THE CITY OF PADUCAH, KENTUCKY, REVISED ANNUAL BUDGET FOR THE FISCAL YEAR JULY 1, 2014, THROUGH JUNE 30, 2015, BY ESTIMATING REVENUES AND RESOURCES AND APPROPRIATING FUNDS FOR THE OPERATION OF CITY GOVERNMENT. “ This ordinance is summarized as follows: The City of Paducah repeals Ordinance No. 2014-6-8155, that estimated revenues and resources and appropriated funds for FY2015 and adopts a budget for FY2015 that reflects all adjustments made throughout the fiscal year and any adjustments required by the independent financial auditors. The appropriations of City Government for a total of \$67,986,390, and summarized by fund as follows:

| <u>FUNDS</u> | <u>APPROPRIATIONS</u> |
|--------------|-----------------------|
| GENERAL | \$32,971,325 |
| MAP | 1,401,870 |
| INVESTMENT | 5,044,820 |
| CDBG | 237,500 |
| HOME | 80,430 |
| E911 | 1,576,740 |
| COURT AWARDS | 39,985 |
| DEBT | 3,124,075 |
| CIP | 6,421,830 |
| BOND | 4,230,095 |
| SOLID WASTE | 4,581,995 |

DECEMBER 15, 2015

| | |
|-----------------|---------------------|
| CIVIC CENTER | 98,345 |
| RENTAL | 147,510 |
| RADIO DEPR | 137,370 |
| FLEET | 540,330 |
| FLEET TRUST | 780,835 |
| SELF INSURANCE | 1,031,445 |
| HEALTH INS | 3,996,220 |
| AEPF/PFPF/TRSTS | <u>1,543,670</u> |
| | <u>\$67,986,390</u> |

CITY MANAGER REPORT

- The City Manager reminded the Board about the Special Called Meeting on Thursday, December 17, 2015, at 5:30 p.m.
- Requested an executive session to discuss a personnel issue.

MAYOR & COMMISSIONER COMMENTS

Mayor congratulated Commissioner Gault on Governor's appointment to the Tennessee Tombigbee Waterways Board.

PUBLIC COMMENTS

No public comments were given.

Upon motion the meeting adjourned.

ADOPTED: January _____, 2015

City Clerk

Mayor

DECEMBER 17, 2015

At a Called Meeting of the Board of Commissioners, held on Tuesday, December 17, 2015, at 5:30 p.m., in the Commission Chambers of City Hall located at 300 South 5th Street, Mayor Kaler presided, and upon call of the roll by the City Clerk, the following answered to their names: Commissioners Gault, Rhodes, Wilson and Mayor Kaler (4). Commissioner Abraham was absent (1).

MOTION

R & F CALLED MEETING NOTICE

Commissioner Gault offered motion, seconded by Commissioner Rhodes, that the Notice of Called Meeting for Thursday, December 17, 2015, be received and filed.

Adopted on call of the roll, yeas, Commissioners Gault, Rhodes, Wilson and Mayor Kaler (4).

RESOLUTION

NOTIFICATION TO McCRACKEN COUNTY FISCAL COURT OF NON-RENEWAL OF CURRENT INTERLOCAL AGREEMENT FOR E-911 SERVICES

Mayor Kaler offered a motion that the following resolution be adopted:

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY, DIRECTING THE MAYOR TO NOTIFY McCRACKEN COUNTY THAT THE CITY DOES NOT INTEND TO RENEW THE CURRENT INTERLOCAL COOPERATION AGREEMENT ESTABLISHING AND GOVERNING PADUCAH-McCRACKEN COUNTY E-911

WHEREAS, the Paducah-McCracken County E-911 system infrastructure is one of the most important and critical aspects of providing and delivering public safety to citizens of Paducah and McCracken County; and

WHEREAS, significant operational problems were identified in 2013 which have and will continue to impede efficient operation of the 911 system; and

WHEREAS, as a result of those identified problems, in 2014, the Paducah-McCracken County Emergency Communications Board (hereinafter "Board"), consisting of State, City and County officials, initiated a review of all 2013 operations resulting in actionable items to be addressed; and

WHEREAS, the actionable items identified by the Board included: (1) seeking alternative funding, (2) making facility modifications, (3) restructuring staff, (4) abolishing the assistant director position, (5) creating a capital plan, (6) researching the feasibility of becoming a city or county department, (7) restructuring board size and governance, and (8) merging Mercy dispatch into the 911 operation; and

WHEREAS, despite those actionable items being identified, only two items have been addressed by the Board, neither of which have received Board support for implementation; and

DECEMBER 17, 2015

WHEREAS, the City of Paducah and McCracken County requested a proposal from the Kentucky State Police for outsourcing 911 dispatch operations in an effort to address those actionable items and increase efficiency and decrease costs; and

WHEREAS, after careful review and consideration of the Kentucky State Police proposal, the City determined that the proposal would not increase efficiency or decrease costs as had been hoped; and

WHEREAS, in March 2015, the City passed a Resolution to continue to provide 911 services to its citizens and not outsource 911 dispatch operations; and

WHEREAS, to date, McCracken County continues to pursue the idea of outsourcing dispatch operations and has not indicated a set timetable for its final decision on the Kentucky State Police proposal; and

WHEREAS, in the meantime, the current 911 system infrastructure of radio, telephony, and CAD are beyond their functional life and in dire need of replacement before a catastrophic breakdown occurs; and

WHEREAS, there is no capital plan in existence for replacement of the critical infrastructure with the exception of the radio which is a city asset and is covered under a city capital replacement and expenditure which was established in 1992; and

WHEREAS, in 2015, the Board commissioned a Request for Qualifications/ Request for Proposals for a Public Safety/Wireless Communications Consultant to plan, design and provide implementation assistance of a Public Safety Radio/Wireless Communication System, 911 Telephony System, and Computer Aided Dispatch System; and

WHEREAS, all proposals were received and evaluated by the Board which, pursuant to a unanimous vote by the State, City, and County members of the Board, recommended that Federal Engineering, Inc. be commissioned to perform the proposed work in the amount of \$252,172.00 to be paid for by the City and County equally; and

WHEREAS, the City has adopted an ordinance authorizing the expenditure of one-half of Federal Engineering, Inc.'s fee, as requested by unanimous vote of the Board; and

WHEREAS, the County has indicated that it does not plan to consider whether it will authorize the expenditure of its half of the fee until a decision has been made concerning the Kentucky State Police proposal, for which there is no certain timetable; and

WHEREAS, it is in the best interest of the citizens of the City of Paducah to initiate a capital replacement of the 911 operation infrastructure and continue with plans for the future of 911, neither of which can occur while McCracken County is considering a withdrawal from the agency; and

WHEREAS, the Interlocal Cooperation Agreement between the City of Paducah and McCracken County provides that either party may terminate the Agreement upon six-months' notice to the other party before the expiration of the term which ends on June 30th of each year.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. Although the Board of Commissioners for the City of Paducah is of the opinion that the community is better served by a joint 911 operation between the City of Paducah and McCracken County, due to the current unknown status of 911's governance/operation and the antiquated nature of 911's infrastructure, which is a potential threat to public safety, the Mayor is hereby directed and authorized to notify McCracken County in writing on or before December 30, 2015 that the City does not intend to renew the current 911 Interlocal Cooperation Agreement on June 30, 2016.

SECTION 2. The Mayor is further authorized to inform McCracken County that if the County notifies the City in writing on or before March 1, 2016 of its intent to continue a relationship with the City for purposes of providing 911 services to the citizens of Paducah and McCracken County, the City will be amenable to engaging in discussions with McCracken County concerning that potential relationship.

SECTION 3. In the meantime, the City of Paducah will authorize the Mayor, via ordinance, to execute a contract with Federal Engineering, Inc. for consulting services to plan, design, and provide implementation assistance of a Public Safety/Wireless Communication System, 911 Telephony System, and Computer Aided Dispatch System, with the City funding the entirety of the contract.

SECTION 4. If McCracken County does not notify the City of Paducah on or before March 1, 2016 of its desire to continue to continue a relationship with the City for purposes of providing 911 services, City staff is directed to begin the process of developing an internal 911 Department for 911 operations to ensure that the emergency needs of the City's citizens are not interrupted and to further explore and develop a proposal which would offer other agencies, including McCracken County, 911 services through this newly-developed department.

SECTION 5. This resolution shall be in full force and effect from and after its adoption.

Commissioner Gault seconded the motion.

Adopted on call of the roll, yeas, Commissioners Gault, Rhodes, Wilson and Mayor Kaler (4).

ORDINANCE – ADOPTION

ACCEPT CONTRACT FOR THE PADUCAH PAVILION RELOCATION PROJECT

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exceed \$34,500. Further, the Mayor is authorized to execute the contract with A & K for the Dome Relocation Project.

Adopted on call of the roll, yeas, Commissioners Gault, Rhodes, Wilson and Mayor Kaler (4).
ORD.#2015-12-8339; BK 34

ADOPT REVISED BUDGET FOR FY2015

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| FLEET TRUST | 780,835 |
| SELF INSURANCE | 1,031,445 |
| HEALTH INS | 3,996,220 |
| AEPF/PFPF/TRSTS | <u>1,543,670</u> |
| | <u>\$67,986,390</u> |

Adopted on call of the roll, yeas, Commissioners Gault, Rhodes, Wilson and Mayor Kaler (4).
ORD.#2015-12—8340; BK 34

DECEMBER 17, 2015

Upon motion the meeting adjourned.

ADOPTED: January _____, 2016

City Clerk

Mayor

January 12, 2016

I move that the following documents and bids be received and filed:

DOCUMENTS

1. Declaration of a Local State of Emergency for flooding on December 29, 2015
2. Contracts & Agreements:
 - a. Amendment Number 1 to Memorandum of Understanding with The Department of the Army for Work Provided Prior to Execution of a Project Partnership Agreement for Ohio River Shoreline Reconstruction Project (ORD 2015-03-8227)
 - b. Supplemental Agreement # 1 with Commonwealth of Kentucky Transportation Cabinet Department of Highways for Riverfront Redevelopment Project Phase 1-B (ORD # 2015-12-8337)
 - c. Proposal Contract with Netvision 360 Security Group for Surveillance Camera System for the Police Department (ORD # 2015-12-8338)
3. City of Paducah Comprehensive Annual Financial Report for Year Ended June 30, 2015

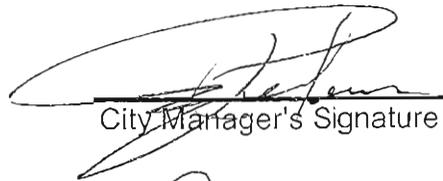
BIDS FOR Planning Department

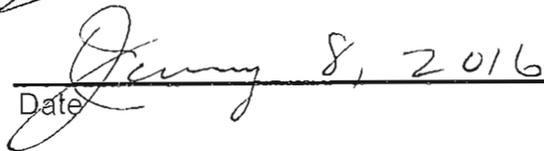
430 Broadway Stabilization – Masonry Closure Wall – Contract 3

1. Artisan Contractors of Kentucky, LLC *

CITY OF PADUCAH
January 12, 2016

Upon the recommendation of the City Manager, the Board of Commissioners of the City of Paducah order that the personnel changes on the attached list be approved.


City Manager's Signature


Date

CITY OF PADUCAH
PERSONNEL ACTIONS
January 12, 2016

NEW HIRES - PART-TIME (P/T)/TEMPORARY/SEASONAL

| <u>PLANNING</u> | <u>POSITION</u> | <u>RATE</u> | <u>NCS/CS</u> | <u>FLSA</u> | <u>EFFECTIVE DATE</u> |
|------------------------|-------------------|-------------|---------------|-------------|-----------------------|
| Garrett, Lesley D | Planning Intern | \$10.00/Hr | NCS | Non-Ex | January 20, 2016 |
| <u>PARKS SERVICES</u> | | | | | |
| Dunbar, Zara | Recreation Leader | \$8.50/Hr | NCS | Non-Ex | January 28, 2016 |
| <u>EPW - FLOODWALL</u> | | | | | |
| Edmonds, Broderick K | Pump Operator | \$8.00/Hr | NCS | Non-Ex | December 28, 2015 |

NEW HIRE - FULL-TIME (F/T)

| <u>EPW - STREET</u> | <u>POSITION</u> | <u>RATE</u> | <u>NCS/CS</u> | <u>FLSA</u> | <u>EFFECTIVE DATE</u> |
|---------------------|------------------------|-------------|---------------|-------------|-----------------------|
| Griffin, Jarried A | ROW Maintenance Person | \$16.85/Hr | NCS | Non-Ex | January 14, 2016 |

TERMINATIONS - PART-TIME (P/T)/TEMPORARY/SEASONAL

| <u>PARKS SERVICES</u> | <u>POSITION</u> | <u>REASON</u> | <u>EFFECTIVE DATE</u> |
|-----------------------|-----------------------------|---------------------|-----------------------|
| Bell, David L | Parks Maintenance - Laborer | Seasonal Employment | October 29, 2015 |
| Settle, Aulton R | Park Ranger | Resignation | January 3, 2016 |

TERMINATIONS - FULL-TIME (F/T)

| <u>EPW - FLOODWALL</u> | <u>POSITION</u> | <u>REASON</u> | <u>EFFECTIVE DATE</u> |
|------------------------|--------------------|---------------|-----------------------|
| Farlee, Derrick N | Floodwall Operator | Resignation | December 29, 2015 |

PAYROLL ADJUSTMENTS/TRANSFERS/PROMOTIONS/TEMPORARY ASSIGNMENTS

| | <u>PREVIOUS POSITION AND BASE RATE OF PAY</u> | <u>CURRENT POSITION AND BASE RATE OF PAY</u> | <u>NCS/CS</u> | <u>FLSA</u> | <u>EFFECTIVE DATE</u> |
|----------------------------------|---|--|---------------|-------------|-----------------------|
| <u>POLICE - ADMINISTRATION</u> | | | | | |
| Barnhill, Brandon L | Police Chief \$48.15/Hr | Police Chief \$49.84/Hr | NCS | Non-Ex | January 7, 2016 |
| <u>POLICE - SUPPORT SERVICES</u> | | | | | |
| Jaimel, Nathan C | Patrolman \$23.40/Hr | Police Detective \$24.40/Hr | NCS | Non-Ex | January 7, 2016 |
| Young, Brian N | Patrolman \$25.01/Hr | Police Detective \$26.01/Hr | NCS | Non-Ex | January 7, 2016 |

Agenda Action Form Paducah City Commission

Meeting Date: /12/12016

Short Title: JSA Rate Adjustment Approval

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: John Hodges, JSA

Presentation By: John Hodges, JSA

Background Information:

The majority of sanitary sewers in Paducah and McCracken County were constructed between 1897 and the 1960's. The materials and design standards under which they were constructed do not meet today's environmental standards. As such, the regulatory community has required sanitary sewer utilities to plan and implement capital programs to bring these systems into compliance with today's environmental standards. The JSA entered into a Consent Judgment with the Commonwealth of Kentucky's Energy and Environmental Cabinet in September 2007. In addition, JSA is under an Administrative Order from the Environmental Protection Agency, issued in 2007. Under these Consent Judgment/Administrative Orders, the JSA is required to mitigate environmental impacts of the combined sanitary/storm sewer systems, as well as its separate sanitary sewer system. The Consent Judgment requires JSA to implement a Sanitary Sewer Overflow Plan and a Long Term Control Plan, of which JSA is in process of implementation. The projects remaining to implement exceed \$102 million, and are to be funded through the assumption of debt and repaid to bondholders and/or the JSA through rate increases. JSA derives all of its income through user rates and fees for service.

Several other cities, including Owensboro, Henderson, Covington, Lexington, Maysville, Ashland, Frankfort, Winchester and Louisville have entered into Consent Judgments with KY Division of Water or EPA related to Combined Sewers, which carry both sanitary and storm flow. The EPA or local state jurisdiction has entered into Consent Judgments with approximately all of the estimated 772 Combined Sewer communities throughout the nation.

The JSA has been working these issues for several years now, and realizes the

necessity for low sanitary sewer rates. Over the past 10 years, the agency has been able to reduce staffing levels and implement programs to keep operating costs as low as possible. Fortunately, JSA rates are lower than the state average. In 2012, the state average for a 5,000 gallon monthly sanitary sewer bill was \$33.68. JSA's current monthly bill for 5,000 gallon usage is \$22.15, which is roughly 66% of the 2012 state average. Under these rate adjustments, the bill for 5,000 gallon usage would change to \$25.75 on March 1, 2016 and to \$29.15 on July 1, 2017. Both of these adjustments remain below the state average monthly sewer bill as surveyed in 2012. The 3,000 gallon monthly minimum would change from \$13.29 to \$15.45 on March 1, 2016 and \$17.49 on July 1, 2017.

The previous rate ordinance for JSA contained a clause allowing the Board of Directors to implement annual Consumer Price Index –Urban (CPI-U) rate adjustments. The new ordinance retains this capability and also allows the Board of Directors to implement or modify certain fees at the Board level.

JSA is governed by House Bill 1, which does require the JSA to provide public notice and testimony to the Fiscal Court and City Commission if rates or fees are changed.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: N/A
Account Number: N/A

| |
|---------|
| Finance |
|---------|

Staff Recommendation: JSA Board of Directors has initiated this rate adjustment and recommends approval.

Attachments:

| | | |
|-----------------|------------|--------------|
| Department Head | City Clerk | City Manager |
|-----------------|------------|--------------|

ORDINANCE NO. 2016-1-_____

**AN ORDINANCE ADOPTING A SCHEDULE FOR RATES AND CHARGES
FOR WASTEWATER PURSUANT TO KRS CHAPTER 76**

WHEREAS, the JSA was formed pursuant to identical ordinances adopted by the legislative bodies of the City of Paducah and McCracken County under the authority of KRS 76.231 (such ordinances hereinafter referred to as the "Establishing Ordinances"); and

WHEREAS, under a Consent Judgment with the Commonwealth of Kentucky's Energy and Environmental Cabinet that the JSA entered into in September 2007, and an Environmental Protection Agency (EPA) Administrative Order issued in December of 2007, the JSA is required to mitigate the environmental impacts of the combined sanitary/storm sewer systems, as well as its separate sanitary sewer system which the JSA inherited at the time of its formation. The consent judgment requires JSA to implement a Sanitary Sewer Overflow Plan and a Long Term Control Plan which JSA is in process of implementation. The projects remaining to implement exceed \$102 million which are to be funded through the assumption of debt and repaid to bondholders and/or the JSA through rate increases; and

WHEREAS, the JSA's current schedule of rates, rentals and charges will not continue to generate sufficient revenue for the proper operation and maintenance of the existing sewer system and for the retirement of the JSA's outstanding debt; and

WHEREAS, in order to comply with all federal and state laws as well as with the Establishing Ordinances, the JSA must maintain a schedule of charges that will generate sufficient revenue to offset the cost of all operation and maintenance of the sewer system; and

WHEREAS, it is a joint finding of the City of Paducah, McCracken County Fiscal Court, and the JSA Board that the limited capacity of the wastewater treatment facilities owned and operated by JSA necessitate the difference in fees charged for treatment and disposal of waste generated outside McCracken County; and

WHEREAS, the JSA Board has reviewed the proposed adjusted schedule attached hereto (hereinafter the "Adjusted Schedule of Rates and Charges") and deems it to be in the best interest of the JSA and its rate payers.

NOW, THEREFORE, be it ordained by the City of Paducah and the McCracken County Fiscal Court, jointly, as follows:

SECTION 1. The following "Schedule of Rates and Charges" is hereby approved and adopted.

SCHEDULE OF RATES AND CHARGES

A. WASTEWATER USER CHARGES

For customers of the former sewer districts, the rates and charges shall be:

From March 1, 2016 through June 30, 2016, the following rates shall apply:

All customers \$5.15 per 1,000 gallons of water usage with 3,000 gallons minimum

From July 1, 2016 through June 30, 2017, the JSA shall adjust the rates in accordance with the consumer price index for all urban consumers (CPI-U). The adjustment shall be based on the published April CPI-U and shall be adjusted only if the index is positive.

From and after July 1, 2017, the following rates shall apply:

All customers \$5.83 per 1,000 gallons of water usage with 3,000 gallons minimum

After July 1, 2017, the JSA may adjust the listed rates in accordance with the consumer price index for all urban consumers ("CPI-U").

B. INDUSTRIAL SURCHARGE

Permits are issued to certain industries that produce wastewater of an unusual content or an abnormally high strength. Industries that qualify, as determined by JSA, will pay a permit fee of \$900 every three years.

Additional surcharge rates shall apply to each user of the treatment system that has received permission from JSA to contribute excessive strength wastewater to the sewer system.

For the treatment of biological oxygen demand ("BOD") waste in a concentration exceeding 300 mg/l, an additional surcharge will be imposed as follows:

From March 1, 2016, through June 30, 2017, a surcharge of \$0.22 per pound of BOD.
From and after July 1, 2017, a surcharge of \$0.23 per pound of BOD.

For the treatment of waste containing total suspended solids ("TSS") in a concentration exceeding 350 mg/l, a surcharge will be imposed as follows:

From March 1, 2016, through June 30, 2017, a surcharge of \$0.23 per pound of TSS.
From and after July 1, 2017, a surcharge of \$0.24 per pound of TSS.

After July 1, 2017, the JSA may adjust these rates in accordance with the consumer price index for all urban consumers ("CPI-U").

C. HAULED WASTE

The JSA shall assess a fee for the treatment and proper disposal of acceptable waste that is generated within McCracken County and hauled to the Paducah Wastewater Treatment Plant. The following rates will apply for the disposal of hauled waste:

From March 1, 2016, through June 30, 2017, the charge will be \$40.00 per 1,000 gallons of hauled waste.

From and after July 1, 2017, the charge will be \$44.00 per 1,000 gallons of hauled waste.

After July 1, 2017, the JSA may adjust these rates in accordance with the consumer price index for all urban consumers ("CPI-U").

JSA shall assess a fee for the treatment and proper disposal of acceptable waste that is generated outside of McCracken County and hauled to the Paducah Wastewater Treatment Plant. The fee for treatment and disposal of acceptable waste generated outside McCracken County shall be exactly double the fee charged for waste generated in McCracken County.

Qualified haulers will also pay an annual fee for a disposal permit in the amount of \$300.

D. OTHER FEES

i. TAP-ON FEE

This is a fee assessed to recover the costs of constructing core facilities and appurtenances which make sewer service available. This fee would be due from every new customer that connects to the system. The proposed fee is \$1,950 per Equivalent Residential Unit (ERU).

ii. CAPACITY FEE

This fee is a charge to all new customers connecting to the JSA sanitary sewer system, and represents the purchase of their share of capacity. This fee would be due from every new customer that connects to the system. The proposed fee is \$350 per Equivalent Residential Unit (ERU).

iii. LATERAL CONNECTION FEE

A lateral connection fee is a charge assessed to recover the costs associated with constructing a physical sewer connection for a property from the property line or the right-of-way to the JSA sanitary sewer system. This fee would be due from any new customer requesting such a connection. This fee is \$625 minimum per connection, but may vary based on the actual width of the right-of-way.

The Board of Directors for the JSA may independently enact or amend fees for (i), (ii), and (iii) above and for connections, inspections, reviews, etc., and may include additional charges for treatment of sewage, with a surcharge where the sewage contains industrial waste or other waste in excess of limitations established by the regulations of the Agency.

SECTION 2. The rates adopted herein shall be effective on bills rendered on or after _____.

SECTION 3. This ordinance shall be read on two separate days and will be effective upon summary publication pursuant to KRS Chapter 424.

MAYOR

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, January 12, 2016

Adopted by the Board of Commissioners, January _____, 2016

Recorded by Tammara S. Sanderson, City Clerk, January _____, 2016

Published by *The Paducah Sun*, _____, 2016

word\sewer rates 2016

**Agenda Action Form
Paducah City Commission**

Meeting Date: Jan. 12, 2016

Short Title: 432 Broadway Demolition Project – Contract 2, Change Order #1

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Steve Ervin, Sheryl Chino

Presentation By: Steve Ervin

Background Information:

Staff procured the services of Adam Bohnhoff with Civil Design Inc. to engineer the existing steel columns underneath the steel beam that will stabilize the exterior wall of the 430 Broadway. This work is being done so that further deterioration within the block will not occur.

Bids for the reinforcement work were opened on Nov. 20, 2015. Darnell Steel @ Construction has been awarded the contract.

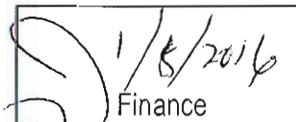
The City of Paducah has been awarded a \$500,000.00 CDBG grant to offset the costs of the demolition/stabilization costs. A \$125,000 minimum match was required for total project costs of \$625,000.00.

Darnell Steel & Construction, LLC has submitted a change order request regarding the 430 Broadway Steel Reinforcing (contract 2) in the amount of \$600.00. The Change Order is related to the removal a portion of the wood platform that is located in the store front that is conflicting with one of the steel brace locations.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

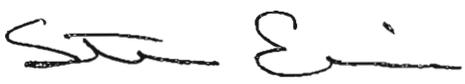
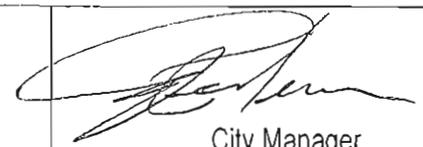
Funds Available:

Account Name:
Account Number:
Project Number:


Finance

Staff Recommendation: Authorize the mayor to execute Change Order #1.

Attachments: Recommendation by CDI, Inc. regarding request for Change Order #1 by Darnell Steel & Construction, LLC.

| | | |
|---|------------|--|
|  Department Head | City Clerk |  City Manager |
|---|------------|--|

ORDINANCE NO. 2016-1-_____

AN ORDINANCE APPROVING CHANGE ORDER NO. 1 WITH DARNELL STEEL CONSTRUCTION, LLC, FOR THE STEEL REINFORCING CONTRACT FOR 430/432 BROADWAY

WHEREAS, the City approved Ordinance No. 2015-12-8331 to enter into a contract with Darnell Steel Construction, LLC in the amount of \$19,750.00 for steel reinforcing of the buildings located at 430/432 Broadway; and

WHEREAS, Change Order No. 1 is required for an increase in the amount of \$600 for removal of a portion of the wood platform that is located in the store front that is conflicting with one of the steel brace locations, therefore , increasing the total contract price to \$20,350.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is hereby authorized to execute Change Order No. 1 for an increase in the amount of \$600 with Darnell Steel Construction, LLC to remove a portion of the wood platform that is located in the store front of 430 Broadway that is conflicting with one of the steel brace locations; therefore, increasing the total contract price to \$20,350.

SECTION 2. The funds for Change Order No. 1 authorized in Section 1 above shall be charged to project account DT0034.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners January 12, 2016
Adopted by the Board of Commissioners January 19, 2016
Recorded by Tammara S. Sanderson City Clerk, January 19, 2016
Published by The Paducah Sun, _____
\ord\plan\chord 1 - 430-432 broadway

CITY OF PADUCAH
ENGINEERING PUBLIC-WORKS DEPARTMENT
CHANGE ORDER

CHANGE ORDER NO: 1
DATE: 1.6.2015
NAME OF PROJECT: 432 Broadway Demolition
OWNER: City of Paducah, Kentucky
VENDOR: Darnell Steel & Construction LLC

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

| | |
|------------|-----------------|
| ADDITIONS | <u>\$600.00</u> |
| DEDUCTIONS | <u>\$0.00</u> |

CONTRACT PRICE DUE TO THIS CHANGE ORDER WILL BE INCREASED BY: \$600.00
ORIGINAL CONTRACT PRICE: \$19,750.00
CURRENT CONTRACT PRICE ADJUSTED BY PREVIOUS CHANGE ORDERS: \$0.00
NEW CONTRACT PRICE INCLUDING THIS CHANGE ORDER WILL BE: \$20,350.00
THE CONTRACT TIME WILL BE INCREASED BY: 0 days

APPROVALS REQUIRED:

See Attached letter
VENDOR:

1/6/16
DATE

Stan Emi
PLANNING DIRECTOR:

1/6/16
DATE

MAYOR:

DATE



January 5, 2016

Sheryl Chino
Grants Administrator
City of Paducah
Planning Department
P.O. Box 2267
Paducah, KY 42002-2267

SUBJECT: Response to CO #1
430 Broadway Building Stabilization
City of Paducah
Civil Design, Inc. (CDI) Project Number: R1860.01

Dear Sheryl:

CDI has reviewed the Change Order Request from Darnell Steel & Construction. We are satisfied that the request amount is appropriate and that the scope of work is necessary to complete the intended work. The Contractor will have to remove a portion of the wood platform that is located in the store front that is conflicting with one of the steel brace locations.

| | |
|---------------------------|--------------------------------------|
| Original Contract amount: | \$19,750 |
| Contractors CO price: | \$600 |
| New Contract amount: | \$20,350 |
| <u>CDI cost estimate:</u> | <u>\$20,000</u> |
| Difference: | \$350 (approximate 1.75% difference) |

Sincerely,

A handwritten signature in cursive script that reads 'Adam Bohnhoff'.

Adam D. Bohnhoff, PE, SE
Structural Department Manager
Civil Design, Inc.

CONTRACT CHANGE ORDER

| | |
|-------------------------------|--|
| Owner: <i>City of Paducah</i> | Change Order #: <i>1</i> |
| Project #: <i>R1860</i> | Project Name: <i>430 Broadway Building Stabilization</i> |
| Date: <i>January 5, 2016</i> | Contractor: <i>Darnell Steel & Construction, LLC</i> |

This Change Order authorizes Contractor to proceed with the following change in the Work:

| Code # | Date | Description | Amount |
|--------|--------|--|--------|
| | 1/5/16 | Removal of wood platform that is obstructing the work area | \$600 |
| Total | | | \$600 |

The Fee/Contract Price will be adjusted as a result of this Change Order in the following manner and amount:

| | | |
|----|---|----------|
| A. | Original Fee/Contract Price | \$19,750 |
| B. | Net Changes by Previous Change Orders | \$0.00 |
| C. | Fee/Contract Price prior to this Change Order | \$19,750 |
| D. | Increase/Decrease Per this Change Order | \$600 |
| E. | Total New Contract Fee/Contract Price | \$20,350 |

- ✓ The Contractor will be compensated for this change pursuant to the provisions of the Contract and the Fee/Contract Price will thereafter be adjusted accordingly.
- ✓ The time for Substantial Completion of the Work will not be increased or decreased as a result of this Change Order by working days and the revised date for Substantial Completion is still January 21, 2016.
- ✓ The Contractor hereby accepts the adjustments to the Fee/Contract Price and time for Substantial Completion set forth in this Change Order.

OWNER (City of Paducah)

CONTRACTOR (Darnell Steel & Construction, LLC)

(Signature)

(Signature)

(Printed Name & Title)

(Printed Name & Title)

**Agenda Action Form
Paducah City Commission**

Meeting Date: 12 January 2016

Short Title: 432 Broadway Demolition – Contract 3, Masonry Closure Wall

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Steve Ervin, Sheryl Chino

Presentation By: Steve Ervin

Background Information: As part of the permanent stabilization work of adjacent structures (430 Broadway) associated with the Demolition of 432 Broadway, staff recently solicited bids for Contract 3 – Masonry Closure Wall. Contract 3 will involve construction an 18x114 foot masonry wall on the exterior of 430 Broadway once the structure at 432 Broadway is demolished.

All work performed will comply with current City codes and regulations and all Community Development Block Grant guidelines (CDBG).

Bids:

In full compliance with the City’s procurement policies, staff solicited sealed bids through an advertisement in the Paducah Sun on November 30, 2015. Bids were opened at 3:30 PM on Friday, December 18, 2015 with the following results:

Contract 3 – Masonry Closure Wall

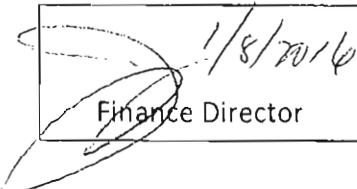
- | | | |
|----|--|--------------|
| 1. | Artisan Contractors of KY, LLC | \$158,725.00 |
| | Added Alternate to use existing bricks | 10,750.00 |

Staff reviewed the bid in order to determine the most qualified contractor based on CDBG procurement requirements. The City must award the contract to the lowest responsible and responsive bidder if the bid is within the budgeted amount.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

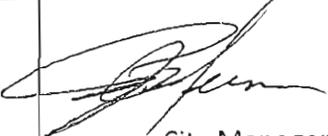
Funds Available:

Account Name: 432 Broadway
Account Number: 04088275362307
Project Number: DT-0034


1/8/2016
Finance Director

Staff Recommendations: Staff recommends the Masonry Closure Wall Contract – Contract 3 be awarded to Artisan Contractors of KY, LLC for \$158,725.00.

Attachments:

| | | |
|--|------------|--|
|  Department Head | City Clerk |  City Manager |
|--|------------|--|

ORDINANCE NO. 2016-1-_____

AN ORDINANCE ACCEPTING THE BID OF ARTISAN CONTRACTORS OF KY LLC FOR CONTRACT 3, MASONRY CLOSURE WALL ASSOCIATED WITH THE DEMOLITION OF 432 BROADWAY, AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City of Paducah accepts the bid of Artisan Contractors of KY, LLC in the amount of \$158,725.00, for Contract 3-Masonry Closure Wall associated with the Demolition of 432 Broadway, which will involve construction of a masonry wall on the exterior of 430 Broadway, said bid being in substantial compliance with the bid specifications, as contained in the bid of Artisan Contractors of KY, LLC, dated December 18, 2015.

SECTION 2. That the Mayor be authorized to execute a contract with Artisan Contractors of KY, LLC, for construction of a masonry wall authorized in Section 1 above, according to the specifications, bid proposal and all contract documents heretofore approved and incorporated in the bid.

SECTION 3. This expenditure shall be charged to project account DT-0034, account number 040-8827-536-2307.

SECTION 4. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, January 12, 2016
Adopted by the Board of Commissioners, January 19, 2016
Recorded by Tammara S. Sanderson, City Clerk, January 19, 2016
Published in The Paducah Sun, _____
\\ord\plan\contract3-masonry wall - 432-430 broadway

CITY OF PADUCAH, KY

Bid Tabulation

430 Broadway Stabilization - Masonry Closure Wall

Contract 3

Bid Opening: December 18, 2015, 3:30 p.m. CST

| No. | Bidder | Base Bid | Alternate Bid |
|-----|----------------------------------|---------------|-----------------|
| 1 | ARTISAN CONTRACTORS OF KY LLC | \$ 158,725.00 | ADD \$10,750.00 |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |

Agenda Action Form Paducah City Commission

Meeting Date: 01-12-2016

Short Title: **Amend Sections 106-2 and 106-213 of the Code of Ordinances of the City of Paducah, Kentucky**

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Jonathan Perkins, Angela Copeland
Presentation By: Jonathan Perkins

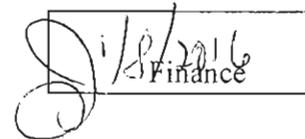
Background Information:

City of Paducah Code of Ordinance Section 106-2, 'Due date; penalty and interest for unpaid tax', references KRS 92.590 (2) which was repealed last year by the KY General Assembly; thus creating the need to amend our Code to reflect the change.

City of Paducah Code of Ordinance Section 106-213, 'Payment Due Dates', is amended to reflect annual property tax due dates without the need to amend yearly for date changes.

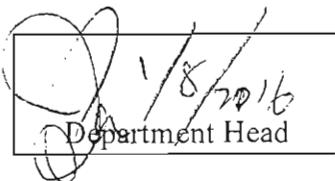
Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: n/a
Account Number: n/a


Finance

Staff Recommendation:
Staff recommends passage.

Attachments: Ordinance draft.

| | | |
|--|------------|--------------|
|  1/8/2016 Department Head | City Clerk | City Manager |
|--|------------|--------------|

AN ORDINANCE AMENDING SECTION 106-2 AND 106-213 OF THE CODE OF ORDINANCES OF THE CITY OF PADUCAH, KENTUCKY.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That Section 106-2 is hereby amended to read as follows:

Sec. 106-2. - Due date; penalty and interest for unpaid tax.

- (a) The city taxes for each fiscal year shall be due and payable in two equal parts, with the dates to be fixed by the Commission on an annual basis.
- (b) Taxes not paid ~~within one calendar month after the bill date~~ on or before the payment deadline fixed by the Commission shall ~~bear~~ be subject to the following penalty and interest ~~at the rates set forth in KRS 92.590(2), all of which shall be added to the tax bill, and paid at the time that the taxes are paid:~~
 - (1) The penalty shall be ten percent (10%) of the amount of the tax owed under the unpaid tax bill: and
 - (2) The interest shall be one-half percent (.5%) of the amount of the tax owed under the unpaid tax bill, which interest shall accrue on a monthly basis from and after the deadline date until such time that the unpaid taxes, together with the accrued penalty and interest, are fully paid.
- (c) Whenever a deadline for a tax payment falls on a Saturday or Sunday, the taxpayer shall be given an extension until midnight of the following Monday to pay the tax. In the event the following Monday is a city holiday, the taxpayer shall be given an additional extension to midnight of the city's next business day to pay the tax. The same extension shall apply to any successive day which is also a city holiday.
- (d) A taxpayer shall be deemed to have timely paid a tax bill if the taxpayer shall have tendered the full payment of the tax owed under the tax bill to the United States Post Office for mail delivery service, postage prepaid, prior to midnight of the deadline date, or the extended deadline date, if applicable. To evidence such tender, the taxpayer shall be required to obtain proof of such timely tender, which proof may be by post mark or by such other evidence which is acceptable to the Finance Director. Provided, however, that in the event the actual tax payment received by the city is less than the amount of the tax due under the tax bill, the taxpayer shall be subject to the penalty and interest set forth under this Section.

(e) The sale of tax claims against delinquent taxpayers may be made by the Finance Director in the manner provided by law.

SECTION 2. That Section 106-213 is hereby amended to read as follows:

Sec. 106-213. - Payment due dates.

(a) Property taxes levied herein shall be due and payable in the following manner:

- (1) The first half payment shall be due on November 1, ~~2000~~ of each calendar year, and shall be payable without penalty and interest until November 30, ~~2000~~ of that year.
- (2) The second half payment shall be due on February 1, ~~2001~~ of each calendar year, and shall be payable without penalty and interest until February 28, ~~2001~~ of that year, or if applicable, February 29 of that year.
- (3) Taxes not paid on or before the aforementioned deadlines shall be subject to the penalty and interest imposed under Section 106-2.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon title and a certified summary thereof.

GAYLE KALER, MAYOR

ATTEST:

CITY CLERK

Agenda Action Form

Paducah City Commission

Meeting Date: January 12, 2016

Short Title: Authorize Change Order #1 for SCBA and purchase 11 Self Contained Breathing Apparatus from Bluegrass Uniforms

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Kevin McKellips

Presentation By: Steve Kyle

Background Information:

Change order to adjust Ordinance 2015-06-8258 for the self-contained breathing apparatus with Bluegrass Uniforms to include the purchase of new technology to track personnel and improve communications during emergency operations that has become available since ordinance was adopted.

Unit price will increase three hundred and fifty five dollars (\$355) from seven thousand one hundred and fifty dollars (\$7150) to seven thousand five hundred and five dollars (\$7,505).

The fire department request to purchase eleven self-contained breathing apparatus from Bluegrass Uniforms at the adjusted contract price of seven thousand five hundred and five dollars (\$7,505) for a total of eighty two thousand five hundred and fifty five dollars.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

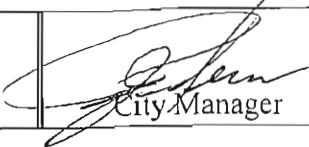
Funds Available: Account Name: Fire Equipment
Account Number: 040-1802-522.23-07 FI0028
001-1802-522-40-13

 1/8/2016
Finance

Staff Recommendation:

To increase per unit price of Self-contained breathing apparatus by three hundred and fifty five dollars (\$350) to \$7,505 and authorize the Finance Department to issue payment \$82,555 to Bluegrass Uniforms to purchase eleven self-contained breathing apparatus.

Attachments: Contract and Change Order #1

| | | |
|-----------------|------------|---|
| Department Head | City Clerk |  City Manager |
|-----------------|------------|---|

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE CHANGE ORDER NO. 1 WITH BLUEGRASS UNIFORMS, INC., TO UPGRADE SELF-CONTAINED BREATHING APPARATUS AND TO AUTHORIZE THE FINANCE DIRECTOR TO ISSUE PAYMENT FOR THE PURCHASE OF 11 SELF-CONTAINED BREATHING APPARATUS UNITS FOR THE PADUCAH FIRE DEPARTMENT

WHEREAS, the City approved Ordinance No. 2015-6-8258 on June 16, 2015, to enter into a contract with Bluegrass Uniforms, Inc., for the purchase of self-contained breathing apparatus (SCBA) at the unit price of \$7,150, for use by the Paducah Fire Department; and

WHEREAS, Change Order No. 1 is required in order to upgrade the voice amplifier to be able to integrate with handheld radios via Bluetooth technology and to also activate the Pack tracker systems for the SCBA's to provide an extra layer of safety for firefighters at a rate of \$355 per unit, therefore increasing the total unit price to \$7,505; and

WHEREAS, the Fire Department wishes to purchase 11 self-contained breathing apparatus units.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is hereby authorized to execute Change Order No. 1 with Bluegrass Uniforms, Inc., to accept the unit price increase of \$355 for the self-contained breathing apparatus units to be used by the Paducah Fire Department.

SECTION 2. The Finance Director is hereby authorized to issue payment in the amount of \$82,555 to purchase 11 of the self-contained breathing apparatus units. The expenditure shall be charged to the Fire Equipment account, account numbers 040-1802-522-2307 and 001-1802-522-4013.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners January 12, 2016
Adopted by the Board of Commissioners January 19, 2016
Recorded by Tammara S. Sanderson, January 19, 2016
Published by The Paducah Sun, _____
\\ord\fire\chg ord-SCBA

ORDINANCE NO. 2015-6-8258

AN ORDINANCE ACCEPTING THE BID OF BLUEGRASS UNIFORMS FOR SALE TO THE CITY OF SELF-CONTAINED BREATHING APPARATUS FOR USE BY THE PADUCAH FIRE DEPARTMENT FOR THE REMAINING PORTION OF 2015 AND FISCAL YEAR 2016 , WITH A ONE-YEAR CONTRACT OPTION TO RENEW AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME

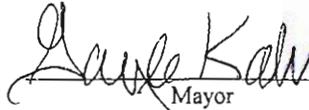
BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The City of Paducah accepts the bids of Bluegrass Uniforms at the unit price of \$7,150 per set, for self-contained breathing apparatus for use by the Paducah Fire Department, said bids being in substantial compliance with bid specifications, and as contained in the bids of Bluegrass Uniforms of May 29, 2015.

SECTION 2. The Mayor is hereby authorized to execute a contract with Bluegrass Uniforms for the purchase of self-contained breathing apparatus, authorized in Section 1 above, according to the specifications, bid proposal and all contract documents heretofore approved and incorporated in the bid. This contract shall be for the remaining portion of 2015 and fiscal year 2016, and contains a one-year contract option to renew. Further, the Mayor is hereby authorized to execute, subsequent to the recommendation of the City of Paducah Fire Chief, the option for an additional one-year renewal ending December 31, 2017 upon mutual agreement of both parties.

SECTION 3. These purchases shall be charged to Fire Hose – Rescue Equipment account.

SECTION 4. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.



 Mayor

ATTEST:


 Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, June 9, 2015
 Adopted by the Board of Commissioners, June 16, 2015
 Recorded by Tammara S. Sanderson, City Clerk, June 16, 2015
 Published by The Paducah Sun, June 26, 2015
 \ord\fire\breathing apparatus 6-2015

CITY OF PADUCAH
 FIRE DEPARTMENT
 CHANGE ORDER

CHANGE ORDER NO: _____ 1 _____
 DATE: _____ November 02, 2015 _____
 NAME OF PROJECT: _____ Self Contained Breathing Apparatus _____
 OWNER: _____ City of Paducah, Kentucky _____
 VENDOR: _____ Bluegrass Uniforms _____

THE FOLLOWING UPGRADES ARE TO BE MADE TO THE CONTRACT

| Section | Description | Item | Price |
|---------|---|------|-----------|
| | Technical Specification Information | | |
| | Upgrade voice amp for self contained breathing amp to be able to be Intergrated with handheld radios via blutooth technology. | | \$ 180.00 |
| | activate Pack tracker systems on self contained breathing apparatus to be able to provide an extra layer of safety. | | \$ 175.00 |

ADDITIONS per unit \$355.00
 DEDUCTIONS \$

CONTRACT PRICE DUE TO THIS CHANGE ORDER WILL BE INCREASED BY: \$355.00
 ORIGINAL CONTRACT PRICE: \$7,150.00
 CURRENT CONTRACT PRICE ADJUSTED BY PREVIOUS CHANGE ORDERS: \$7,150.00
 NEW CONTRACT PRICE INCLUDING THIS CHANGE ORDER WILL BE: \$7,505.00
 THE CONTRACT TIME WILL BE INCREASED BY: 0 Days

APPROVALS REQUIRED:

 VENDOR DATE

 CITY FIRE CHIEF DATE

 MAYOR: DATE

**CITY OF PADUCAH, KENTUCKY
AGREEMENT FOR
SELF-CONTAINED BREATHING APPARATUS (SCBA) EQUIPMENT.**

THIS AGREEMENT, made this 25 day of June, 2015 by and between the CITY OF PADUCAH, hereinafter called the OWNER, and Bluegrass Uniforms, hereinafter called the VENDOR, for the consideration hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF WORK

The Vendor agrees to furnish and deliver the requested **Self-Contained Breathing Apparatus (SCBA) Equipment** as ordered by the Paducah Fire Department in full compliance with the Specifications as contained in the Bid Proposal Dated May 29, 2015.

ARTICLE 2. TIME FOR COMPLETION

The Vendor hereby agrees to deliver **Self Contained Breathing Apparatus (SCBA) Equipment** as ordered by the Paducah Fire Department within 30 consecutive calendar days of said order.

ARTICLE 3. THE CONTRACT SUM

The Owner agrees to pay the Vendor Bluegrass Uniforms (\$7150) for Each **Self Contained Breathing Apparatus (SCBA)** as quoted in the aforementioned Vendor's Bid Proposal and as approved by the Board of Commissioners on June 16, 2015 by Ordinance # 2015-6-8258.

ARTICLE 4. PAYMENTS

The Owner will make Payment in full upon satisfactory delivery of the **Self Contained Breathing Apparatus (SCBA)** as ordered in accordance with the Contract Documents and the Specifications. Contract prices are firm and will not be altered during the contract period.

ARTICLE 5. CONTRACT TIME

The Contract shall be binding upon the City and the Vendor, his partners, successors, assigns, and legal representatives for remaining portion of the 2014-2015 Fiscal Year (which ends on June 30, 2015) and through one additional Fiscal Year of 2015-2016 beginning on July 1, 2015 and ending on June 30, 2016.

The term of the Contract may be renewable for ONE additional Fiscal-Year term, upon the mutual agreement of both parties. The City of Paducah Fire Chief, acting as agent for the Owner, shall determine, in his sole discretion, the option to renewal. This renewal option shall be exercised by both parties executing and delivering the written Agreement for the additional Fiscal-Year Renewal. The 2016-2017 Fiscal-Year time period extension shall upon execution of the Contract by the Mayor of the City of Paducah and end on June 30, 2017.

The City reserves the right to purchase said Contract items at the quoted unit prices until the additional Fiscal-Year Renewal Agreement has been executed by both parties. However, in no case shall the Vendor be bound to supply the Contract items at these prices past the ending of the original Agreement.

ARTICLE 6. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, both as to interpretation and performance, as it is made and entered into in the Commonwealth of Kentucky. Venue for any legal action brought to enforce any provision of this Agreement or based upon or arising out of this Agreement shall exclusively be in the state courts of McCracken County, Kentucky, and the parties hereto irrevocably agree to submit to the personal jurisdiction of any such court.

ARTICLE 7. THE CONTRACT DOCUMENTS

The Specifications and any addendum that may have been issued are fully a part of this Contract as if thereto attached or herein repeated.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement, the day and year first above written.

VENDOR

BY R. Holland for Bluegrass
TITLE Owner Uniforms, Inc

ADDRESS:
132 Chester Ct. Suite 1
Bowling Green KY 42103

CITY OF PADUCAH, KENTUCKY

BY Gayle Kaler
Gayle Kaler, Mayor

ADDRESS:
Post Office Box 2267
Paducah, Kentucky 42002-2267

Agenda Action Form Paducah City Commission

Meeting Date: January 12, 2016

Short Title: Solid Waste Contract with Freedom Waste Service, LLC

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Rick Murphy, Lisa Emmons, Jeff Pederson
Presentation By: Rick Murphy and Jeff Pederson

Background Information:

The Agreement between the City of Paducah and Republic Service, Inc., for the operation of a solid waste transfer station and associated transportation and landfill expired on December 31, 2015. The City contracted with the firm HDR, Inc., for the development of a Request For Proposal, which was issued on September 17, 2015, and which resulted in proposals being submitted to the City by Republic Service, Inc., as well as Freedom Waste Service, LLC.

Review of the respective proposals by HDR, Inc., resulted in the recommendation that the City award a contract to Freedom Waste Service, LLC, at a projective comparative cost savings to the City of \$200,000 annually. Based upon the recommendation, and the analysis conducted during review of the two RFP submittals, the City conducted a negotiation process with Freedom Waste Service, LLC, for an Agreement for transfer, transport, and disposal of municipal solid waste for the City of Paducah.

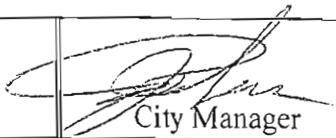
Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name:
Account Number:

| |
|---------|
| Finance |
|---------|

Staff Recommendation: Enter into an Agreement with Freedom Waste Service, LLC, for a period of ten (10) years. The City will pay Freedom Waste Service the base unit fee of \$34.95 per ton for solid waste and the base unit of \$40 per ton for acceptable recyclable material

Attachments: Agreement and Ordinance

| | | |
|-----------------|------------|--|
| Department Head | City Clerk |  City Manager |
|-----------------|------------|--|

ORDINANCE NO. 2016 - _____

AN ORDINANCE OF THE CITY OF PADUCAH, KENTUCKY,
AUTHORIZING AND APPROVING AN AGREEMENT FOR TRANSFER,
TRANSPORT AND DISPOSAL OF MUNICIPAL SOLID WASTE BETWEEN THE
CITY OF PADUCAH AND FREEDOM WASTE SERVICE, LLC.; AND
AUTHORIZING THE EXECUTION OF THE AGREEMENT

WHEREAS, the City of Paducah's (the "City") Solid Waste Division is responsible for the collection of residential and commercial waste within the City limits of Paducah; and

WHEREAS, Freedom Waste Service, LLC, is a Kentucky limited liability company ("Freedom"), capable of providing long-term transfer station services, transport and disposal services and a safe and accessible citizen drop-off area for the deposition of recyclable products; and

WHEREAS, the City desires to contract with Freedom for long-term transfer station services, the transport and disposal of all municipal solid waste, and a safe and accessible citizen drop-off area for the deposition of recyclable products; and

WHEREAS, the City and Freedom have come to an agreement regarding these services and have agreed to the terms and conditions of same/

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PADUCAH, KENTUCKY, AS FOLLOWS:

Section 1. Recitals and Authorization. The City hereby authorizes and approves the Agreement for Transfer, Transport and Disposal of Municipal Solid Waste between the City and Freedom (the "Agreement"), in substantially the same form attached hereto as Exhibit A and made a part hereof. It is further determined that it is necessary and desirable and in the best interest of the City to enter into the Agreement for the purposes therein specified. The Mayor of the City is hereby authorized to execute the Agreement, and all other documents and instruments of any kind to be executed or delivered in connection with the Agreement, with such changes in the Agreement not inconsistent with this Ordinance and not substantially adverse to the City as may be approved by the official executing the same on behalf of the City or the City Manager. The approval of such changes, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of the Agreement by the authorized official.

Section 2. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. Compliance With Open Meetings Laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 4. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

Section 5. Effective Date. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

MAYOR

ATTEST:

City Clerk

Introduced by the Board of Commissioners, _____, 2016

Adopted by the Board of Commissioners, _____, 2016

Recorded by City Clerk, _____, 2016

Published by *The Paducah Sun*, _____, 2016

EXHIBIT A TO THE ORDINANCE

**AGREEMENT FOR TRANSFER, TRANSPORT
AND DISPOSAL OF MUNICIPAL SOLID WASTE**

See attachment

**AGREEMENT FOR TRANSFER, TRANSPORT
AND DISPOSAL OF MUNICIPAL SOLID WASTE**

THIS AGREEMENT ("Agreement") made and entered into this ____ day of January 2016, by and between the **CITY OF PADUCAH, KENTUCKY**, a municipal corporation and body politic of the Commonwealth of Kentucky, P.O. Box 2267, Paducah, Kentucky 42002-2267, (hereinafter referred to as the "City") and **FREEDOM WASTE SERVICE, LLC**, a Kentucky limited liability company, with local offices located at 3426 State Route 45 South, Mayfield, Kentucky 42066 (hereinafter referred to as "Contractor");

WITNESSETH:

WHEREAS, the City's Solid Waste Division is responsible for the collection of residential and commercial waste within the City limits of Paducah; and

WHEREAS, the City desires to contract for long-term transfer station services, the transport and disposal of all municipal solid waste, and a safe and accessible citizen drop-off area for the deposition of recyclable products; and

WHEREAS, by Request for Proposals for Solid Waste Receipt, Transfer, Haul & Disposal, issued September 17, 2015, the City sought proposals to secure long-term transfer station services, transport and disposal services and a safe and accessible citizen drop-off area for the deposition of recyclable products; and

WHEREAS, after evaluating the proposals received, the City desires to contract with Contractor, as an independent contractor, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for the consideration hereinafter set forth, the City and Contractor agree as follows:

SECTION 1: DEFINITIONS:

For the purposes of this Agreement, the following terms shall apply:

1.1. **Acceptable Recyclable Material:** Shall mean paper, plastic, aluminum, tin, steel, and cardboard.

1.2. **Applicable Law:** Shall mean (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation

utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and both generally applicable and publicly available; and (4) Governmental Approvals, in each case having the force of law and applicable from time to time to the Transfer Station, the Disposal Facility, and the Backup Disposal Facility, the services provided by Contractor under this Agreement, or any other transaction or matter contemplated in this Agreement (including any of the foregoing which pertain to waste management, waste transportation, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination), now in effect, or hereafter enacted during the Contract Term.

1.3. **Approved Plans:** Has the meaning set forth in Section 2.1

1.4. **Backup Disposal Facility:** A landfill or similar facility approved by the City, operated in accordance with all Applicable Laws for handling Solid Waste, to which the Contractor transports Solid Waste from the Transfer Station for final disposal should the Disposal Facility be unable to receive Solid Waste for any reason. In order for the landfill or similar facility to be approved by the City the owner/operator shall maintain, at its sole expense, Owned and Non-Owned Disposal Site Pollution Legal Liability and Remediation/Cleanup with limits of \$3,000,000 per claim during the Contract Term..

1.5. **Billing Month:** Means each calendar month during the Contract Term, commencing the calendar month during which the Service Date occurs.

1.6. **C&D Waste:** Means wastes resulting from construction, remodeling, repair or demolition operations of structures and from road building.

1.7. **Citizen Drop-off Center:** A safe and adequately equipped facility for citizens to directly dispose of Acceptable Recyclable Material at the Transfer Station.

1.8. **Contract Term:** Has the meaning set forth in Section 5.

1.9. **Contract Year:** The first Contract Year shall be the period beginning on the Service Date and ending on the following July 31st. Thereafter, a Contract Year shall be the period beginning on August 1st and ending on the following July 31st.

1.10. **Contractor's Proposal:** Written terms, conditions, and costs for performing the work and submitted by Contractor on October 15, 2015 to the City in response to the City's RFP.

1.11. **City-Designated Personnel:** The City Manager and other City employees or agents designated by the City Manager.

1.12. **Construction Completion:** Has the meaning set forth in Section 2.2.1.

1.13. **Consumer Price Index or CPI:** The U.S. Department of Labor, Bureau of

Labor Statistics, Consumer Price Index for the South Region , All Items, All Urban Consumers (CPI-U), Not Seasonally Adjusted, and reported in the CPI Detailed Report Series Id: CUUR0300SA0.

1.14. **Consumer Price Index Adjustment Factor or CPI Adjustment Factor:** The pricing adjustment factor to be applied, when used with respect to a particular Contract Year, equal to the quotient derived by dividing (a) the average of the 12 monthly CPI values in the Contract Year preceding the Contract Year with respect to which a calculation is made, divided by (b) the average of the 12 monthly CPI values from January 2015 through and including December 2015.” The language following (b) in the example definition would result in the average 2015 CPI being used as the base upon which all future adjustments will be made (as opposed to a year-over-year change in CPI).

1.15. **Disposal Facility:** The City approves West Kentucky Landfill located in Graves County, Kentucky, a landfill, owned and operated by Jones Sanitation Holding, LLC, a Kentucky limited liability company (an affiliated company of the Contractor) to which the Contractor shall transport Solid Waste from the Transfer Station for final disposal; provided, however, the owner/operator shall maintain, at its sole expense, Owned and Non-Owned Disposal Site Pollution Legal Liability and Remediation/Cleanup with limits of \$3,000,000 per claim during the Contract Term. The owner/operator shall operate the Disposal Facility in accordance with Applicable Law for handling Solid Waste.

1.16. **Effective Date:** The date this Agreement is executed and delivered by the parties hereto.

1.17. **Emergency Solid Waste Processing:** An unexpected, serious occurrence or situation urgently requiring prompt action by the Contractor, such as but not limited to pending or post storm event processing of Solid Waste at the Transfer Station as a result of increased curbside collections.

1.18. **Fuel Adjustment Factor:** The pricing adjustment factor to be applied, when used with respect to a particular Contract Year, equal to the quotient derived by dividing (a) the average of the 12 monthly EIA Diesel All Types Prices – Midwest (PADD2) (the “EIA Diesel Prices”), as reported by the U.S. Energy Information Administration, values in the Contract Year preceding the Contract Year with respect to which a calculation is made, divided by (b) the average of the 12 monthly EIA Diesel Prices values from January 2015 through and including December 2015.

1.19. **Governmental Approval:** All orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issues by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contractor’s obligations under this Agreement.

1.20. **Governmental Body or Governmental Bodies:** Any federal, state,

regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

1.21. **Moderate Risk Waste:** means any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under Applicable Law solely because the waste is generated in quantities below the threshold for regulation.

1.22. **Request for Proposals or RFP:** Means the Request for Proposals for Transfer Station Receipt, Transfer, Haul and Disposal of Municipal Solid Waste dated September 17, 2015, and any Addenda or amendments thereto.

1.23. **Scales Facility:** The scale house and weighing truck scales operated, maintained, repaired, and replaced by the Contractor and located at the Transfer Station for weighing Solid Waste deliveries. The Contractor shall utilize scales approved and certified by the Commonwealth of Kentucky.

1.24. **Service Date:** Has the meaning set forth in Section 2.2.1.

1.25. **Service Fee:** Has the meaning set forth in Section 4.1.

1.26. **Solid Waste:** Means all municipal solid waste such as garbage, refuse, rubbish and other materials and substances discarded as being spent, useless, worthless or in excess to the generator thereof at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments (including small quantities of hazardous material or medical waste but only to the extent permitted by Applicable Law), which are acceptable now or in the future at the Transfer Stations under Applicable Law. Solid Waste includes Acceptable Recyclable Material, Moderate Risk Waste, White Goods, and C&D Waste.

1.27. **Ton:** shall mean 2,000 pounds.

1.28. **Transfer Station:** The Contractor's facility having all Governmental Approvals required by Applicable Law located on the Transfer Station Site, where Solid Waste is deposited from collection vehicles and transferred to waste hauling vehicles to be transported to the Disposal Facility, including without limitation the Citizen Drop-off Center and the Scales Facility.

1.29. **Transfer Station Site:** Means the parcel of land, consisting of 5 acres, located off of Potter Lane within Paducah, McCracken County, Kentucky, on which the Transfer Station is to be located.

1.30. **Unacceptable Waste:** Shall mean "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. and "hazardous waste" as defined under the Resource

Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

1.31. **Uncontrollable Circumstance:** Any cause beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement, and that materially interferes with or materially increases the cost of performing its obligations hereunder (other than payment obligations), to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such party. Subject to the foregoing, Uncontrollable Circumstances may include without limitation the following: acts of God, war, riot, fire, explosion, wind storm, flood, earthquakes, or action by a Governmental Body not party to this Agreement. Uncontrollable Circumstances shall not include without limitation any act, event, or circumstance that would not have occurred if the affected party had complied with its obligations hereunder; changes in interest rates, inflation rates, wage rates, insurance costs, currency values, labor availability, exchange rates or other economic conditions; changes in the financial condition of the City, the Contractor, any subcontractor, any of the Contractor's affiliates or any other person in the performance of this Agreement; weather conditions normal for the geographic region of the City; strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions by employees; or equipment failure.

1.32. **White Goods:** Means residential appliances, including water heaters, washers, water tanks, dryers, stoves, refrigerators, and electronics.

SECTION 2: SCOPE OF SERVICES - RESPONSIBILITIES OF CONTRACTOR

The Contractor shall furnish the following services and during the Contract Term shall be responsible for the following:

2.1. The Contractor shall, in accordance with this Agreement, design, construct, operate, maintain, and replace, at its sole cost and expense, a Transfer Station on the Transfer Station Site, which shall include without limitation a Citizen Drop-off Center and Scales Facility. The Transfer Station shall be designed, constructed, operated, maintained, repaired and replaced by the Contractor in order to fully satisfy the scope of services and its responsibilities under this Agreement and in accordance with the site plan, specifications, drawings, and other details approved by the Contractor and the City, all of which are attached hereto and made a part hereof as **Schedule 1** (the "Approved Plans"), which Approved Plans shall include without limitation the location and traffic plan associated with the Citizens Drop-off Center to ensure safety by separating citizens and collection vehicles routes of travel while on the Transfer Station Site. At all times during the Contract Term, the Contractor shall own or otherwise have control of the Transfer Station. The Transfer Station shall at all times during the Contract Term have and comply with all Governmental Approvals in order to permit it to be used for the purposes contemplated by this Agreement in compliance with all Applicable Law.

2.2. The construction of the Transfer Station shall be as follows:

2.2.1. The construction schedule shall be as set forth in the Contractor's Proposal, except that the Construction Completion Date for the Transfer Station shall be mutually agreed upon but shall be no later than June 30, 2016. The Construction Completion Date shall be the date that the Transfer Station, built in compliance with the Approved Plans and having all Governmental Approvals, is open and available for the Contractor to begin accepting deliveries of Solid Waste and performing its obligations related thereto hereunder and shall also constitute the "Service Date".

2.2.2. If the Service Date does not occur on or before August 1, 2016 (as extended only due to the occurrence of an Uncontrollable Circumstances), the Contractor shall pay the City delay liquidated damages in the amount of \$1,000.00 per day for each day of such delay. The City may invoice the Contractor for such liquidated damages on a weekly basis, and such invoices will be due and payable by the Contractor within ten days following receipt of the invoice. The failure of the Contractor to have achieved the Service Date by October 1, 2016 shall constitute a material default by the Contractor and the City, by notice to the Contractor, may (notwithstanding anything to the contrary in Section 18) terminate this Agreement without any requirement of having given notice previously or of providing any further cure opportunity.

2.2.3. The Contractor shall meet all Applicable Law in respect to the final design, construction, and Governmental Approvals of the Transfer Station.

2.2.4. The Contractor is solely responsible for the financing and payment of all costs of the design and construction of the Transfer Station and construction of ingress and egress, sitework and utilities to the Transfer Station, including without limitation roads and landscaping.

2.2.5. The Citizens Drop-off Center shall have paved or concrete surfaces for all container and traffic areas to minimize dust and debris accumulation and shall be maintained in a clean and orderly manner at all times, and shall be adequately lit during times of extended hours of operation. The City shall have approval rights with respect to the location and traffic plan associated with the Citizens Drop-off Center to ensure safety by separating citizens and collection vehicles routes of travel while on the Transfer Station Site.

2.3. The Contractor shall furnish at its own cost and expense all labor, materials, supplies and equipment needed to operate and maintain the Transfer Station for the receipt of Solid Waste in accordance with Applicable Law.

2.4. All Solid Waste delivered by City or City residents and businesses to the Transfer Station operated by Contractor under the terms of this Agreement shall be received, safely managed, and loaded into transfer trailers by the Contractor for hauling and disposal at the Disposal Facility or Backup Disposal Facility on the same day such Solid Waste is delivered to the Transfer Station. Except as provided in Section 2.5, all Solid Waste shall be removed from

the Transfer Station each day. The Contractor shall provide for the proper hauling and disposal of all Solid Waste delivered by the City or its residents to the Disposal Facility and the Backup Disposal Facility, in accordance with all terms and conditions of this Agreement. The Contractor shall only dispose of Solid Waste at the Disposal Facility or Backup Disposal Facility, and at no other disposal location without the prior written consent of the City.

2.5. In the event that the Contractor fails to comply with its obligations to accept all Solid Waste (unless failure is due to the occurrence of a Uncontrollable Circumstances) or fails to dispose of Solid Waste at only a City approved disposal facility), the Contractor shall pay the City liquidated damages in the amount of (i) either \$50.00 per ton of rejected Solid Waste or all out-of-pocket costs incurred by the City in disposing of the rejected Solid Waste at another transfer station or disposal site, including without limitation service fees and transport costs, whichever is more, or (ii) \$100.00 per ton of improperly disposed of Solid Waste. The City may invoice the Contractor for such liquidated damages on a weekly basis, and such invoices will be due and payable by the Contractor within ten days following receipt of the invoice. Except to the extent excused due to an Uncontrollable Circumstance, the failure or refusal of the Contractor to accept, process and dispose of Solid Waste during normal operating hours (i) for a 24-hour period (other than Holidays) at the Transfer Station, or (ii) for a period of seven consecutive days (excluding Holidays) at the Transfer Station shall constitute a material default by the Contractor and the City may (notwithstanding anything to the contrary in Section 18) terminate this Agreement without any requirement of having given notice previously or of providing any further cure opportunity.

2.6. The Contractor shall be responsible for the weighing, transportation, marketing and disposal of segregated Recyclable Materials, Moderate Risk Waste and White Goods delivered to and accepted at the Transfer Station (including the Citizens Drop-off Center) from the Transfer Station to appropriate City-approved disposal sites for disposition, including end-use markets, in accordance with Applicable Law. Prior to disposal or recycling of any White Goods, the Contractor shall remove refrigerants and other hazardous components from all such White Goods accepted at the Transfer Station in accordance with the Applicable Law. The Contractor acknowledges that the Service Fee paid in accordance with Section 4 includes all compensation to which the Contractor is entitled on account of all transportation and disposal costs. The Contractor may retain the revenue generated from the marketing of recovered Recyclable Materials, Moderate Risk Waste and White Goods, however, the Contractor is to provide to the City written verification reports as to the quantities of the Acceptable Recyclable Material and income and expense statements for record keeping purposes.

2.7. The Contractor shall schedule its employees in such a manner so as to avoid delays and back-ups in receiving Solid Waste at the Transfer Station. At least two (2) employees shall be available at the Transfer Station during operating hours, which shall be as set forth below:

2.7.1. Monday through Friday 7:00 a.m. to 4:00 p.m.

2.7.2. Saturday 7:00 a.m. to Noon¹.

2.7.3. The Contractor's offices shall be opened from 8 a.m. to 5 p.m. Monday through Friday to handle customer service questions and problems and an answering service, in direct contact with the managers and owners of the Contractor, shall handle after normal operating hour questions and problems.

2.8. The Transfer Station shall be open on all days, except for Sundays and the following holidays unless otherwise agreed upon by the City and Contractor:

2.8.1. New Year's Day

2.8.2. Thanksgiving Day

2.8.3. Christmas Day

2.9. At the Scales Facility, the Contractor shall weigh all vehicles delivering Solid Waste to the Transfer Station by the City before and after the transfer of Solid Waste into the transfer trailers. At the Scales Facility, the Contractor shall also weigh Recyclable Materials, Moderate Risk Waste and White Goods delivered to and accepted at the Transfer Station (including the Citizens Drop-off Center). Such weighing method shall be approved by the City prior to implementation. The City shall have the right to test the accuracy of scales at reasonable times and without unreasonable interference with operations of the Transfer Facility. In the event the weighing scales become inoperable, the Contractor shall repair and/or replace the scales within a commercially reasonable time, not to exceed seven (7) calendar days. During scales breakdown, the City shall provide a reasonable estimate by (a) weighing the collection vehicle at a City facility, (b) using the historical records of the weight of Solid Waste delivered to the Transfer Station for a comparable period during the preceding Contract Year, or (c) any other reasonable means that the City deems appropriate.

2.10. The Contractor shall maintain daily records of the number of Tons of Solid Waste delivered by the City to the Transfer Station and the number of Tons of Solid Waste transported from the Transfer Station to the Disposal Facility, indicating, in each case and to the extent practicable, the date and time of arrival or departure of each City vehicle transporting such waste, with appropriate identification of each vehicle.

2.11. The Contractor shall assist City with Emergency Solid Waste Processing of Acceptable Waste prior to and after storm events or other emergencies within the normal scope of services defined in this section.

2.12. Prior to the Service Date, the Contractor shall own or have right to use the Backup Disposal Facility and shall develop an emergency backup plan, acceptable to the City, in

¹ All times described in this Agreement shall be Central Standard Time.

the event the Disposal Facility is unavailable for disposal at any time during the Contract Term. The Service Fees set forth in Section 4 apply to the Backup Disposal Facility. Also, prior to the Service Date, the Contractor shall notify the City in writing of the location of the Backup Disposal Facility. In the event the location of the Backup Disposal Facility is changed, the Contractor shall provide the City with written notice of the new location at least thirty (30) days prior to such the implementation of such change.

2.13. The Contractor shall furnish, at its sole cost and expense, all personnel, tractors, trailers, licenses, Governmental Approvals, equipment and other requirements necessary to transport all Solid Waste received at the Transfer Station to the Disposal Facility or Backup Disposal Facility. The Contractor shall provide sufficient number of trailers to transport all Solid Waste, with the capacity to transport the Acceptable Recyclable Material (in addition to any other waste it is obligated or may be obligated to transport) for the Contract Term.

2.14. The Contractor shall provide for the receipt, processing and sale of all Acceptable Recyclable Material delivered to the Citizens Drop-off Center by the City or its residents. The Contractor shall, at its sole cost and expense, operate the Citizens Drop-off Center with its own staff, (ii) furnish and maintain roll-off or other containers for collection of Acceptable Recyclable Material, and (iii) arrange for the removal and disposal of such Acceptable Recyclable Material.”

2.15. The Contractor shall provide for the control of insects, rodents and other vectors, and shall employ whatever means necessary to minimize the generation and migration of nuisance litter and debris throughout the Transfer Station on a daily basis.

2.16. The services to be performed under this Agreement by the Contractor shall be performed under all weather conditions. Further, in the event of inclement weather, the Contractor shall be responsible for taking measures necessary (e.g. plowing) to allow for ingress and egress into and within the Transfer Station Site.

SECTION 3: RESPONSIBILITIES OF THE CITY

3.1. The City shall deliver all Solid Waste collected by or on behalf of the City to the Transfer Station during the Contract Term.

3.2. The City makes no representation or guarantee as to the actual quantity or type of Solid Waste to be delivered to the Transfer Station pursuant to this Agreement. The City shall not be liable in damages for any failure to deliver, or cause to be delivered, Solid Waste to the Transfer Station.

3.3 The City shall pay the Service Fee and any other amounts due the Contractor in accordance with the terms and conditions of this Agreement.

3.4 Nothing in this Agreement will be deemed to restrict the right of the City to practice source separation for the recovery, recycling or composting of waste nor the right of the City to conduct, sponsor, encourage or require such source separation. The City will not be responsible or liable for any reduction in the amount of Solid Waste generated in the City and delivered to the Transfer Station by the City, which may result from any such source separation or recycling program.

SECTION 4: CONSIDERATION FOR TRANSFER STATION OPERATION

4.1 As the sole compensation for the Contractor's performance of the services described in Section 2 of this Agreement, beginning on the Service Date the City shall pay the Contractor a service fee in accordance with this Section 4 (the "Service Fee"). For each Billing Month, the City shall pay the Contractor the Service Fee in an amount equal to the sum of (a) the amount determined pursuant to Section 4.1.1 for the amount of Solid Waste (other than Acceptable Recyclable Material) delivered by the City to the Transfer Station during such Billing Month, and (b) the amount determined pursuant to Section 4.1.2 for the amount of Acceptable Recyclable Material delivered to the Citizen Drop-off Center during such Billing Month.

4.1.1. The City shall pay the Contractor a base unit fee of **\$34.95 per Ton** to receive, transfer, process, transport and dispose of all Solid Waste delivered to the Transfer Station by the City. The foregoing amount shall be in effect through June 30, 2017 and shall thereafter be adjusted at the start of each Contract Year as described in Section 4.2.

4.1.2. The City shall pay the Contractor a base unit fee of **\$40.00 per Ton** to receive, transfer, process, transport and sell all Acceptable Recyclable Material delivered to the Citizen Drop-off Center. The foregoing amount shall be in effect through June 30, 2017 and shall thereafter be adjusted at the start of each Contract Year as described in Section 4.2.

4.2. The base unit fees described above in Sections 4.1.1 and 4.1.2 shall be adjusted annually as follows:

4.2.1. 70 % of base unit fees shall be adjusted on July 1, 2017 and on July 1 of each Contract Year thereafter during the Contract Term by multiplying each of the base unit fees specified in Sections 4.1.1 and 4.1.2 by the CPI Adjustment Factor.

4.2.2. 30 % of base unit fees shall be adjusted on July 1, 2017 and on July 1 of each Contract Year thereafter during the Contract Term by multiplying each of the base unit Service Fees specified in Sections 4.1.1 and 4.1.2 by the Fuel Adjustment Factor

4.2.3. For each Contract Year, the aggregate annual increase or decrease to the base unit Service Fees specified in Sections 4.1.1 and 4.1.2 calculated under this provision shall be subject to a maximum increase and a maximum decrease equal to six percent (6%) greater or lower, as applicable, of the base unit Service Fees in effect

during the prior Contract Year.”

4.3. The Contractor shall submit a single invoice to the City for each Billing Month no later than the fifteenth day following the conclusion of such Billing Month. This monthly invoice will be paid by the City within thirty (30) days of the receipt of an approvable invoice for the Billing Month. The invoice shall be accompanied by an itemization and summary of the Tons of all Solid Waste delivered by the City and Acceptable Recyclable Material delivered by residents of the City to the Transfer Station and the Citizen Drop-off Center during the Billing Month.

4.4. Except as otherwise provided herein for Acceptable Recyclable Material delivered to the Citizen Drop-off Center (for which the Contractor shall be compensated pursuant to Section 4.1.2), the Contractor may impose the fees or charges set forth in **Schedule 2** to this Agreement upon City residents and businesses for deliveries of Solid Waste to the Transfer Station . All such charges shall be subject to the annual adjustments set forth in Section 4.2 of this Agreement. The Contractor shall be responsible for billing and collection of such fees and the City shall have no liability therefor.

SECTION 5: CONTRACT TERM

This Agreement shall become effective on the Effective Date and shall continue in effect until the tenth anniversary of the Service Date ,and may be extended, at the sole discretion of the City, on the same conditions as set forth in this Agreement, for two (2) additional five-year periods; provided, however, the City provides Contractor with written notice of its election to renew at least sixty (60) days prior to the expiration of the then existing Contract Term hereunder, unless earlier terminated pursuant to the termination provisions of Section 19, in which event the Contract Term shall be deemed to have ended as of the date of such termination. At the end of the Contract Term, all obligations of the parties hereunder will terminate except as provided in Section 28.

SECTION 6: INSPECTIONS

Contractor agrees to permit City-Designated Personnel to inspect its routes, transfer station facilities, disposal and hauling equipment, complaint logs, or procedures to the extent that such pertain to the performance of this Agreement. The City shall have the right, at any time and at any place, to search Solid Waste delivered to the Transfer Station for personal property retrieval or law enforcement purposes. This right shall in no way be restricted by the Contractor and shall extend to the Disposal Facility and the Backup Disposal Facility as well as vehicles carrying such Solid Waste at any point along the route to the Disposal Facility and the Backup Disposal Facility. The Contractor shall cooperate and assist the City in this regard. Such cooperation and assistance shall include diverting vehicles carrying Solid Waste in transport, producing Solid Waste for inspection by the City and identifying the location of Solid Waste deposited at the Disposal Facility and the Backup Disposal Facility.

SECTION 7: PERFORMANCE BOND

7.1 Upon execution of this Agreement, Contractor shall furnish to the City a performance bond, in the form attached hereto as **Schedule 3** for the faithful performance of this Agreement by the Contractor and all Contractor obligations arising hereunder in the amount of \$1,500,000.00. The cost and expense of obtaining and maintaining the bond under this Section 7 shall be borne by the Contractor without additional reimbursement from the City.

7.2 A surety company licensed to do business in the Commonwealth of Kentucky and acceptable to the City shall issue the bond. A certificate from the surety company showing that the bond premiums are paid in full shall accompany the bond. The bond shall be extended annually thirty (30) days in advance of each Contract Year in an amount of \$1,500,000.00, and shall remain in effect for a period of time ninety (90) days following the expiration or termination of this Agreement.

SECTION 8: INDEPENDENT CONTRACTOR

The Contractor shall perform all work and services described in this Agreement as an independent contractor and not as an officer, agent, servant or employee of the City. Except as otherwise provided under this Agreement, Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same, and nothing herein shall be construed as creating a partnership or joint venture between the City and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the City, and no such person shall be entitled to any benefits available or granted to employees of the City.

SECTION 9: COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall be required to perform all services under this Agreement in compliance with and shall qualify under any and all Applicable Law, and shall cause all subcontractors approved by the City in accordance with Section 13 to comply with any and all Applicable Law. If at any time the Contractor fails to meet these requirements, it shall take immediate actions necessary to remedy such failure, shall pay any resulting damages, penalties and fines and, pursuant to Section 17, shall indemnify and hold harmless the City Indemnitees from any loss and expense resulting therefrom.

SECTION 10: GOVERNMENTAL APPROVALS

Contractor at its sole cost and expense, shall maintain throughout the term of this Agreement all Governmental Approvals necessary or required for Contractor to perform the work and services described herein, as required by Governmental Bodies and Applicable Law.

SECTION 11: LAW TO GOVERN; FORUM SELECTION

This Agreement is entered into and is to be performed in the Commonwealth of Kentucky. The City and Contractor agree that the laws of the Commonwealth of Kentucky shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. Any legal action arising from or relating in any way to this Agreement shall have venue exclusively in the state courts of McCracken County, Kentucky.

SECTION 12: EMERGENCIES

In the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions, the Contractor shall: (1) provide appropriate notifications to the City and the Governmental Bodies having jurisdiction and shall facilitate coordinated emergency response actions by the City and all such other appropriate Governmental Bodies; (2) undertake necessary spill prevention and response measures; (3) assure timely availability of all personnel required to respond to any emergency; and (4) otherwise comply with this Agreement.

SECTION 13: SUBCONTRACTORS

The Contractor hereby agrees that no subcontractor will be used to perform any of the services to be provided to the City under this Agreement without written approval of the City. The Contractor further agrees that any subcontractor shall meet all City requirements imposed on the Contractor. The Contractor may use temporary employees from temporary employment agencies. The Contractor shall retain full responsibility to the City under this Agreement notwithstanding the execution or terms and conditions of any subcontract, and no failure of any subcontract used by the Contractor shall relieve the Contractor from its obligations hereunder. The Contractor's indemnity obligations under Section 17 shall extend to all claims for payment of damages by any subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the services performed under this Agreement.

SECTION 14: NON-ASSIGNMENT

The Contractor shall not assign, transfer, convey, or otherwise hypothecate this Agreement or its rights, duties or obligation hereunder or any part thereof without the prior written consent of the City.

SECTION 15: INSURANCE

The Contractor shall obtain and maintain, at its sole cost, throughout the Contract Term of this Agreement, at Contractor sole cost and expense, not less than the insurance coverage set forth below, in addition to the insurance required by Applicable Law, from an insurance company authorized to write casualty insurance in the Commonwealth of Kentucky and having a minimum rating of "A-VII" in the Best Key Rating Guide published by A.M. Best & Co., Inc., as will protect itself, its subcontractors, the City, including officials, agents and employees of the City, from claims for bodily injury, death, property damage, or environmental liability which may arise from operations and services performed under this Agreement. Each

insurance policy (excluding Worker's Compensation) shall name the City as additional insured. The Contractor shall not commence work under this Agreement until it has obtained all insurance required under this Section, and shall have filed the certificates of insurance or a certified copy of the insurance policies with the City. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without ten (10) days written notice to the City of intention to cancel.

1. Commercial General Liability on an occurrence basis, covering bodily injury, personal injury, advertising injury and property damage including loss of use, with minimum limits of:

- a. \$2,000,000 Minimum General Aggregate;
- b. \$2,000,000 Products & Complete Aggregate;
- c. \$1,000,000 Personal & Advertising; and
- d. \$1,000,000 each occurrence.

The Commercial General Liability insurance shall include coverage for on-premises and off-premises operations, contractual liability, broad form property damage and professional liability.

The Commercial General Liability insurance (other than professional liability) shall be written on an occurrence basis and shall not be written on a claims- made basis.

Coverage shall be written on current/latest edition of ISO CG0001 or its equivalent. The City shall be named as an additional insured for ongoing as well as completed operations using the latest edition of ISO endorsements CG2010 and CG2037.

2. Business Automobile Liability insurance coverage, or its equivalent, covering liability arising out of the ownership, maintenance, operation, or use of any owned, non-owned and hired automobiles in connection with this Agreement with a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence.

Coverage shall be written on latest edition of ISO CA0020 including CA 9948 or its equivalent.. Coverage shall include the MCS-90 endorsement.

3. Employers Liability with minimum limits of:

- a. \$1,000,000 Each Accident for Bodily Injury;
- b. \$500,000 Policy limit for Bodily Injury by Disease; and
- c. \$1,000,000 Each Employee bodily Injury by Disease.

4. The insurance required above must be evidenced by a Certificate of Insurance and this Certificate of Insurance must contain one of the following statements:

- a. Policy contains no deductible clauses -or-

- b. Policy contains \$ 1,000.00 deductible property damage clause; however, insurance company will pay claim and collect the deductible from the Contractor.
- c. Higher environmental liability deductibles are acceptable with the prior written approval of the City

5. Kentucky Worker's Compensation Insurance to meet the statutory requirements of the commonwealth of Kentucky: The Contractor shall furnish evidence of coverage of all employees by executing and delivering to the City the Form included in the specifications.

6. All risk property and casualty insurance for the replacement value of the Transfer Station including without limitation the Scales Facility and the Citizen Drop-off Center, and all equipment, vehicles, and other related assets to the Contractor's business operation.

7. Environmental Liability coverage as follows:

- a. \$1,000,000.00 - Pollution Legal Liability and Remediation Legal Liability coverage on the Transfer Station and/or Transfer Station Site;
- b. \$1,000,000.00 – Auto Pollution Liability and Contingent Transportation coverage for each occurrence during the transportation of the Solid Waste; and
- c. \$1,000,000.00 - Owned and Non-Owned Disposal Site Pollution Legal Liability and Remediation/Cleanup coverage and Contingent Transportation Pollution Liability coverage on the Disposal Facility and the Backup Disposal Facility.

All subcontractors must meet the same minimum insurance requirements. Copies of all such insurance policy or policies shall be on file with the City prior to the Service Date and annually at the commencement of each Contract Year.

SECTION 16: SAFETY AND SECURITY

16.1. The Contractor shall maintain the safety of the operations of the Transfer Station at a level consistent with Applicable Law. Without limiting the foregoing, the Contractor shall: (1) take all precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Transfer Station to, (a) all employees working at the Transfer Station and all other persons who may be involved in the operation and maintenance of the Transfer Station, (b) all customers and visitors to the Transfer Station; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate qualified and responsible employee(s) whose duty shall be the supervision of safety, the prevention of fire and accidents and the coordination of such activities as shall be necessary with Applicable Law and City officials; and (5) provide for safe and orderly vehicular movements.

16.2. The Contractor shall be responsible for the security of the Transfer Station, including the safe storage and security of Contractor's equipment, and shall maintain suitable fences, gates and locks at the Transfer Station. The Contractor shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism

or malicious mischief of third parties. The Contractor shall prepare a Safety and Security Plan that will be reviewed by the parties annually and updated when necessary.

SECTION 17: INDEMNIFICATION

17.1. The Contractor covenants and agrees to indemnify, defend, hold harmless, and render whole the City and its elected officials, appointed officers, directors, employees, representatives, agents, consultants and contractors (each, a "City Indemnitee") for (and pay the full amount of) any loss, cost, and expense, including attorney fees, which are incurred by the City Indemnitee for reason of the Contractor's failure to properly perform under this Agreement. Additionally, it is expressly agreed and understood that the Contractor shall at all times indemnify and save the City Indemnitee harmless from (and pay the full amount of) any and all loss or damage which may be sustained by the City Indemnitee by reason of any negligent act or omission committed by the Contractor, and/or its employees and agents, in the performance of its work hereunder. The Contractor shall indemnify and save the City Indemnitee harmless from (and pay the full amount of) any and all claims, demands, and causes of action arising either directly or indirectly from any of such negligent act or omission including but not limited to claims by third parties for property damage or personal injury.

17.2. Notwithstanding the foregoing provisions, in the event loss or damage incurred by the City Indemnitee or claims, demands, or causes of action asserted against the City Indemnitee is attributable to the sole negligence of the City Indemnitee the foregoing provisions shall not apply, but rather, the parties shall have such rights and remedies as provided by law.

17.3. The Contractor's indemnification obligations hereunder shall also include reimbursement to the City Indemnitee for any attorney fees and court costs incurred by the City Indemnitee by reason of making a claim for loss or damage or by reason of the assertion of any claims, demands, or causes of action against it

SECTION 18: EVENTS OF DEFAULT BY THE CONTRACTOR

18.1. In the event the Contractor defaults in the performance of any of the material, covenants or agreements to be kept, done, or performed by it under the terms of this Agreement, the City at its option may notify the Contractor in writing of the nature of such default. Within fifteen (15) days following such notice,

18.1.1. the Contractor shall correct the default; or

18.1.2. in the event of a default not capable of being corrected within fifteen (15) days, the Contractor shall commence correcting the default within fifteen (15) days of the City's notification. The City, in its unreviewable discretion, may grant an extension of time for the correction of the default or for the commencement of actions to correct the default providing that, in the City's reasonable judgment, the Contractor is diligently pursuing a correction, but in no event shall this extension be longer than (40) days from the City's notification.

18.2. If the Contractor fails to correct the default as provided above, the City, without further notice, shall have all of the following rights which the City may exercise singly or in combination, in addition to any other right or remedy allowed by Applicable Law:

18.2.1. the right to declare that this Agreement, together with all rights granted the Contractor hereunder, are terminated effective upon such date as the City shall designate; and

18.2.2. the right to contract with others to perform the services otherwise to be performed by the Contractor, or to perform such services itself, in which event the Contractor shall be liable to the City for the costs expended by the City to secure such performance; and

18.2.3. the right to pursue all legal and equitable remedies against the Contractor and/or on its bond posted under Section 8 hereof to recover the costs, expenses, and losses by such default.

18.3. Each of the following will constitute a default by the Contractor upon which the City, by notice to the Contractor, may terminate this Agreement without any requirement of having given notice previously or of providing the cure opportunity set forth in Section 18.1:

18.3.1. The failure of the Contractor to have achieved the Service Date by October 1, 2016.

18.3.2. Failure to maintain the insurance as required by Section 15 or bonds required as set forth in Section 7 of this Agreement.

18.3.3. Declaration of voluntary or involuntary bankruptcy.

18.3.4. The insolvency of the Contractor as determined under the Bankruptcy Code.

18.3.5. Except to the extent excused due to an Uncontrollable Circumstance, the failure or refusal of the Contractor to accept, process and dispose of Solid Waste during normal operating hours (i) for a 24-hour period (other than Holidays) at the Transfer Station, or (ii) for a period of seven consecutive days (excluding Holidays) at the Transfer Station.

18.4. The right of termination provided under this Section 18 upon default by the Contractor is not exclusive. If this Agreement is terminated by the City for a default by the Contractor, the City shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement, under the bond set forth in Section 7 and under Applicable Law.

18.5. Termination of this Agreement pursuant to this Section will not relieve the Contractor or its Surety from liability for liquidated damages provided under this Agreement. The Contractor shall be liable for all liquidated damages that have accrued up to the

termination date. The parties acknowledge and agree that such liquidated damages are intended solely to compensate the City for costs and expenses associated with the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that the City is likely to suffer in the event of a Contractor Event of Default under this Article. Accordingly, except with respect to damages relating solely to the specific circumstances for which liquidated damages are provided under this Agreement, the payment of any such liquidated damages by the Contractor will not serve to limit or otherwise affect the City's right to pursue and recover damages under subsection (C) of this Section.

18.6 In the event of breach or default, the non-breaching/non-defaulting party shall also be entitled to recover any costs and expenses incurred in interpreting and enforcing this Agreement, including any court costs, expenses, and reasonable attorney fees.

SECTION 19: EVENTS OF DEFAULT BY THE CITY

19.1. Each of the following shall constitute a default by the City upon which the Contractor, by written notice and an opportunity to cure to the City, may terminate this Agreement:

19.1.1. Any representation or warranty of the City hereunder was false or inaccurate in any material respect when made, and the legality of this Agreement or the ability of the City to carry out its obligations hereunder is thereby adversely affected.

19.1.2. The failure, refusal or other default by the City in its duty to pay an amount required to be paid to the Contractor under this Agreement within 60 days following the due date for such payment.

19.2. No such default described in this Section 19 will give the Contractor the right to terminate this Agreement for cause unless:

19.2.1. The Contractor has given prior written notice to the City stating that a specified default has occurred, which gives the Contractor a right to terminate this Agreement for cause under this Section, and describing the default in reasonable detail; and

19.2.2. The City has neither challenged in an appropriate forum the Contractor's conclusion that such default has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time not to exceed 30 days after the date of the notice given pursuant to the preceding paragraph (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute a default giving the Contractor a right to terminate this Agreement for as long as the City is continuing to take such steps to correct such default).

19.3. In the event of breach or default, the non-breaching/non-defaulting party shall also be entitled to recover any costs and expenses incurred in interpreting and enforcing this Agreement, including any court costs, expenses, and reasonable attorney fees.

SECTION 20: NON-BINDING MEDIATION

20.1. Either party may request non-binding mediation of any dispute arising under this Agreement. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such non-binding mediation shall be divided equally between the City and the Contractor.

20.2. The mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interest are not being served by the mediation.

20.3. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Agreement. No mediator shall be empowered to render a binding decision.

20.4. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial legal proceedings upon a breach of this Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.

20.5 Notwithstanding any disputes which arise between the City and the Contractor, the Contractor shall continue to perform all services required of it under this Agreement during the pendency of the dispute. The City shall pay the undisputed amounts pursuant to this Agreement.

SECTION 21: REPRESENTATIONS AND WARRANTIES

21.1. The Contractor represents and warrants that it is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, is duly qualified to conduct business in the Commonwealth of Kentucky, and has the power and authority to enter into this Agreement and to perform the obligations set forth herein. The execution and delivery of this Agreement has been approved by all necessary action of the members of the Contractor, and no other actions are required in order to constitute this Agreement as a binding obligation of a contract.

21.2. To the best of its knowledge after due inquiry, neither the execution nor delivery by the Contractor of this Agreement nor the performance by the Contractor of its obligations in

connection with the transactions contemplated hereby or the fulfillment by the Contractor of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Contractor or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any organizational document of the Contractor, or any contract, agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

21.3. Except as disclosed in writing to the City, there is no legal proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Contractor's knowledge after due inquiry, overtly threatened or publicly announced against the Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the Contractor or the validity, legality or enforceability of this Agreement against the Contractor, or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby, or on the ability of the Contractor to perform its obligations hereunder or under any such other agreement or instrument.

21.4. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Agreement by the Contractor or the performance of its payment or other obligations hereunder except as such have been duly obtained or made or, if not required as of the Effective Date, are expected to be obtained in due course.

21.5 Except as disclosed in writing to the City, to the best of its knowledge after due inquiry, there are no material and adverse claims or demands based in environmental or tort law, or based on breach of contract, pending or threatened against the Contractor with respect to any solid waste transfer station operated, maintained or managed by the Contractor that would have a material and adverse effect upon the ability of the Contractor to perform this Agreement.

21.6 Except as disclosed in writing to the City, to the best of its knowledge after due inquiry, the Contractor is not in material violation of any law, order, rule or regulation applicable to any solid waste transfer station operated, maintained or managed by the Contractor, the violation of which may have a material and adverse effect on the ability of the Contractor to perform its obligations hereunder.

21.7 The information supplied and representations and warranties made by the Contractor in all submittals made in response to the RFP and in all post-Contractor Proposal submittals with respect to the Contractor are true, correct and complete in all material respects.

SECTION 22: NOTICES

All notices required, permitted, or given pursuant to the provisions of this Agreement shall be in writing, and either (i) hand delivered, (ii) delivered by certified mail, postage prepaid, return receipt requested, (iii) delivered by an overnight delivery service, or (iv) delivered by

facsimile machine or email, followed within twenty-four (24) hours by delivery under options (i), (ii) or (iii) addressed as follows:

If to the Contractor:

Freedom Waste Service, LLC
10129 Highway 62 West
Princeton, Kentucky 42445

With copy to:

Freedom Waste Service, LLC
6500 Glenridge Park Place, Suite #10
Louisville, Kentucky 40222

With copy to:

Bryan Wilson, Esq.
Neely, Brien & Wilson
238 North 7th Street
Mayfield, Kentucky 42066
bryan@neelybrien.com

If to the City:

City of Paducah Kentucky
City Hall
300 South 5th Street
Paducah, KY 42001
Attention: City Manager
jpederson@paducahky.gov

With copy to:

City Attorney
Glenn D. Denton
Denton Law Firm, PLLC
555 Jefferson Street, Suite 301
Paducah, KY 42001
gdenton@dentonfirm.com

Notices shall be deemed delivered upon receipt. The addresses given above may be changed by any party by notice given in the manner provided herein.

SECTION 23: CONTRACTOR'S RECORDS

23.1. Contractor shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements:

23.1.1. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers and canceled checks, as well as all other records or documents evidencing or relating to charges for services, expenditures or disbursements borne by the City for a minimum period of five (5) years, or for any longer period required by Applicable Law, from the date of final payment to Contractor pursuant to this Agreement.

25.5. The City shall resume service with Contractor according to the terms of this Agreement after expiration of the notice period, unless Contractor shall provide further written notice of its continuing inability to perform by reason of Uncontrollable Circumstances.

25.6. At any time that Contractor's performance is suspended as set out in this Section, it is understood and agreed by the parties that the City shall not be obligated to Contractor for any or all service interrupted by reason of Uncontrollable Circumstances.

SECTION 26: COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY

During the performance of services in this Agreement, Contractor agrees it will not discriminate in its hiring, employment, and contracting practices with reference to age, sex, race, color, religion, national origin, handicap or disability. The Contractor shall fully comply with Applicable Law, including, but not limited to, posting in conspicuous places, available to employees and applicants for employment, all notices required by Applicable Law.

SECTION 27: DRUG-FREE WORKPLACE.

During the performance of this Agreement, the Contractor agrees to (1) provide a drug-free workplace for the Contractor's employees; (2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (3) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor. For the purposes of this Section, "drug-free workplace" means a site for the performance of services performed in conjunction with this Agreement. The Contractor's employees, in accordance with this Section, are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance during the performance of this Agreement.

SECTION 28: SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION

All representations and warranties of the parties hereto contained in this Agreement, the Contractor's indemnity obligations in this Agreement with respect to events that occurred prior to the termination, Section 19, and all other provisions of this Agreement that so provide shall survive the termination of this Agreement, subject to any statute of limitation provisions of Applicable Law. No termination of this Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any legal proceeding originated by a third-party as to any matter occurring during the Contract Term to the extent

permitted under Applicable Law.

SECTION 29: TITLES OF SECTIONS

Section headings preceding the text of the sections and subsections of this Agreement are for convenience of reference only, and will not affect its meaning, construction or effect.

SECTION 30: AMENDMENT

This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives and approved by action of the City Commission.

SECTION 31: SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or section contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any phrase, sentence, clause, or section of this Agreement is ruled invalid by any court of competent jurisdiction, then the parties will: (1) promptly negotiate a substitute for such phrase, sentence, clause, or section which will, to the greatest extent legally permissible, effect the intent of the parties in the invalid phrase, sentence, clause, or section; (2) if necessary or desirable to accomplish Item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in substitution for or addition to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision.

SECTION 32: SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties hereto, their successors and assigns.

SECTION 33: ENTIRETY

This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement completely and fully supersedes all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFP, the Contractor's Proposal, and any amendments or supplements to the RFP or the Contractor's Proposal. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

SECTION 34: COUNTERPARTS

This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

SECTION 35: DRAFTING RESPONSIBILITY

The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

SECTION 36: THIRD PARTY RIGHTS

This Agreement is exclusively for the benefit of the City and the Contractor and will not provide any third parties (with the sole exception of the rights of any third-party City Indemnitees under Section 17) with any remedy, claim, liability, reimbursement, cause of action, or other rights.

SECTION 36: LIQUIDATED DAMAGES

This Agreement provides for the payment by the Contractor of liquidated damages in certain circumstances of non-performance, breach and default. Each party agrees that the City's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such non-performance, breach or default of the Contractor), and that the liquidated damages provided for herein with respect to each such circumstance are a reasonable forecast of the just compensation required to place the City in the same economic position as it would have been in had the circumstance not occurred. Such liquidated damages will constitute the only damages payable by the Contractor to the City in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to limit any of the other remedies for breach specifically provided for in this Agreement. The parties acknowledge and agree that the additional remedies specifically provided for in this Agreement are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the parties agree as follows: (i) that the liquidated damages payable under this Agreement are not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the specific circumstances of non-performance or breach; (ii) and that, in recognition of the acknowledgments above, the Contractor is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty or are otherwise not enforceable.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

THE CITY:

CITY OF PADUCAH, KENTUCKY

By: _____

Title: _____

THE CONTRACTOR:

FREEDOM WASTE SERVICE, LLC

By: _____

Title: _____

**SCHEDULE 1
TRANSFER STATION APPROVED PLANS
ATTACHED HERETO**

[To be provided by the Contractor.]

SCHEDULE 2
SOLID WASTE DELIVERY FEES FOR CITY RESIDENTS AND BUSINESSES

\$45-\$65/ton subject to volume and type.

SCHEDULE 3
PERFORMANCE BOND

CONTRACTOR'S PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that **FREEDOM WASTE SERVICE, LLC**, a Kentucky limited liability company (the "Contractor"), as Principal, and **EVERGREEN NATIONAL INDEMNITY COMPANY** (the "Bonding Company"), as Surety, an Ohio corporation, whose principal office is located at 6140 Parkland Boulevard, Suite 300, Mayfield Heights, OH 44124, are firmly bound unto the City of Paducah, a political subdivision the State of Kentucky, (the "City"), as Obligee, to fulfill the obligations of the Principal and the Surety under the AGREEMENT FOR TRANSFER, TRANSPORT AND DISPOSAL OF MUNICIPAL SOLID WASTE (the "Contract") to which reference is hereafter made, in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000.00) (including State sales tax) for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the Contractor 1 has entered into a written Agreement for Transfer, Transport, and Disposal of Municipal Solid Waste with the City of Paducah, dated January [_____]. 2016.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall faithfully perform all the provisions of the Contract on its part, and pay all laborers, mechanics, subcontractors and material suppliers, and all persons who supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and indemnify and hold harmless the City, as Obligee, from all loss, cost or damage which it may suffer by reason of the failure to do any of the foregoing, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the services to be performed thereunder or the SPECIFICATIONS as set forth in the RFP accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the services or to the SPECIFICATIONS as set forth in the RFP.

No final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Terms herein not otherwise defined herein shall have the same meaning as defined in the Contract and the RFP.

SIGNED AND SEALED THIS _____ DAY OF JANUARY, 2016.

SURETY

PRINCIPAL

Signature

Signature

Typed Name

Typed Name

Title

Title

(SEAL)

Note: Date of bond must not be prior to the date of the Agreement.

**AGREEMENT FOR TRANSFER, TRANSPORT
AND DISPOSAL OF MUNICIPAL SOLID WASTE**

THIS AGREEMENT ("Agreement") made and entered into this _____ day of January 2016, by and between the **CITY OF PADUCAH, KENTUCKY**, a municipal corporation and body politic of the Commonwealth of Kentucky, P.O. Box 2267, Paducah, Kentucky 42002-2267, (hereinafter referred to as the "City") and **FREEDOM WASTE SERVICE, LLC**, a Kentucky limited liability company, with local offices located at 3426 State Route 45 South, Mayfield, Kentucky 42066 (hereinafter referred to as "Contractor");

WITNESSETH:

WHEREAS, the City's Solid Waste Division is responsible for the collection of residential and commercial waste within the City limits of Paducah; and

WHEREAS, the City desires to contract for long-term transfer station services, the transport and disposal of all municipal solid waste, and a safe and accessible citizen drop-off area for the deposition of recyclable products; and

WHEREAS, by Request for Proposals for Solid Waste Receipt, Transfer, Haul & Disposal, issued September 17, 2015, the City sought proposals to secure long-term transfer station services, transport and disposal services and a safe and accessible citizen drop-off area for the deposition of recyclable products; and

WHEREAS, after evaluating the proposals received, the City desires to contract with Contractor, as an independent contractor, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for the consideration hereinafter set forth, the City and Contractor agree as follows:

SECTION 1: DEFINITIONS:

For the purposes of this Agreement, the following terms shall apply:

1.1. **Acceptable Recyclable Material:** Shall mean paper, plastic, aluminum, tin, steel, and cardboard.

1.2. **Applicable Law:** Shall mean (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation

utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and both generally applicable and publicly available; and (4) Governmental Approvals, in each case having the force of law and applicable from time to time to the Transfer Station, the Disposal Facility, and the Backup Disposal Facility, the services provided by Contractor under this Agreement, or any other transaction or matter contemplated in this Agreement (including any of the foregoing which pertain to waste management, waste transportation, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination), now in effect, or hereafter enacted during the Contract Term.

1.3. **Approved Plans:** Has the meaning set forth in Section 2.1

1.4. **Backup Disposal Facility:** A landfill or similar facility approved by the City, operated in accordance with all Applicable Laws for handling Solid Waste, to which the Contractor transports Solid Waste from the Transfer Station for final disposal should the Disposal Facility be unable to receive Solid Waste for any reason. In order for the landfill or similar facility to be approved by the City the owner/operator shall maintain, at its sole expense, Owned and Non-Owned Disposal Site Pollution Legal Liability and Remediation/Cleanup with limits of \$3,000,000 per claim during the Contract Term..

1.5. **Billing Month:** Means each calendar month during the Contract Term, commencing the calendar month during which the Service Date occurs.

1.6. **C&D Waste:** Means wastes resulting from construction, remodeling, repair or demolition operations of structures and from road building.

1.7. **Citizen Drop-off Center:** A safe and adequately equipped facility for citizens to directly dispose of Acceptable Recyclable Material at the Transfer Station.

1.8. **Contract Term:** Has the meaning set forth in Section 5.

1.9. **Contract Year:** The first Contract Year shall be the period beginning on the Service Date and ending on the following July 31st. Thereafter, a Contract Year shall be the period beginning on August 1st and ending on the following July 31st.

1.10. **Contractor's Proposal:** Written terms, conditions, and costs for performing the work and submitted by Contractor on October 15, 2015 to the City in response to the City's RFP.

1.11. **City-Designated Personnel:** The City Manager and other City employees or agents designated by the City Manager.

1.12. **Construction Completion:** Has the meaning set forth in Section 2.2.1.

1.13. **Consumer Price Index or CPI:** The U.S. Department of Labor, Bureau of

Labor Statistics, Consumer Price Index for the South Region , All Items, All Urban Consumers (CPI-U), Not Seasonally Adjusted, and reported in the CPI Detailed Report Series Id: CUUR0300SA0.

1.14. **Consumer Price Index Adjustment Factor or CPI Adjustment Factor:** The pricing adjustment factor to be applied, when used with respect to a particular Contract Year, equal to the quotient derived by dividing (a) the average of the 12 monthly CPI values in the Contract Year preceding the Contract Year with respect to which a calculation is made, divided by (b) the average of the 12 monthly CPI values from January 2015 through and including December 2015.” The language following (b) in the example definition would result in the average 2015 CPI being used as the base upon which all future adjustments will be made (as opposed to a year-over-year change in CPI).

1.15. **Disposal Facility:** The City approves West Kentucky Landfill located in Graves County, Kentucky, a landfill, owned and operated by Jones Sanitation Holding, LLC, a Kentucky limited liability company (an affiliated company of the Contractor) to which the Contractor shall transport Solid Waste from the Transfer Station for final disposal; provided, however, the owner/operator shall maintain, at its sole expense, Owned and Non-Owned Disposal Site Pollution Legal Liability and Remediation/Cleanup with limits of \$3,000,000 per claim during the Contract Term. The owner/operator shall operate the Disposal Facility in accordance with Applicable Law for handling Solid Waste.

1.16. **Effective Date:** The date this Agreement is executed and delivered by the parties hereto.

1.17. **Emergency Solid Waste Processing:** An unexpected, serious occurrence or situation urgently requiring prompt action by the Contractor, such as but not limited to pending or post storm event processing of Solid Waste at the Transfer Station as a result of increased curbside collections.

1.18. **Fuel Adjustment Factor:** The pricing adjustment factor to be applied, when used with respect to a particular Contract Year, equal to the quotient derived by dividing (a) the average of the 12 monthly EIA Diesel All Types Prices – Midwest (PADD2) (the “EIA Diesel Prices”), as reported by the U.S. Energy Information Administration, values in the Contract Year preceding the Contract Year with respect to which a calculation is made, divided by (b) the average of the 12 monthly EIA Diesel Prices values from January 2015 through and including December 2015.

1.19. **Governmental Approval:** All orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issues by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contractor’s obligations under this Agreement.

1.20. **Governmental Body or Governmental Bodies:** Any federal, state,

regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

1.21. **Moderate Risk Waste:** means any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under Applicable Law solely because the waste is generated in quantities below the threshold for regulation.

1.22. **Request for Proposals or RFP:** Means the Request for Proposals for Transfer Station Receipt, Transfer, Haul and Disposal of Municipal Solid Waste dated September 17, 2015, and any Addenda or amendments thereto.

1.23. **Scales Facility:** The scale house and weighing truck scales operated, maintained, repaired, and replaced by the Contractor and located at the Transfer Station for weighing Solid Waste deliveries. The Contractor shall utilize scales approved and certified by the Commonwealth of Kentucky.

1.24. **Service Date:** Has the meaning set forth in Section 2.2.1.

1.25. **Service Fee:** Has the meaning set forth in Section 4.1.

1.26. **Solid Waste:** Means all municipal solid waste such as garbage, refuse, rubbish and other materials and substances discarded as being spent, useless, worthless or in excess to the generator thereof at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments (including small quantities of hazardous material or medical waste but only to the extent permitted by Applicable Law), which are acceptable now or in the future at the Transfer Stations under Applicable Law. Solid Waste includes Acceptable Recyclable Material, Moderate Risk Waste, White Goods, and C&D Waste.

1.27. **Ton:** shall mean 2,000 pounds.

1.28. **Transfer Station:** The Contractor's facility having all Governmental Approvals required by Applicable Law located on the Transfer Station Site, where Solid Waste is deposited from collection vehicles and transferred to waste hauling vehicles to be transported to the Disposal Facility, including without limitation the Citizen Drop-off Center and the Scales Facility.

1.29. **Transfer Station Site:** Means the parcel of land, consisting of 5 acres, located off of Potter Lane within Paducah, McCracken County, Kentucky, on which the Transfer Station is to be located.

1.30. **Unacceptable Waste:** Shall mean "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. and "hazardous waste" as defined under the Resource

Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

1.31. **Uncontrollable Circumstance:** Any cause beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement, and that materially interferes with or materially increases the cost of performing its obligations hereunder (other than payment obligations), to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such party. Subject to the foregoing, Uncontrollable Circumstances may include without limitation the following: acts of God, war, riot, fire, explosion, wind storm, flood, earthquakes, or action by a Governmental Body not party to this Agreement. Uncontrollable Circumstances shall not include without limitation any act, event, or circumstance that would not have occurred if the affected party had complied with its obligations hereunder; changes in interest rates, inflation rates, wage rates, insurance costs, currency values, labor availability, exchange rates or other economic conditions; changes in the financial condition of the City, the Contractor, any subcontractor, any of the Contractor's affiliates or any other person in the performance of this Agreement; weather conditions normal for the geographic region of the City; strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions by employees; or equipment failure.

1.32. **White Goods:** Means residential appliances, including water heaters, washers, water tanks, dryers, stoves, refrigerators, and electronics.

SECTION 2: SCOPE OF SERVICES - RESPONSIBILITIES OF CONTRACTOR

The Contractor shall furnish the following services and during the Contract Term shall be responsible for the following:

2.1. The Contractor shall, in accordance with this Agreement, design, construct, operate, maintain, and replace, at its sole cost and expense, a Transfer Station on the Transfer Station Site, which shall include without limitation a Citizen Drop-off Center and Scales Facility. The Transfer Station shall be designed, constructed, operated, maintained, repaired and replaced by the Contractor in order to fully satisfy the scope of services and its responsibilities under this Agreement and in accordance with the site plan, specifications, drawings, and other details approved by the Contractor and the City, all of which are attached hereto and made a part hereof as **Schedule 1** (the "Approved Plans"), which Approved Plans shall include without limitation the location and traffic plan associated with the Citizens Drop-off Center to ensure safety by separating citizens and collection vehicles routes of travel while on the Transfer Station Site. At all times during the Contract Term, the Contractor shall own or otherwise have control of the Transfer Station. The Transfer Station shall at all times during the Contract Term have and comply with all Governmental Approvals in order to permit it to be used for the purposes contemplated by this Agreement in compliance with all Applicable Law.

2.2. The construction of the Transfer Station shall be as follows:

2.2.1. The construction schedule shall be as set forth in the Contractor's Proposal, except that the Construction Completion Date for the Transfer Station shall be mutually agreed upon but shall be no later than August 1, 2016. The Construction Completion Date shall be the date that the Transfer Station, built in compliance with the Approved Plans and having all Governmental Approvals, is open and available for the Contractor to begin accepting deliveries of Solid Waste and performing its obligations related thereto hereunder and shall also constitute the "Service Date".

2.2.2. If the Service Date does not occur on or before August 1, 2016 (as extended only due to the occurrence of an Uncontrollable Circumstances), the Contractor shall pay the City delay liquidated damages in the amount of \$1,000.00 per day for each day of such delay. The City may invoice the Contractor for such liquidated damages on a weekly basis, and such invoices will be due and payable by the Contractor within ten days following receipt of the invoice. The failure of the Contractor to have achieved the Service Date by October 1, 2016 shall constitute a material default by the Contractor and the City, by notice to the Contractor, may (notwithstanding anything to the contrary in Section 18) terminate this Agreement without any requirement of having given notice previously or of providing any further cure opportunity.

2.2.3. The Contractor shall meet all Applicable Law in respect to the final design, construction, and Governmental Approvals of the Transfer Station.

2.2.4. The Contractor is solely responsible for the financing and payment of all costs of the design and construction of the Transfer Station and construction of ingress and egress, sitework and utilities to the Transfer Station, including without limitation roads and landscaping.

2.2.5. The Citizens Drop-off Center shall have paved or concrete surfaces for all container and traffic areas to minimize dust and debris accumulation and shall be maintained in a clean and orderly manner at all times, and shall be adequately lit during times of extended hours of operation. The City shall have approval rights with respect to the location and traffic plan associated with the Citizens Drop-off Center to ensure safety by separating citizens and collection vehicles routes of travel while on the Transfer Station Site.

2.3. The Contractor shall furnish at its own cost and expense all labor, materials, supplies and equipment needed to operate and maintain the Transfer Station for the receipt of Solid Waste in accordance with Applicable Law.

2.4. All Solid Waste delivered by City or City residents and businesses to the Transfer Station operated by Contractor under the terms of this Agreement shall be received, safely managed, and loaded into transfer trailers by the Contractor for hauling and disposal at the Disposal Facility or Backup Disposal Facility on the same day such Solid Waste is delivered to the Transfer Station. Except as provided in Section 2.5, all Solid Waste shall be removed from

the Transfer Station each day. The Contractor shall provide for the proper hauling and disposal of all Solid Waste delivered by the City or its residents to the Disposal Facility and the Backup Disposal Facility, in accordance with all terms and conditions of this Agreement. The Contractor shall only dispose of Solid Waste at the Disposal Facility or Backup Disposal Facility, and at no other disposal location without the prior written consent of the City.

2.5. In the event that the Contractor fails to comply with its obligations to accept all Solid Waste (unless failure is due to the occurrence of a Uncontrollable Circumstances) or fails to dispose of Solid Waste at only a City approved disposal facility), the Contractor shall pay the City liquidated damages in the amount of (i) either \$50.00 per ton of rejected Solid Waste or all out-of-pocket costs incurred by the City in disposing of the rejected Solid Waste at another transfer station or disposal site, including without limitation service fees and transport costs, whichever is more, or (ii) \$100.00 per ton of improperly disposed of Solid Waste. The City may invoice the Contractor for such liquidated damages on a weekly basis, and such invoices will be due and payable by the Contractor within ten days following receipt of the invoice. Except to the extent excused due to an Uncontrollable Circumstance, the failure or refusal of the Contractor to accept, process and dispose of Solid Waste during normal operating hours (i) for a 24-hour period (other than Holidays) at the Transfer Station, or (ii) for a period of seven consecutive days (excluding Holidays) at the Transfer Station shall constitute a material default by the Contractor and the City may (notwithstanding anything to the contrary in Section 18) terminate this Agreement without any requirement of having given notice previously or of providing any further cure opportunity.

2.6. The Contractor shall be responsible for the weighing, transportation, marketing and disposal of segregated Recyclable Materials, Moderate Risk Waste and White Goods delivered to and accepted at the Transfer Station (including the Citizens Drop-off Center) from the Transfer Station to appropriate City-approved disposal sites for disposition, including end-use markets, in accordance with Applicable Law. Prior to disposal or recycling of any White Goods, the Contractor shall remove refrigerants and other hazardous components from all such White Goods accepted at the Transfer Station in accordance with the Applicable Law. The Contractor acknowledges that the Service Fee paid in accordance with Section 4 includes all compensation to which the Contractor is entitled on account of all transportation and disposal costs. The Contractor may retain the revenue generated from the marketing of recovered Recyclable Materials, Moderate Risk Waste and White Goods, however, the Contractor is to provide to the City written verification reports as to the quantities of the Acceptable Recyclable Material and income and expense statements for record keeping purposes.

2.7. The Contractor shall schedule its employees in such a manner so as to avoid delays and back-ups in receiving Solid Waste at the Transfer Station. At least two (2) employees shall be available at the Transfer Station during operating hours, which shall be as set forth below:

2.7.1. Monday through Friday 7:00 a.m. to 4:00 p.m.

2.7.2. Saturday 7:00 a.m. to Noon¹.

2.7.3. The Contractor's offices shall be opened from 8 a.m. to 5 p.m. Monday through Friday to handle customer service questions and problems and an answering service, in direct contact with the managers and owners of the Contractor, shall handle after normal operating hour questions and problems.

2.8. The Transfer Station shall be open on all days, except for Sundays and the following holidays unless otherwise agreed upon by the City and Contractor:

2.8.1. New Year's Day

2.8.2. Thanksgiving Day

2.8.3. Christmas Day

2.9. At the Scales Facility, the Contractor shall weigh all vehicles delivering Solid Waste to the Transfer Station by the City before and after the transfer of Solid Waste into the transfer trailers. At the Scales Facility, the Contractor shall also weigh Recyclable Materials, Moderate Risk Waste and White Goods delivered to and accepted at the Transfer Station (including the Citizens Drop-off Center). Such weighing method shall be approved by the City prior to implementation. The City shall have the right to test the accuracy of scales at reasonable times and without unreasonable interference with operations of the Transfer Facility. In the event the weighing scales become inoperable, the Contractor shall repair and/or replace the scales within a commercially reasonable time, not to exceed seven (7) calendar days. During scales breakdown, the City shall provide a reasonable estimate by (a) weighing the collection vehicle at a City facility, (b) using the historical records of the weight of Solid Waste delivered to the Transfer Station for a comparable period during the preceding Contract Year, or (c) any other reasonable means that the City deems appropriate.

2.10. The Contractor shall maintain daily records of the number of Tons of Solid Waste delivered by the City to the Transfer Station and the number of Tons of Solid Waste transported from the Transfer Station to the Disposal Facility, indicating, in each case and to the extent practicable, the date and time of arrival or departure of each City vehicle transporting such waste, with appropriate identification of each vehicle.

2.11. The Contractor shall assist City with Emergency Solid Waste Processing of Acceptable Waste prior to and after storm events or other emergencies within the normal scope of services defined in this section.

2.12. Prior to the Service Date, the Contractor shall own or have right to use the Backup Disposal Facility and shall develop an emergency backup plan, acceptable to the City, in

¹ All times described in this Agreement shall be Central Standard Time.

the event the Disposal Facility is unavailable for disposal at any time during the Contract Term. The Service Fees set forth in Section 4 apply to the Backup Disposal Facility. Also, prior to the Service Date, the Contractor shall notify the City in writing of the location of the Backup Disposal Facility. In the event the location of the Backup Disposal Facility is changed, the Contractor shall provide the City with written notice of the new location at least thirty (30) days prior to such the implementation of such change.

2.13. The Contractor shall furnish, at its sole cost and expense, all personnel, tractors, trailers, licenses, Governmental Approvals, equipment and other requirements necessary to transport all Solid Waste received at the Transfer Station to the Disposal Facility or Backup Disposal Facility. The Contractor shall provide sufficient number of trailers to transport all Solid Waste, with the capacity to transport the Acceptable Recyclable Material (in addition to any other waste it is obligated or may be obligated to transport) for the Contract Term.

2.14. The Contractor shall provide for the receipt, processing and sale of all Acceptable Recyclable Material delivered to the Citizens Drop-off Center by the City or its residents. The Contractor shall, at its sole cost and expense, operate the Citizens Drop-off Center with its own staff, (ii) furnish and maintain roll-off or other containers for collection of Acceptable Recyclable Material, and (iii) arrange for the removal and disposal of such Acceptable Recyclable Material.”

2.15. The Contractor shall provide for the control of insects, rodents and other vectors, and shall employ whatever means necessary to minimize the generation and migration of nuisance litter and debris throughout the Transfer Station on a daily basis.

2.16. The services to be performed under this Agreement by the Contractor shall be performed under all weather conditions. Further, in the event of inclement weather, the Contractor shall be responsible for taking measures necessary (e.g. plowing) to allow for ingress and egress into and within the Transfer Station Site.

SECTION 3: RESPONSIBILITIES OF THE CITY

3.1. The City shall deliver all Solid Waste collected by or on behalf of the City to the Transfer Station during the Contract Term.

3.2. The City makes no representation or guarantee as to the actual quantity or type of Solid Waste to be delivered to the Transfer Station pursuant to this Agreement. The City shall not be liable in damages for any failure to deliver, or cause to be delivered, Solid Waste to the Transfer Station.

3.3 The City shall pay the Service Fee and any other amounts due the Contractor in accordance with the terms and conditions of this Agreement.

3.4 Nothing in this Agreement will be deemed to restrict the right of the City to practice source separation for the recovery, recycling or composting of waste nor the right of the City to conduct, sponsor, encourage or require such source separation. The City will not be responsible or liable for any reduction in the amount of Solid Waste generated in the City and delivered to the Transfer Station by the City, which may result from any such source separation or recycling program.

SECTION 4: CONSIDERATION FOR TRANSFER STATION OPERATION

4.1 As the sole compensation for the Contractor's performance of the services described in Section 2 of this Agreement, beginning on the Service Date the City shall pay the Contractor a service fee in accordance with this Section 4 (the "Service Fee"). For each Billing Month, the City shall pay the Contractor the Service Fee in an amount equal to the sum of (a) the amount determined pursuant to Section 4.1.1 for the amount of Solid Waste (other than Acceptable Recyclable Material) delivered by the City to the Transfer Station during such Billing Month, and (b) the amount determined pursuant to Section 4.1.2 for the amount of Acceptable Recyclable Material delivered to the Citizen Drop-off Center during such Billing Month.

4.1.1. The City shall pay the Contractor a base unit fee of **\$34.95 per Ton** to receive, transfer, process, transport and dispose of all Solid Waste delivered to the Transfer Station by the City. The foregoing amount shall be in effect through July 31, 2017 and shall thereafter be adjusted at the start of each Contract Year as described in Section 4.2.

4.1.2. The City shall pay the Contractor a base unit fee of **\$40.00 per Ton** to receive, transfer, process, transport and sell all Acceptable Recyclable Material delivered to the Citizen Drop-off Center. The foregoing amount shall be in effect through July 31, 2017 and shall thereafter be adjusted at the start of each Contract Year as described in Section 4.2.

4.2. The base unit fees described above in Sections 4.1.1 and 4.1.2 shall be adjusted annually as follows:

4.2.1. 70 % of base unit fees shall be adjusted on August 1, 2017 and on August 1st of each Contract Year thereafter during the Contract Term by multiplying each of the base unit fees specified in Sections 4.1.1 and 4.1.2 by the CPI Adjustment Factor.

4.2.2. 30 % of base unit fees shall be adjusted on August 1, 2017 and on August 1st of each Contract Year thereafter during the Contract Term by multiplying each of the base unit Service Fees specified in Sections 4.1.1 and 4.1.2 by the Fuel Adjustment Factor

4.2.3. For each Contract Year, the aggregate annual increase or decrease to the base unit Service Fees specified in Sections 4.1.1 and 4.1.2 calculated under this provision shall be subject to a maximum increase and a maximum decrease equal to six percent (6%) greater or lower, as applicable, of the base unit Service Fees in effect

during the prior Contract Year.”

4.3. The Contractor shall submit a single invoice to the City for each Billing Month no later than the fifteenth day following the conclusion of such Billing Month. This monthly invoice will be paid by the City within thirty (30) days of the receipt of an approvable invoice for the Billing Month. The invoice shall be accompanied by an itemization and summary of the Tons of all Solid Waste delivered by the City and Acceptable Recyclable Material delivered by residents of the City to the Transfer Station and the Citizen Drop-off Center during the Billing Month.

4.4. Except as otherwise provided herein for Acceptable Recyclable Material delivered to the Citizen Drop-off Center (for which the Contractor shall be compensated pursuant to Section 4.1.2), the Contractor may impose the fees or charges set forth in **Schedule 2** to this Agreement upon City residents and businesses for deliveries of Solid Waste to the Transfer Station . All such charges shall be subject to the annual adjustments set forth in Section 4.2 of this Agreement. The Contractor shall be responsible for billing and collection of such fees and the City shall have no liability therefor.

SECTION 5: CONTRACT TERM

This Agreement shall become effective on the Effective Date and shall continue in effect until the tenth anniversary of the Service Date ,and may be extended, at the sole discretion of the City, on the same conditions as set forth in this Agreement, for two (2) additional five-year periods; provided, however, the City provides Contractor with written notice of its election to renew at least sixty (60) days prior to the expiration of the then existing Contract Term hereunder, unless earlier terminated pursuant to the termination provisions of Section 19, in which event the Contract Term shall be deemed to have ended as of the date of such termination. At the end of the Contract Term, all obligations of the parties hereunder will terminate except as provided in Section 28.

SECTION 6: INSPECTIONS

Contractor agrees to permit City-Designated Personnel to inspect its routes, transfer station facilities, disposal and hauling equipment, complaint logs, or procedures to the extent that such pertain to the performance of this Agreement. The City shall have the right, at any time and at any place, to search Solid Waste delivered to the Transfer Station for personal property retrieval or law enforcement purposes. This right shall in no way be restricted by the Contractor and shall extend to the Disposal Facility and the Backup Disposal Facility as well as vehicles carrying such Solid Waste at any point along the route to the Disposal Facility and the Backup Disposal Facility. The Contractor shall cooperate and assist the City in this regard. Such cooperation and assistance shall include diverting vehicles carrying Solid Waste in transport, producing Solid Waste for inspection by the City and identifying the location of Solid Waste deposited at the Disposal Facility and the Backup Disposal Facility.

SECTION 7: PERFORMANCE BOND

7.1 Upon execution of this Agreement, Contractor shall furnish to the City a performance bond, in the form attached hereto as **Schedule 3** for the faithful performance of this Agreement by the Contractor and all Contractor obligations arising hereunder in the amount of \$1,500,000.00. The cost and expense of obtaining and maintaining the bond under this Section 7 shall be borne by the Contractor without additional reimbursement from the City.

7.2 A surety company licensed to do business in the Commonwealth of Kentucky and acceptable to the City shall issue the bond. A certificate from the surety company showing that the bond premiums are paid in full shall accompany the bond. The bond shall be extended annually thirty (30) days in advance of each Contract Year in an amount of \$1,500,000.00, and shall remain in effect for a period of time ninety (90) days following the expiration or termination of this Agreement.

SECTION 8: INDEPENDENT CONTRACTOR

The Contractor shall perform all work and services described in this Agreement as an independent contractor and not as an officer, agent, servant or employee of the City. Except as otherwise provided under this Agreement, Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same, and nothing herein shall be construed as creating a partnership or joint venture between the City and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the City, and no such person shall be entitled to any benefits available or granted to employees of the City.

SECTION 9: COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall be required to perform all services under this Agreement in compliance with and shall qualify under any and all Applicable Law, and shall cause all subcontractors approved by the City in accordance with Section 13 to comply with any and all Applicable Law. If at any time the Contractor fails to meet these requirements, it shall take immediate actions necessary to remedy such failure, shall pay any resulting damages, penalties and fines and, pursuant to Section 17, shall indemnify and hold harmless the City Indemnitees from any loss and expense resulting therefrom.

SECTION 10: GOVERNMENTAL APPROVALS

Contractor at its sole cost and expense, shall maintain throughout the term of this Agreement all Governmental Approvals necessary or required for Contractor to perform the work and services described herein, as required by Governmental Bodies and Applicable Law.

SECTION 11: LAW TO GOVERN; FORUM SELECTION

This Agreement is entered into and is to be performed in the Commonwealth of Kentucky. The City and Contractor agree that the laws of the Commonwealth of Kentucky shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. Any legal action arising from or relating in any way to this Agreement shall have venue exclusively in the state courts of McCracken County, Kentucky.

SECTION 12: EMERGENCIES

In the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions, the Contractor shall: (1) provide appropriate notifications to the City and the Governmental Bodies having jurisdiction and shall facilitate coordinated emergency response actions by the City and all such other appropriate Governmental Bodies; (2) undertake necessary spill prevention and response measures; (3) assure timely availability of all personnel required to respond to any emergency; and (4) otherwise comply with this Agreement.

SECTION 13: SUBCONTRACTORS

The Contractor hereby agrees that no subcontractor will be used to perform any of the services to be provided to the City under this Agreement without written approval of the City. The Contractor further agrees that any subcontractor shall meet all City requirements imposed on the Contractor. The Contractor may use temporary employees from temporary employment agencies. The Contractor shall retain full responsibility to the City under this Agreement notwithstanding the execution or terms and conditions of any subcontract, and no failure of any subcontract used by the Contractor shall relieve the Contractor from its obligations hereunder. The Contractor's indemnity obligations under Section 17 shall extend to all claims for payment of damages by any subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the services performed under this Agreement.

SECTION 14: NON-ASSIGNMENT

The Contractor shall not assign, transfer, convey, or otherwise hypothecate this Agreement or its rights, duties or obligation hereunder or any part thereof without the prior written consent of the City.

SECTION 15: INSURANCE

The Contractor shall obtain and maintain, at its sole cost, throughout the Contract Term of this Agreement, at Contractor sole cost and expense, not less than the insurance coverage set forth below, in addition to the insurance required by Applicable Law, from an insurance company authorized to write casualty insurance in the Commonwealth of Kentucky and having a minimum rating of "A-VII" in the Best Key Rating Guide published by A.M. Best & Co., Inc., as will protect itself, its subcontractors, the City, including officials, agents and employees of the City, from claims for bodily injury, death, property damage, or environmental liability which may arise from operations and services performed under this Agreement. Each

insurance policy (excluding Worker's Compensation) shall name the City as additional insured. The Contractor shall not commence work under this Agreement until it has obtained all insurance required under this Section, and shall have filed the certificates of insurance or a certified copy of the insurance policies with the City. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without ten (10) days written notice to the City of intention to cancel.

1. Commercial General Liability on an occurrence basis, covering bodily injury, personal injury, advertising injury and property damage including loss of use, with minimum limits of:

- a. \$2,000,000 Minimum General Aggregate;
- b. \$2,000,000 Products & Complete Aggregate;
- c. \$1,000,000 Personal & Advertising; and
- d. \$1,000,000 each occurrence.

The Commercial General Liability insurance shall include coverage for on-premises and off-premises operations, contractual liability, broad form property damage and professional liability.

The Commercial General Liability insurance (other than professional liability) shall be written on an occurrence basis and shall not be written on a claims- made basis.

Coverage shall be written on current/latest edition of ISO CG0001 or its equivalent. The City shall be named as an additional insured for ongoing as well as completed operations using the latest edition of ISO endorsements CG2010 and CG2037.

2. Business Automobile Liability insurance coverage, or its equivalent, covering liability arising out of the ownership, maintenance, operation, or use of any owned, non-owned and hired automobiles in connection with this Agreement with a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence.

Coverage shall be written on latest edition of ISO CA0020 including CA 9948 or its equivalent.. Coverage shall include the MCS-90 endorsement.

3. Employers Liability with minimum limits of:

- a. \$1,000,000 Each Accident for Bodily Injury;
- b. \$500,000 Policy limit for Bodily Injury by Disease; and
- c. \$1,000,000 Each Employee bodily Injury by Disease.

4. The insurance required above must be evidenced by a Certificate of Insurance and this Certificate of Insurance must contain one of the following statements:

- a. Policy contains no deductible clauses -or-

b. Policy contains \$ 1,000.00 deductible property damage clause; however, insurance company will pay claim and collect the deductible from the Contractor.

c. Higher environmental liability deductibles are acceptable with the prior written approval of the City

5. Kentucky Worker's Compensation Insurance to meet the statutory requirements of the commonwealth of Kentucky: The Contractor shall furnish evidence of coverage of all employees by executing and delivering to the City the Form included in the specifications.

6. All risk property and casualty insurance for the replacement value of the Transfer Station including without limitation the Scales Facility and the Citizen Drop-off Center, and all equipment, vehicles, and other related assets to the Contractor's business operation.

7. Environmental Liability coverage as follows:

a. \$1,000,000.00 - Pollution Legal Liability and Remediation Legal Liability coverage on the Transfer Station and/or Transfer Station Site;

b. \$1,000,000.00 – Auto Pollution Liability and Contingent Transportation coverage for each occurrence during the transportation of the Solid Waste; and

c. \$1,000,000.00 - Owned and Non-Owned Disposal Site Pollution Legal Liability and Remediation/Cleanup coverage and Contingent Transportation Pollution Liability coverage on the Disposal Facility and the Backup Disposal Facility.

All subcontractors must meet the same minimum insurance requirements. Copies of all such insurance policy or policies shall be on file with the City prior to the Service Date and annually at the commencement of each Contract Year.

SECTION 16: SAFETY AND SECURITY

16.1. The Contractor shall maintain the safety of the operations of the Transfer Station at a level consistent with Applicable Law. Without limiting the foregoing, the Contractor shall: (1) take all precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Transfer Station to, (a) all employees working at the Transfer Station and all other persons who may be involved in the operation and maintenance of the Transfer Station, (b) all customers and visitors to the Transfer Station; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate qualified and responsible employee(s) whose duty shall be the supervision of safety, the prevention of fire and accidents and the coordination of such activities as shall be necessary with Applicable Law and City officials; and (5) provide for safe and orderly vehicular movements.

16.2. The Contractor shall be responsible for the security of the Transfer Station, including the safe storage and security of Contractor's equipment, and shall maintain suitable fences, gates and locks at the Transfer Station. The Contractor shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism

or malicious mischief of third parties. The Contractor shall prepare a Safety and Security Plan that will be reviewed by the parties annually and updated when necessary.

SECTION 17: INDEMNIFICATION

17.1. The Contractor covenants and agrees to indemnify, defend, hold harmless, and render whole the City and its elected officials, appointed officers, directors, employees, representatives, agents, consultants and contractors (each, a “City Indemnitee”) for (and pay the full amount of) any loss, cost, and expense, including attorney fees, which are incurred by the City Indemnitee for reason of the Contractor’s failure to properly perform under this Agreement. Additionally, it is expressly agreed and understood that the Contractor shall at all times indemnify and save the City Indemnitee harmless from (and pay the full amount of) any and all loss or damage which may be sustained by the City Indemnitee by reason of any negligent act or omission committed by the Contractor, and/or its employees and agents, in the performance of its work hereunder. The Contractor shall indemnify and save the City Indemnitee harmless from (and pay the full amount of) any and all claims, demands, and causes of action arising either directly or indirectly from any of such negligent act or omission including but not limited to claims by third parties for property damage or personal injury.

17.2. Notwithstanding the foregoing provisions, in the event loss or damage incurred by the City Indemnitee or claims, demands, or causes of action asserted against the City Indemnitee is attributable to the sole negligence of the City Indemnitee the foregoing provisions shall not apply, but rather, the parties shall have such rights and remedies as provided by law.

17.3. The Contractor’s indemnification obligations hereunder shall also include reimbursement to the City Indemnitee for any attorney fees and court costs incurred by the City Indemnitee by reason of making a claim for loss or damage or by reason of the assertion of any claims, demands, or causes of action against it

SECTION 18: EVENTS OF DEFAULT BY THE CONTRACTOR

18.1. In the event the Contractor defaults in the performance of any of the material, covenants or agreements to be kept, done, or performed by it under the terms of this Agreement, the City at its option may notify the Contractor in writing of the nature of such default. Within fifteen (15) days following such notice,

18.1.1. the Contractor shall correct the default; or

18.1.2. in the event of a default not capable of being corrected within fifteen (15) days, the Contractor shall commence correcting the default within fifteen (15) days of the City's notification. The City, in its unreviewable discretion, may grant an extension of time for the correction of the default or for the commencement of actions to correct the default providing that, in the City's reasonable judgment, the Contractor is diligently pursuing a correction, but in no event shall this extension be longer than (40) days from the City’s notification.

18.2. If the Contractor fails to correct the default as provided above, the City, without further notice, shall have all of the following rights which the City may exercise singly or in combination, in addition to any other right or remedy allowed by Applicable Law:

18.2.1. the right to declare that this Agreement, together with all rights granted the Contractor hereunder, are terminated effective upon such date as the City shall designate; and

18.2.2. the right to contract with others to perform the services otherwise to be performed by the Contractor, or to perform such services itself, in which event the Contractor shall be liable to the City for the costs expended by the City to secure such performance; and

18.2.3. the right to pursue all legal and equitable remedies against the Contractor and/or on its bond posted under Section 8 hereof to recover the costs, expenses, and losses by such default.

18.3. Each of the following will constitute a default by the Contractor upon which the City, by notice to the Contractor, may terminate this Agreement without any requirement of having given notice previously or of providing the cure opportunity set forth in Section 18.1:

18.3.1. The failure of the Contractor to have achieved the Service Date by October 1, 2016.

18.3.2. Failure to maintain the insurance as required by Section 15 or bonds required as set forth in Section 7 of this Agreement.

18.3.3. Declaration of voluntary or involuntary bankruptcy.

18.3.4. The insolvency of the Contractor as determined under the Bankruptcy Code.

18.3.5. Except to the extent excused due to an Uncontrollable Circumstance, the failure or refusal of the Contractor to accept, process and dispose of Solid Waste during normal operating hours (i) for a 24-hour period (other than Holidays) at the Transfer Station, or (ii) for a period of seven consecutive days (excluding Holidays) at the Transfer Station.

18.4. The right of termination provided under this Section 18 upon default by the Contractor is not exclusive. If this Agreement is terminated by the City for a default by the Contractor, the City shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement, under the bond set forth in Section 7 and under Applicable Law.

18.5. Termination of this Agreement pursuant to this Section will not relieve the Contractor or its Surety from liability for liquidated damages provided under this Agreement. The Contractor shall be liable for all liquidated damages that have accrued up to the

termination date. The parties acknowledge and agree that such liquidated damages are intended solely to compensate the City for costs and expenses associated with the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that the City is likely to suffer in the event of a Contractor Event of Default under this Article. Accordingly, except with respect to damages relating solely to the specific circumstances for which liquidated damages are provided under this Agreement, the payment of any such liquidated damages by the Contractor will not serve to limit or otherwise affect the City's right to pursue and recover damages under subsection (C) of this Section.

18.6 In the event of breach or default, the non-breaching/non-defaulting party shall also be entitled to recover any costs and expenses incurred in interpreting and enforcing this Agreement, including any court costs, expenses, and reasonable attorney fees.

SECTION 19: EVENTS OF DEFAULT BY THE CITY

19.1. Each of the following shall constitute a default by the City upon which the Contractor, by written notice and an opportunity to cure to the City, may terminate this Agreement:

19.1.1. Any representation or warranty of the City hereunder was false or inaccurate in any material respect when made, and the legality of this Agreement or the ability of the City to carry out its obligations hereunder is thereby adversely affected.

19.1.2. The failure, refusal or other default by the City in its duty to pay an amount required to be paid to the Contractor under this Agreement within 60 days following the due date for such payment.

19.2. No such default described in this Section 19 will give the Contractor the right to terminate this Agreement for cause unless:

19.2.1. The Contractor has given prior written notice to the City stating that a specified default has occurred, which gives the Contractor a right to terminate this Agreement for cause under this Section, and describing the default in reasonable detail; and

19.2.2. The City has neither challenged in an appropriate forum the Contractor's conclusion that such default has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time not to exceed 30 days after the date of the notice given pursuant to the preceding paragraph (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute a default giving the Contractor a right to terminate this Agreement for as long as the City is continuing to take such steps to correct such default).

19.3. In the event of breach or default, the non-breaching/non-defaulting party shall also be entitled to recover any costs and expenses incurred in interpreting and enforcing this Agreement, including any court costs, expenses, and reasonable attorney fees.

SECTION 20: NON-BINDING MEDIATION

20.1. Either party may request non-binding mediation of any dispute arising under this Agreement. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such non-binding mediation shall be divided equally between the City and the Contractor.

20.2. The mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interest are not being served by the mediation.

20.3. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Agreement. No mediator shall be empowered to render a binding decision.

20.4. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial legal proceedings upon a breach of this Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.

20.5 Notwithstanding any disputes which arise between the City and the Contractor, the Contractor shall continue to perform all services required of it under this Agreement during the pendency of the dispute. The City shall pay the undisputed amounts pursuant to this Agreement.

SECTION 21: REPRESENTATIONS AND WARRANTIES

21.1. The Contractor represents and warrants that it is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, is duly qualified to conduct business in the Commonwealth of Kentucky, and has the power and authority to enter into this Agreement and to perform the obligations set forth herein. The execution and delivery of this Agreement has been approved by all necessary action of the members of the Contractor, and no other actions are required in order to constitute this Agreement as a binding obligation of a contract.

21.2. To the best of its knowledge after due inquiry, neither the execution nor delivery by the Contractor of this Agreement nor the performance by the Contractor of its obligations in

connection with the transactions contemplated hereby or the fulfillment by the Contractor of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Contractor or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any organizational document of the Contractor, or any contract, agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

21.3. Except as disclosed in writing to the City, there is no legal proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Contractor's knowledge after due inquiry, overtly threatened or publicly announced against the Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the Contractor or the validity, legality or enforceability of this Agreement against the Contractor, or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby, or on the ability of the Contractor to perform its obligations hereunder or under any such other agreement or instrument.

21.4. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Agreement by the Contractor or the performance of its payment or other obligations hereunder except as such have been duly obtained or made or, if not required as of the Effective Date, are expected to be obtained in due course.

21.5 Except as disclosed in writing to the City, to the best of its knowledge after due inquiry, there are no material and adverse claims or demands based in environmental or tort law, or based on breach of contract, pending or threatened against the Contractor with respect to any solid waste transfer station operated, maintained or managed by the Contractor that would have a material and adverse effect upon the ability of the Contractor to perform this Agreement.

21.6 Except as disclosed in writing to the City, to the best of its knowledge after due inquiry, the Contractor is not in material violation of any law, order, rule or regulation applicable to any solid waste transfer station operated, maintained or managed by the Contractor, the violation of which may have a material and adverse effect on the ability of the Contractor to perform its obligations hereunder.

21.7 The information supplied and representations and warranties made by the Contractor in all submittals made in response to the RFP and in all post-Contractor Proposal submittals with respect to the Contractor are true, correct and complete in all material respects.

SECTION 22: NOTICES

All notices required, permitted, or given pursuant to the provisions of this Agreement shall be in writing, and either (i) hand delivered, (ii) delivered by certified mail, postage prepaid, return receipt requested, (iii) delivered by an overnight delivery service, or (iv) delivered by

facsimile machine or email, followed within twenty-four (24) hours by delivery under options (i), (ii) or (iii) addressed as follows:

If to the Contractor:

Freedom Waste Service, LLC
10129 Highway 62 West
Princeton, Kentucky 42445

With copy to:

Freedom Waste Service, LLC
6500 Glenridge Park Place, Suite #10
Louisville, Kentucky 40222

With copy to:

Bryan Wilson, Esq.
Neely, Brien & Wilson
238 North 7th Street
Mayfield, Kentucky 42066
bryan@neelybrien.com

If to the City:

City of Paducah Kentucky
City Hall
300 South 5th Street
Paducah, KY 42001
Attention: City Manager
jpederson@paducahky.gov

With copy to:

City Attorney
Glenn D. Denton
Denton Law Firm, PLLC
555 Jefferson Street, Suite 301
Paducah, KY 42001
gdenton@dentonfirm.com

Notices shall be deemed delivered upon receipt. The addresses given above may be changed by any party by notice given in the manner provided herein.

SECTION 23: CONTRACTOR'S RECORDS

23.1. Contractor shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements:

23.1.1. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers and canceled checks, as well as all other records or documents evidencing or relating to charges for services, expenditures or disbursements borne by the City for a minimum period of five (5) years, or for any longer period required by Applicable Law, from the date of final payment to Contractor pursuant to this Agreement.

23.1.2. Contractor shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by Applicable Law, from the date of termination or completion of this Agreement.

23.2. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time, during regular business hours, upon written request by the City or its designated agent or representative. The records shall be available to the City at the address indicated above for receipt of notices in this Agreement.

23.3. The Contractor shall fully support the City's reporting requirements as required by Applicable Law by providing all data, reports and other information which may be necessary for the City to comply with such reporting requirements or information requests.

SECTION 24: WAIVER

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

SECTION 25: UNCONTROLLABLE CIRCUMSTANCES

25.1. Except as expressly provided under the terms of this Agreement, neither party to this Agreement shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The parties agree that the relief for an Uncontrollable Circumstance described in this Section shall apply to all obligations in this Agreement, except to the extent specifically provided otherwise, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Agreement but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstances.

25.2. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone, facsimile or e mail (accompanied by a telephone call to the City-Designated Personnel), on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the occurrence thereof, followed within 15 days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); (2) the date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected; (3) its estimated impact on the other obligations of such party under this Agreement; and (4) potential mitigating actions which might be taken by the

Contractor or the City and any areas where costs might be reduced and the approximate amount of such cost reductions. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever an Uncontrollable Circumstance occurs, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use all reasonable efforts to eliminate the cause thereof, mitigate and limit damage to itself and the other party, and resume full performance under this Agreement. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by an Uncontrollable Circumstances shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party. The Contractor shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the City.

25.3. If and to the extent that Uncontrollable Circumstances interfere with or delay or the Contractor's performing this Agreement in accordance herewith, and the Contractor has given timely notice as required by Section 25.2, the Contractor shall be entitled to relief from its performance obligations, or an extension of schedule which properly reflects the interference with performance, or the time lost as a result thereof, in each case only to the minimum extent reasonably forced on the Contractor by the event, and the Contractor shall perform all other obligations under this Agreement. In the event that the Contractor believes it is entitled to any performance or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 10 days after the giving of notice delivered pursuant to Section 25.2. Within 30 days after receipt of such a timely submission from the Contractor the City shall issue a written determination as to the extent, if any, it concurs with the Contractor claim for performance or schedule relief, and the reasons therefor. The Contractor acknowledges that its failure to give timely notice pertaining to an Uncontrollable Circumstance as required under this Section 25 may adversely affect the City. To the extent the City asserts that any such adverse effect has occurred and that the adjustment to the Contractor under this Section should be reduced to account for such adverse effect, the Contractor shall have the affirmative burden of refuting the City's assertion. Absent such refutation, the reduction in adjustment to the Contractor asserted by the City in such circumstances shall be effective. The agreement of the parties as to the specific relief to be given the Contractor hereunder on account of an Uncontrollable Circumstance shall be evidenced by a written amendment to this agreement.

25.4. Notwithstanding the forgoing, should Contractor be unable to render performance under this Agreement by reason of Uncontrollable Circumstances, the City shall have the right to secure another vendor to perform any or all portions of the service required under this Agreement for the period of the expected duration of Contractor's inability to perform as set out in Contractor's written notice. In the event Contractor becomes able to resume the performance of its obligations prior to the date set out in the written notice, the City, in its sole discretion, shall have the right to continue service during the notice period with any alternate vendor procured during the notice period or instruct Contractor to resume services notwithstanding anything herein to the contrary.

25.5. The City shall resume service with Contractor according to the terms of this Agreement after expiration of the notice period, unless Contractor shall provide further written notice of its continuing inability to perform by reason of Uncontrollable Circumstances.

25.6. At any time that Contractor's performance is suspended as set out in this Section, it is understood and agreed by the parties that the City shall not be obligated to Contractor for any or all service interrupted by reason of Uncontrollable Circumstances.

SECTION 26: COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY

During the performance of services in this Agreement, Contractor agrees it will not discriminate in its hiring, employment, and contracting practices with reference to age, sex, race, color, religion, national origin, handicap or disability. The Contractor shall fully comply with Applicable Law, including, but not limited to, posting in conspicuous places, available to employees and applicants for employment, all notices required by Applicable Law.

SECTION 27: DRUG-FREE WORKPLACE.

During the performance of this Agreement, the Contractor agrees to (1) provide a drug-free workplace for the Contractor's employees; (2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (3) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor. For the purposes of this Section, "drug-free workplace" means a site for the performance of services performed in conjunction with this Agreement. The Contractor's employees, in accordance with this Section, are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance during the performance of this Agreement.

SECTION 28: SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION

All representations and warranties of the parties hereto contained in this Agreement, the Contractor's indemnity obligations in this Agreement with respect to events that occurred prior to the termination, Section 19, and all other provisions of this Agreement that so provide shall survive the termination of this Agreement, subject to any statute of limitation provisions of Applicable Law. No termination of this Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any legal proceeding originated by a third-party as to any matter occurring during the Contract Term to the extent

permitted under Applicable Law.

SECTION 29: TITLES OF SECTIONS

Section headings preceding the text of the sections and subsections of this Agreement are for convenience of reference only, and will not affect its meaning, construction or effect.

SECTION 30: AMENDMENT

This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives and approved by action of the City Commission.

SECTION 31: SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or section contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any phrase, sentence, clause, or section of this Agreement is ruled invalid by any court of competent jurisdiction, then the parties will: (1) promptly negotiate a substitute for such phrase, sentence, clause, or section which will, to the greatest extent legally permissible, effect the intent of the parties in the invalid phrase, sentence, clause, or section; (2) if necessary or desirable to accomplish Item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in substitution for or addition to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision.

SECTION 32: SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties hereto, their successors and assigns.

SECTION 33: ENTIRETY

This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement completely and fully supersedes all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFP, the Contractor's Proposal, and any amendments or supplements to the RFP or the Contractor's Proposal. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

SECTION 34: COUNTERPARTS

This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

SECTION 35: DRAFTING RESPONSIBILITY

The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

SECTION 36: THIRD PARTY RIGHTS

This Agreement is exclusively for the benefit of the City and the Contractor and will not provide any third parties (with the sole exception of the rights of any third-party City Indemnitees under Section 17) with any remedy, claim, liability, reimbursement, cause of action, or other rights.

SECTION 36: LIQUIDATED DAMAGES

This Agreement provides for the payment by the Contractor of liquidated damages in certain circumstances of non-performance, breach and default. Each party agrees that the City's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such non-performance, breach or default of the Contractor), and that the liquidated damages provided for herein with respect to each such circumstance are a reasonable forecast of the just compensation required to place the City in the same economic position as it would have been in had the circumstance not occurred. Such liquidated damages will constitute the only damages payable by the Contractor to the City in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to limit any of the other remedies for breach specifically provided for in this Agreement. The parties acknowledge and agree that the additional remedies specifically provided for in this Agreement are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the parties agree as follows: (i) that the liquidated damages payable under this Agreement are not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the specific circumstances of non-performance or breach; (ii) and that, in recognition of the acknowledgments above, the Contractor is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty or are otherwise not enforceable.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

THE CITY:

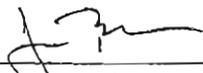
CITY OF PADUCAH, KENTUCKY

By: _____

Title: _____

THE CONTRACTOR:

FREEDOM WASTE SERVICE, LLC

By:  _____

Title: President

**SCHEDULE 1
TRANSFER STATION APPROVED PLANS
ATTACHED HERETO**

[To be provided by the Contractor.]

SCHEDULE 2
SOLID WASTE DELIVERY FEES FOR CITY RESIDENTS AND BUSINESSES

\$45-\$65/ton subject to volume and type.

SCHEDULE 3
PERFORMANCE BOND

CONTRACTOR'S PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that **FREEDOM WASTE SERVICE, LLC**, a Kentucky limited liability company (the "Contractor"), as Principal, and **EVERGREEN NATIONAL INDEMNITY COMPANY** (the "Bonding Company"), as Surety, an Ohio corporation, whose principal office is located at 6140 Parkland Boulevard, Suite 300, Mayfield Heights, OH 44124, are firmly bound unto the City of Paducah, a political subdivision the State of Kentucky, (the "City"), as Obligee, to fulfill the obligations of the Principal and the Surety under the AGREEMENT FOR TRANSFER, TRANSPORT AND DISPOSAL OF MUNICIPAL SOLID WASTE (the "Contract") to which reference is hereafter made, in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000.00) (including State sales tax) for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the Contractor 1 has entered into a written Agreement for Transfer, Transport, and Disposal of Municipal Solid Waste with the City of Paducah, dated January [_____]. 2016.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall faithfully perform all the provisions of the Contract on its part, and pay all laborers, mechanics, subcontractors and material suppliers, and all persons who supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and indemnify and hold harmless the City, as Obligee, from all loss, cost or damage which it may suffer by reason of the failure to do any of the foregoing, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the services to be performed thereunder or the SPECIFICATIONS as set forth in the RFP accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the services or to the SPECIFICATIONS as set forth in the RFP.

No final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Terms herein not otherwise defined herein shall have the same meaning as defined in the Contract and the RFP.

SIGNED AND SEALED THIS _____ DAY OF JANUARY, 2016.

| | |
|---------------------|---------------------|
| _____ SURETY | _____ PRINCIPAL |
| _____ Signature | _____ Signature |
| _____ Typed Name | _____ Typed Name |
| _____ Title | _____ Title |

(SEAL)

Note: Date of bond must not be prior to the date of the Agreement.