

SOLID WASTE COLLECTION SERVICES FRANCHISE AGREEMENT

BETWEEN THE CITY OF RIO COMMUNITIES, NEW MEXICO

AND UNIVERSAL WASTE SYSTEMS, INC.

Governing Body of the City of Rio Communities

Mark Gwinn, Mayor

Peggy Gutjahr, Mayor Pro-Tem
Joshua Ramsell, Councilor

Bill Brown, Councilor
Jim Winters, Councilor

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I. GENERAL PROVISIONS

1. **Authority.** Pursuant to the provisions of New Mexico Statutes Annotated §3-48-3 et seq. (1978) and Rio Communities Ordinance Chapter 11, Article 4, (the "Solid Waste Ordinance"), the City does hereby retain the services of the Contractor and the Contractor hereby agrees to perform solid waste collection and disposal services for the City for the consideration and upon the terms and conditions set forth In this agreement.
2. **Findings.**
 - A. **Collection.** The City finds that uncontrolled, inadequately controlled and improper collection, transportation, and disposal of solid waste:
 - (1) is a public nuisance and a clear and present danger to the people;
 - (2) provides or harbors any breeding places for disease-carrying injurious insects, rodents and other pests harmful to the public health, safety and welfare;
 - (3) constitutes a danger to livestock and domestic animals;
 - (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of this community and has adverse economic and social effects on the community and its residents.
3. **Construction of Agreement.**
 - A. **Headings.** Section and subsection headings are included for convenience only. Such headings are not to be utilized for the purpose of determining the meaning of the agreement.
 - B. **Terms.** Unless the context otherwise requires: the singular shall include the plural; the plural shall include the singular; male shall include female; female shall include male; "may", "can," and "should," shall be permissive; "must," "shall," and "will" shall be mandatory; "or" shall be disjunctive; and "and" shall be conjunctive.
 - C. **Severability.** The provisions of this agreement are severable. If any provision is held invalid, the other provisions shall not be affected thereby but will remain in full force and effect
4. **Exclusive Franchise Agreement for Commercial, and Residential Service and Roll Off Services.** Pursuant to the provisions of City Code Section 11-4-4 A, the City hereby grants, the Contractor the exclusive franchises during the term of this agreement to perform all solid waste collection, disposal and management of all residential, and commercial, and roll off services for residents, businesses and other enterprises located within the City except as limited herein. The City reserves solely unto the City the right to engage in the

collection and disposal of solid waste or any other similar activity that may affect this exclusive grant to the Contractor.

The City warrants that it has the authority to make such a grant. The City shall require mandatory collection of solid waste under this agreement for all residents, commercial businesses, or other enterprises located within the City limits as it may provide under its Solid Waste Ordinance.

5. **Term and Renewals.** Subject to termination as herein provided, the term of this agreement shall be for four (4) years with services of the Contractor to commence at 12:01 a.m. on the 1st day of April 2020, and shall expire on the 31st day of March 2024, at the hour of 11:59 p.m. Service shall begin on the first day of the term of this agreement. The term of this agreement may be extended for two (2) subsequent three (3) year terms.
6. **Binding on Successors and Assigns.** Subject to any restrictions on the transfer and assignment of the rights granted under this agreement, this agreement will inure to the benefit of, and will be binding on the parties hereto. And their respective successors and assigns.
7. **Interface with Local Solid Waste Ordinances.** The City and the Contractor shall comply with the terms of the City Ordinance 2019-69 Chapter 11 Article 4 Solid Waste and/or disposal management. All terms and phrases used in this agreement shall be interpreted consistent with the provisions in any Solid Waste Ordinance, unless otherwise expressly provided herein.

II. CITY PROVISIONS.

1. **City Solid Waste Ordinance.** City agrees to make such modifications to its Solid Waste Ordinance as shall be necessary to Implement the terms of this agreement where determined to be necessary by the City, including any continuing modification of said Solid Waste Ordinance during the term of this agreement and any optional extension hereof.
2. **Tort Claims Act; City Liability.** For any claims arising against the parties, the City shall be responsible for any liability arising from the sole acts of the City or its employees and shall defend those claims subject to the immunities, provisions and limitations of the Tort Claims Act (Section 41-4-1 et seq., N.M.S.A. 1979 comp.) and any amendments thereto.

III. CONTRACTOR PROVISIONS

1. **Areas to be Served; Routes, Schedule.**
 - A. **Areas to be Served.** Service shall be provided to all areas within the corporate limits of the City of Rio Communities and any tracts, territories and areas hereafter annexed to, or acquired by the City of

Rio Communities.

- B. Routes and Schedule of Collections. The Contractor shall provide the City with schedules of residential and commercial collection routes and keep such Information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, the Contractor shall so notify each consumer affected, in a manner and time as is reasonable.

2. Recycling; Solid Waste Reduction Programs. The Contractor shall implement a recycling program as follows:

- A. Curb-Side Recycling. Contractor will offer optional monthly collection of customer separated recyclable materials. Contractor will provide 96-gallon containers to residents as requested for recyclable materials for curbside collection.

Contractor shall provide two (2) 8-yard bins for recycling drop off. One bin at City Hall and one bin at Rio Grande Estates Fire Department, at no charge to the City.

Contractor Shall allow Rio Communities residents to use the Conejo Recycling Facility located in Los Lunas, New Mexico free of charge, as long as contractor operates said facility.

This program does not require or mandate recycling by residents of the City Rio Communities.

(1) Acceptable materials for recycling will include:

- Aluminum
- Corrugated cardboard (flattened)
- Junk mail, office paper/newspaper
- Plastics 1-2

(2) Contractor guarantees that all recyclable materials shall be delivered to a recycling facility unless the City of Rio Communities is notified otherwise, and cause for such action is duly justified.

3. Location and Frequency of Collection.

- A. Residential Collection. All collections made by Contractor shall be cart service only made at curbside, adjacent to the driving surface on the streets adjoining properties, except where special circumstances warrant otherwise and where approved by the City, All solid waste placed out for collection will be placed no further than 3 feet from

the driving surface of the street. The City shall require residents to deliver receptacles to such point for collection and return empty receptacles from said points to the usual place of storage.

- (1) Residential solid waste will be collected once per week.
- (2) It is the responsibility of the customer to see that solid waste is placed in the cart at curbside on the designated collection day. It is also the responsibility of the customer to bag their trash properly prior to being placed in the cart. Curbside refers to that portion of the right-of-way adjacent to paved or traveled roadways.
- (3) In the event a residential customer is disabled in such a manner as to make it impossible for the customer to place the cart at curb-side on the designated collection day and there is no other party either living in the residence or nearby who can perform that task for the disabled customer, Contractor shall make arrangements to retrieve and return the cart to and from the residence. In order to arrange for such service, the disabled customer shall be required to complete a handicapped assistance certification form, copies of which will be logged with the Contractor.

B. Commercial Collection. The Contractor shall have input as to the location of containers on any commercial sites. The Contractor shall provide collection service for the collection of solid waste from commercial units a minimum of once per week, according to the procedure set forth in the Solid Waste Ordinance. All commercial containers, upon the request of the customer, may have a locking mechanism.

4. **Hours of Collection.** Normal hours of collection shall be as specified below. Exceptions will be approved by the City only when necessary to complete collection of a route due to unusual circumstances.
 - A. Residential collection shall be between the hours of 7:00 a.m. and 8:00 p.m. on scheduled service days
 - B. Commercial collection shall be between the hours of 6:00 a.m. and 8:00 p.m. on scheduled service days.
5. **Holidays.** The Contractor may choose to observe the following holidays, on the officially observed day, as non-collection days: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

If the Contractor observes the above listed holidays as non-collection days, then collection shall occur on the next business day. Commercial collections on such holidays shall be performed on the day after the holiday at the option of the

Contractor.

The suspension of collection service on any designated holiday in no way relieves the Contractor of the obligation to provide collection service at least once per week. Extending the hours of collection to meet this obligation is subject to the City's approval, which may not be unreasonably withheld.

The contractor shall make every attempt to make customer aware of holiday schedules.

- 6. Missed Collections.** In the event that a regularly scheduled collection is missed and a complaint is received by either the City or the Contractor, and where no fault can be found on the customers/generator's part, a special collection of the solid waste will be required of the Contractor within 48 hours. The City shall notify the Contractor of any such complaint it receives within 4 business hours.

In the event of missed pickups due to the customer or resident's negligence, at the customer's request special pickup will be made within 48 hours and the customer charged per the applicable rate schedule.

In the event of missed pickup due to acts of God, weather or events outside the control of the Contractor, pickup will be made as soon as possible when conditions are safe to continue service.

- 7. Interruption/Continuity of Service.** An interruption of collection service at the request of a customer due to a vacation or vacancy lasting thirty (30) days or less, will be deemed a continuation of service for the entire month and will not be the subject of a credit on the customer's billing. Interruptions of service requested by the customer, of thirty-one (31) days or greater, will be adjusted on the customer's billing on a pro rata basis.

- 8. Special Services.** The Contractor shall, upon request, provide special services as follows:

A. Bulk Items Pickup. The Contractor will provide customer four (4) bulk pick-ups a year, with a limit of two (2) approved items, at no charge to the customer. Customers must request a special pick up at least 48 hours in advance. Bulk items that will be picked up include:

- Furniture
- Mattresses
- Sinks, toilets
- White goods, such as appliances

B. Community Cleanup. The Contractor will provide one (1) 30-yard roll off container at no cost to the City to facilitate monthly cleanups. The City is responsible for staffing events.

C. Tire Collection. The Contractor twice (2) a year will provide a 20-yard

container to collect tires at a location chosen by the City. The Contractor will not charge the City for the container or the hauling. The City is responsible for staffing the event preparing the tire manifest, and the cost of disposing the tires at the landfill. The Contractor shall invoice the City for the cost of disposing the tires.

- D. Special event Collection. The Contractor shall provide solid waste containers to support two (2) special events in the City as requested by the City Manager or Mayor.
- E. Green Waste Collection. Twice (2) per year on specified dates in the spring and autumn, contractor will collect bundled and/or bagged green waste, curbside at no charge to customers.

9. Containers; Size; Providing for.

- A. Residential. The City shall specify in its Solid Waste Ordinance that each residential customer shall utilize one ninety-six (96) gallon contractor provided receptacle. Residents may request additional receptacles at the rates provided in the attached rate schedules. Only solid waste contained in the Contractor-provided receptacles will be serviced by the Contractor.
- B. Commercial. The City shall specify In Its Solid Waste Ordinance that each commercial business shall utilize a commercial container provided by the Contractor with collection a minimum of one time per week. The contractor shall provide commercial, industry standard front-end loader dumpster from two to eight cubic yard. The Contractor will provide services a maximum of three (3) times a week with rates as established in the attached rate schedules. Customers requiring more services will be provided additional containers at the rates in the attached rate schedule. The use of compactors shall be the subject of private agreements between the Contractor and users to the extent possible, if not regulated by the Solid Waste Ordinance. When conflicts exist as to the type, size, frequency of collection or a prorated shared service, a code enforcement officer will make the final determination, or the City may specify requirements in the Solid Waste Ordinance.

- 10. Noncompliance with Regulations.** Contractor may not collect solid waste from containers that do not conform with the requirements of the City as to size, weight, type, condition, et cetera. The Contractor may apply to the City to remove any waste containers placed for collection at sites covered by parties other than Contractor under this exclusive franchise if such containers are not authorized under this agreement, to replace such unauthorized containers with Contractor's containers, and to notify the owners of such unauthorized containers to arrange to collect them from Contractor. In addition to notifying the owners of unauthorized containers to collect them, Contractor shall reasonably inform the City of all non-standard containers, or of containers which exceed restrictions in weight and size, and shall further place on each such container, or at the residence, a tag indicating the problem with the container.

11. Operations.

A. Service to the City. The Contractor shall maintain an office/service center within the City limits, by January 31, 2021.

The Contractor shall provide reasonable solid waste collection and disposal service to the City Government free of charge. Contractor will also provide free commercial dumpster collection and disposal to City owned facilities as identified below:

- City Hall
- Rio Grande Estates Fire Department
- Tierra Grande Fire Department

B. Necessary Equipment and Containers; Repair and Maintenance. Contractor shall provide an adequate number of vehicles to collect solid waste in accordance with the terms of this agreement. The vehicles shall be licensed in the State of New Mexico and shall be operated in compliance with all applicable state, federal and municipal regulations. The vehicles shall be manufactured and maintained to conform with the appropriate American National Standard Institute's standards. All vehicles and other equipment shall be kept in proper repair and sanitary condition. Each vehicle shall bear at a minimum the name and telephone number of the Contractor plainly visible on both sides of the vehicle. Each vehicle shall be uniquely numbered in numbers at least 3 inches high. Each vehicle shall have at least one broom and shovel to clean up solid waste that may be spilled or otherwise scattered during the process of collection. All vehicles shall be sufficiently secured and/or maintained so as to prevent any littering of solid waste.

- (1) All trucks or other equipment used in collecting solid waste shall be thoroughly cleaned and deodorized or maintained in a sanitary and non-offensive condition.
- (2) The Contractor shall not transfer, sell, assign, lease, surrender, abandon, or permit to lapse its title or right of possession in and to any real or personal property used in the performance of this agreement, without replacing such property with property of comparable serviceability for use in performance of the work required. Any attempt to do so without permission of the City shall constitute a material breach of the agreement.
- (3) The Contractor shall properly maintain all Contractor owned collection equipment, vehicles, and containers, and endeavor to keep the same serviceable. When they are no longer serviceable, such items of equipment should be replaced with property in proper operating condition.
- (4) The Contractor will perform all maintenance and repairs upon

Contractor provided containers in order to keep them in proper operating order. The Contractor shall maintain, repair, or repaint a container upon the order of a code enforcement officer. The Contractor shall be entitled to seek restitution for all maintenance or repairs occasioned by the negligent or intentional acts of third parties, from such responsible third parties.

- (5) The Contractor may make private collections with the same vehicles used for collections under this agreement, provided that such use in no way impairs the delivery of service required under this agreement

C. Inspection of Equipment. The City shall have the right to inspect all vehicles, equipment and containers used by the Contractor in carrying out the requirements of this agreement. Contractor shall promptly perform all corrections of conditions found to be in violation of any City Ordinances or state or federal laws.

D. Supervision of Employees Contractor shall:

- (1) employ and retain supervisors and employees who are experienced and qualified to assure performance of this agreement;
- (2) provide adequate operating and safety training for all of its employees and personnel;
- (3) furnish, upon the request of the City, information concerning the background and experience of any supervisor, agent or employee of the Contractor.
- (4) require the appropriate field employees to wear a company uniform clearly labeled with the name of the company and employee. Such clothing will be as neat and clean as circumstances permit. Shirts will be required at all times;
- (5) allow the City Code Enforcer to make a complaint regarding any employee or agent of the Contractor who violates any provision hereof or who is wanton, negligent or discourteous in the performance of his or her duties, who is unnecessarily noisy or violates the motor vehicle code. Any disciplinary action suggested by the City shall not be binding on the Contractor;
- (6) require that employees follow regular walkways for pedestrians while on private property; not trespass or loiter on private property; not cross property to adjoining property; and not meddle or tamper with property which does not or should not concern them;
- (7) require that each employee assigned to drive a vehicle, shall at all times carry a valid commercial driver's license (CDL) for the type of vehicle being driven and the contractor shall perform

regular driving record checks yearly from the Department of Motor Vehicles to ensure unsafe drivers are removed from serving the City. Contractor shall be responsible for providing the City notice of any “pull notices,” vehicle citations, or vehicle accidents related to any employee or agent of the contractor:

- (8) assure that each employee that drives or operates vehicles or equipment is properly trained in the operation thereof.

12. Performance.

A. Collection and Disposal Performance Bond.

- (1) Contractor shall furnish a performance bond in a form to be prescribed and approved by the City, payable to the City and conditioned upon the Contractor faithfully performing all of the collection and disposal requirements of this agreement. Said bond must be in the penal sum amount of one hundred thousand dollars (\$100,000).
- (2) The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of New Mexico. Attorneys-in-fact who sign performance bonds must file with each bond an effectively dated copy of their power of attorney, bearing the seal of the company evidencing such agent's authority to execute the bond. In case of extension or renewal of this agreement, the Contractor shall furnish a performance bond in the same amount, or subsequently negotiate an amount under the same terms as for the initial agreement. The original surety, however, is in no way obligated to extend or renew the bond.
- (3) This agreement shall be subject to termination by the City at any time if said bond shall be canceled, or the surety thereon relieved from liability for any reason. Notice of cancellation of the bond must be served upon the City thirty (30) days prior to the effective date of said cancellation. The agreement will not be terminated if, within thirty (30) days of such notice, the Contractor files with the City a similar bond to be effective for the balance of the contract period.

13. Right to Require Performance. The failure of either party at any time to require performance by the other party of any provisions of this agreement, will in no way affect the right of that party thereafter to enforce the same. No waiver of either party of any breach of any of the provisions hereof will be taken, or held to be a waiver of any succeeding breach of such provision, or as a waiver of any other provision.

14. Fees

- A. Franchise Fee. In consideration of the City granting the Contractor its franchise, allowing the Contractor to use the City's rights-of-way, and in exchange for all other valuable consideration, Contractor shall pay the City a

franchise fee, which shall be 4% of the amount reported by the Contractor as gross receipts as that term is defined under the Gross Receipts as Compensating Use Tax Act on all fees collected by the Contractor for services performed during the term of this agreement. ; which franchise fee shall be paid monthly by the 10th of the month following the month in which gross receipts are reported to the State of New Mexico. The franchise fee shall not be in lieu of any state or federal fees, charges or taxes. The Franchise Fee shall be enacted by ordinance adopting this franchise agreement and shall be effective as of the beginning of the term of this Agreements.

15. **Books, Records; Access to, Reports.** The Contractor shall keep detailed, accurate and complete records such reasonable form as the City may require. The City has the right to inspect the same to show compliance with this agreement.
16. **Assignment; Subcontract; Sublease.** The rights authorized by this agreement are not assignable either voluntarily or by operation of law without the consent of the City, affiliate consent shall not be unreasonably withheld so long as Contractor assigns voluntarily to a parent, a subsidiary or other corporate affiliate. In the event that a receiver is appointed, an assignment for the benefit of creditors is made or the Contractor becomes insolvent or bankrupt, then the rights authorized hereby may be canceled or annulled, and the City shall have the right to provide collection services or substitute another contractor in its place and stead in a manner provided by law immediately. Contractor shall not subcontract the work or business which it has contracted to perform, without the prior written consent of the City. Contractor shall not sublease, assign or transfer any real or personal property or other assets required to perform the provisions of this agreement, without the prior written consent of the City.
17. **Joint and Several Liability.** If the Contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the Contractor shall be jointly and severally liable.
18. **Indemnification and Hold Harmless.** The Contractor assumes all risk of loss or injury to property or persons caused by or arising from Contractor's negligence in any of its operations or omissions under this agreement. The Contractor will indemnify and hold harmless the City, its officers, agents, servants and employees from any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees arising from any such claims, or from any willful or negligent act or omission of the Contractor, its officers, agents, servants and employees in the performance of this agreement.
19. **Insurance.** The Contractor shall maintain in full force and effect throughout the term of this agreement and throughout any extension or renewal thereof, insurance in the minimum amounts described below. The City shall be named as an additional insured on all insurance policies by endorsement, with the right to approve the specific endorsements for those policies prior to their execution. Employer's liability coverage will be required of the Contractor and *any* subcontractor for any class of employee engaged in work under this agreement that is not protected under the Workmen's Compensation Statute. All insurance will be by insurers acceptable to the City and authorized to do business in the state of New Mexico, and who are rated A,A- (A.M. Best Ratings) or AA+/- (S&P). Coverage shall be on an occurrence basis. All insurance policies shall contain a waiver of subrogation against the City. All insurance policies shall be primary. Coverage shall be on ISO coverage forms. Deductibles in excess of \$20,000 per claim may only be approved by the City. Coverage shall be as broad as that provided in ISO CG 20 01 04 13. Self-insured retentions must be declared and approved by

the City. Automobile coverage shall be ISO Form CA 001 covering Code 1 (any auto) with the limits set forth below.

Fire and extended related coverage and liability insurance for all collection equipment and facilities shall also be provided. Prior to the effective date of this agreement, the Contractor shall furnish the City with certificates of insurance or other satisfactory evidence that such insurance has been procured and is in force. Such policies shall not thereafter be canceled, permitted to expire, or changed without thirty (30) days advance written notice to the City. The failure to have valid policies of insurance in full force and effect at any time during the term of this agreement shall constitute a material breach of this agreement.

Coverage
Minimum Limits of Liability

Workman's Compensation	Statutory
Employer's Liability	\$1,000,000 Each accident
General Liability:	
Bodily Injury occurrence	\$5,000,000 Each \$10,000,000 Aggregate
Property Damage occurrence	\$2,000,000 Each \$10,000,000 Aggregate
Bodily Injury and Property Damage: Each occurrence	\$ 5,000,000
Automobile Liability:	\$5,000,000 per accident for bodily injury and property damage

20. Lawsuits/Litigation. The Contractor shall pay any judgment which may be obtained against the City either alone or jointly with said Contractor, for injury or damage to persons or property by reason of the performance or nonperformance by the Contractor of the terms of this agreement, or in connection with the infringement by the Contractor of any patents. If the City alone shall be sued for such Injury or damage, Contractor shall be provided immediate written notice by the City and Contractor shall tender the claim to the contractor's insurer and appear and defend such action.

21. Waivers. A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of

compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

22. **Grace Period.** In the event that certain requirements contained herein cannot be immediately accomplished or performed by the Contractor upon the execution of this contract, or upon a later date as may be specified herein, and upon notice to the City, it is agreed that there shall be a one (1) month grace period during which the Contractor shall make every effort to come into compliance. During this grace period, the Contractor shall not be in default and the City agrees to take no action to terminate this agreement under the provisions herein, if in the determination of the City the Contractor is making a good faith effort to come into compliance before the expiration of the grace period. The City may extend the grace period for extraordinary circumstances beyond the control of the Contractor, when in the best interest of the City.

IV. ADMINISTRATIVE COMPLIANCE.

1. **Compliance with Law.** In its performance of the terms and conditions of this agreement, the Contractor shall comply with all City, state and federal laws, ordinances and regulations which are now, or which may hereafter regulate the activities which are the subject of this agreement. The Contractor shall keep informed of all existing and future laws, ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. Contractor shall at all times observe and comply with and shall cause all its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees. Contractor shall protect and indemnify the City and all its officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order and decree.
2. **Permits; Licenses; Taxes.** The Contractor shall obtain and assume the cost of all licenses and permits and promptly pay all taxes required by the City or other public entities.
3. **Status as Independent Contractor.** The parties acknowledge and agree that the Contractor shall carry out all the terms of this agreement as an independent Contractor and not as an agent, servant, employee or partner of the City.
4. **Training.** Contractor shall avail itself and its employees of the training in solid waste management provided from time to time by the New Mexico Environmental Division, or by any other recognized entity, and generally keep itself abreast of the advances being made in the field of solid waste disposal.

V. MUTUAL PROVISIONS.

1. **Rates Effective at the beginning of the term of the Agreement.** The Contractor is authorized to charge reasonable rates for the service to be furnished under this agreement. It is understood and agreed between the parties that the rates set out in **Attachment I** for residential services, commercial services and roll-off containers shall remain in effect until April 1, 2021.
2. **Residential, Commercial, and/or Roll Off and Compactor Rate Changes.**
 - A. Rate Adjustments. The referenced rates for residential, and commercial, and roll off accounts shall be adjusted as provided hereafter.
 - (1) Cost of Living Increases. Residential, and commercial, and roll off rates may be adjusted by Ordinance adopted by the City Council, if requested by the Contractor no later than January 31st in the calendar year in which the increase is desired to take effect said increase shall not exceed one hundred percent (100%) of the amount of the National Consumer Price Index for All Urban Consumers (CPI-U) for the preceding April to April period. The rate increase will become effective on April 1st of such calendar year.
 - B. Petition for Unusual or Extraordinary Costs. The Contractor may petition the City at any time for a rate adjustment on the basis of unusual changes in the cost of operations, such as new or revised laws, ordinances or regulations; changes in disposal fees, environmental costs, increases necessitated by force majeure events or for other good reasons. The City shall have the right as a condition for negotiations or approval, to demand inspections by itself or authorized representatives or independent auditors of pertinent records or documents that demonstrate the need for an adjustment to the rates. The City shall conclude all action within ninety (90) days. Failure to conclude action within 90 days may be deemed by the Contractor as an approval.
3. **Billing of Accounts; Basis and Method of Payment.**
 - A. Responsible Party. The owner of the real property being served, or the owner's agent shall be the responsible party for billing purposes as provided under subsection A of section 11-4-5 of the City Code. An owner of vacant land where there is no solid waste collection or disposal services are necessary shall not be required to establish an account with Contractor.
 - B. Advanced Billing. Contractor may bill residential customers for service three months in advance.
4. **Collection and Enforcement.**
 - A. Enforcement of the Solid Waste Ordinance. The Contractor shall notify the City in writing of any account customer delinquent over forty-five (45) days. If such accounts are not brought current within ninety (90) days,

Contractor shall have the option to suspend service until such time as the account and all late fees are paid in full. The City may cite into Municipal Court any person in violation of the Solid Waste Ordinance.

B. Collection Options. The methods to be used to enforce payment obligations with delinquent customers shall be as follows:

(1) Sending collection letters indicating that an account is overdue. Contractor may send no more than two (2) such letters per month and may add a charge per mailing to cover the expense of postage and handling as follows:

a. Residential Account - one dollar (\$1.00) per mailing, plus a late fee of \$5.00 per month per container for each month the account is past due.

a. Commercial Account - 1.25% of outstanding bill, which is 30 or more days in arrears, \$10.00 minimum, plus \$5.00 per month per container for each month the account is past due.

b. If an account is not paid in full after ninety (90) days, Contractor may temporarily suspend service until the account and all late fees are paid in full. Contractor shall not suspend service without notifying both the City and the customer in writing a minimum of ten (10) days prior to any service suspension. Notice to the customer shall be made via regular U.S. mail and by posting on the collection container.

(2) In addition to its other rights and remedies, Contractor may bring a civil suit against the debtor in any court of competent jurisdiction. Such rights do not include the filing and foreclosure of any lien authorized under [Sections 3-36-1](#) through [3-36-7 NMSA 1978](#)

C. Discontinuance of Service. Contractor shall not permanently discontinue service to any customer for failure to pay outstanding charges without first obtaining the consent of the City, which shall not be unreasonably withheld if the customer has previously had two or more temporary service suspensions for failure to pay.

D. Petition for an Adjustment to Rates. The Contractor, after due diligence to collect delinquent accounts, may petition for an adjustment to rates because of an increase in the amount of bad debts, pursuant to the Petition for Unusual or Extraordinary Costs section of this agreement.

5. **Complaints Procedure/Process.** The Contractor shall employ a sufficient number of personnel to answer and respond to all complaints from the public concerning service of the Contractor. Contractor shall equip the office with a telephone system,

which shall include an automatic telephone answering device or service for receiving complaints of the public during non-business hours. Contractor shall also keep a telephone listing in the telephone directory. All complaints shall be promptly investigated as soon as possible, in any event within one (1) business day and resolved as quickly as feasible. Contractor shall have available at all times competent personnel who shall have authority to represent the Contractor.

6. **Title to Solid Waste and Recyclable Materials.** Title to all solid waste and recyclable materials shall be vested in the Contractor upon being placed in the Contractor's vehicle. 100% of the revenue received shall remain solely with the Contractor.
7. **Change of Ownership; Sale of Assets; Notice.** In the event that the Contractors' business assets are sold, the City maintains the right to hold the original owner solely or jointly liable. If, however the City determines that the new ownership or management can adequately and faithfully render the services called for in this agreement for the remaining term of the agreement, then the City may elect to execute a novation allowing the new owner to assume the rights and duties of this agreement. Such novation shall not release the previous owner of any obligation and liability.
8. **Public Rights-of-Way; Use.** The Contractor shall have the right to use any and all streets, alleys, bridges and other public rights-of-way within the City, for the purpose of providing its services and performance under this agreement. Such rights shall be subject to all other regulations, laws or requirements of the City, state or federal government. The City shall exempt Contractor's collection vehicles from any City imposed weight limit on a City street when said vehicle is on a collection route.
9. **Conflict of Interest.** No officer, member or employee of the Contractor or the City shall have any financial interest or other conflict of interest in the terms of this agreement, without full disclosure and/or a waiver by the other party. Such waiver may be granted based on a good faith determination that the best interests of the City are being met.
10. **Bankruptcy; Assignment; Trustee.** Contractor's insolvency, or voluntary or involuntary bankruptcy shall not constitute prospective unwillingness or inability to perform, or a repudiation of this agreement by the Contractor. However, Contractor must provide written, timely and adequate assurance and commitment of its ability to perform. Without such assurances, the City may suspend the terms of this agreement and may terminate the exclusive franchise granted hereunder. If the Contractor fails to provide adequate assurance and commitment, the City may also terminate this agreement with thirty (30) days written notice. Assumption of this agreement and the underlying franchise by any of the Contractor's trustees or receivers, shall be deemed to give rise to a reasonable sense of insecurity. However, the City shall not be bound to the terms of this agreement in the event of the filing of any bankruptcy, or by the insolvent Contractor's trustee or receiver. In such event, the City retains and shall exercise all rights and remedies

available at law and equity.

- 11. Force Majeure; Default; Breach; Termination.** With the exception of the obligation to pay for services previously rendered, the performance of this agreement may be suspended, and the obligations may be excused, in the event and during the period that such performance is reasonably prevented by a cause or causes beyond the reasonable control of a party. Such causes shall include but not be limited to acts of God, acts of war, riot, major fire, explosion, catastrophic accidents, floods or sabotage, strikes or labor disturbances, or other similar acts.
- A. In the event Contractor materially defaults in the performance of any of the material terms of this agreement, the City shall notify Contractor in writing of the nature of such default.
 - B. Within thirty (30) days following such notice, the Contractor shall correct the default or:
 - 1. In the event of a default not capable of being corrected within said period, Contractor shall commence correcting the default at the earliest practical date, utilizing all due diligence and request an extension of time from the City.
 - 2. If Contractor fails to correct the default within the time periods provided above, the City without further notice shall have all rights and remedies provided by law and equity including, but not limited to, the following rights and remedies which may be exercised singly or in any combination:
 - a. The right to declare this agreement, together with the exclusive franchise granted hereunder, terminated effective upon such date as the City shall designate; and
 - b. The right to license others to perform the services otherwise to be performed by the Contractor, or to perform such services itself.
- 12. Bond/Notes; Contractor's Indebtedness.** This agreement, and the underlying exclusive franchise, does not authorize the Contractor to incur indebtedness or liability on behalf of or payable by the City. All expenses incurred and necessary in carrying out the provisions of this agreement shall be payable solely from Contractor's resources. By this agreement, the City does not assume any debts, or pledge a faith and credit or taxing power for the repayment of any Contractor's debt. Contractor shall have no right to have taxes levied, or the taxing authority of the City utilized, for the payment of any of Contractor's debts.

VI. MISCELLANEOUS PROVISIONS.

1. **Effective Date.** For the purpose of performance under this agreement, and for the rates and compensation covered herein, the effective date of this agreement shall be the date that the term of this Agreement begins April 1, 2020.
2. **Publication and Related Costs.** Contractor shall bear the cost of all necessary publication and related costs.
3. **Notices; Points of Contact.** All notices or other communications to be given hereunder, shall be in writing and shall be deemed given when mailed by registered or certified United States mail:

Municipality: The office of the City Clerk
 City of Rio Communities
 360 Rio Communities Blvd
 Rio Communities, NM 87002

Contractor: Universal Waste Systems Inc.
 Attn: Matt Blackburn
 5520 Broadway Blvd SE
 Albuquerque, NM 87105

Any change of address by either party shall be by notice given to the other in the same manner as specified herein.

4. **Discriminatory Practices Prohibited.** Neither the Contractor nor any subcontractor, or any persons acting on Contractor's behalf, shall discriminate against any person because of race, sex, age, creed, color, religion or national origin.
5. **Applicable Law.** This agreement will be governed by the laws of the State of New Mexico both as to interpretation and performance and the proper Venue for any action shall be the Thirteenth Judicial District Court.
7. **Merger of Agreements.** This agreement constitutes the entire agreement and understanding between the parties hereto, and it will not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.
8. **Reservation.** This agreement is subject to the reasonable limitations now or hereafter provided by law. The City reserves the right under its police power to alter and amend related ordinances or codes in any manner necessary for the safety and welfare of the public. This agreement is subject to the provisions of the constitution and laws of the State of New Mexico and all complementary ordinances enacted by the City.

9. **Incorporation into Ordinance.** This Franchise Agreement shall be incorporated as part of an Ordinance granting a franchise to the Contractor. As a condition of this Agreement, Contractor shall provide a written acceptance of the provisions of the said franchise ordinance on such form as the City may provide. In the event that Contractor fails to provide said written acceptance within 30 days following the adoption of said ordinance, the City may declare this franchise agreement to be null and void, and the Contractor shall be required to refund all fees collected to date to customers for which services have not been provided.

ATTACHMENT I

RESIDENTIAL FEE SCHEDULE

CONTAINER	FREQUENCY OF SERVICE	MONTHLY BASE PRICE EXCLUDING APPLICABLE TAXES AND FRANCHISE FEE
96 Gallon Polycart – 15% Indigent 1 Discount	Weekly	\$13.67
96 Gallon Polycart – 10% Veterans', Senior Citizen, Indigent 2 Discount	Weekly	\$14.47
96 Gallon Polycart – Regular Price	Weekly	\$16.00
Additional Polycart(s)	Weekly	\$5.00
2 Yard Dumpster	Weekly	\$63.00
3 Yard Dumpster	Weekly	\$78.00
4 Yard Dumpster	Weekly	\$92.00
Recycling Cart (Monthly)	Monthly	\$5.00

COMMERCIAL FEE SCHEDULE

CONTAINER	FREQUENCY OF SERVICE	MONTHLY BASE PRICE EXCLUDING APPLICABLE TAXES AND FRANCHISE FEE
96 Gallon Polycart	Weekly	\$16.08
2 Yard Dumpster	Weekly	\$63.00
3 Yard Dumpster	Weekly	\$78.00
4 Yard Dumpster	Weekly	\$92.00
6 Yard Dumpster	Weekly	\$117.00
8 Yard Dumpster	Weekly	\$158.00

ROLL-OFF CONTAINER FEE SCHEDULE

*Roll off pricing includes one ton per 10 cubic yards

CONTAINER	FREQUENCY OF SERVICE	MONTHLY BASE PRICE EXCLUDING APPLICABLE TAXES AND FRANCHISE FEE
8 Yard Roll Off	On Call	\$225.00
10 Yard Roll Off*	On Call	\$250.00
15 Yard Roll Off*	On Call	\$275.00
20 Yard Roll Off*	On Call	\$300.00
30 Yard Roll Off*	On Call	\$325.00
40 Yard Roll Off*	On Call	\$375.00

SOLID WASTE COLLECTION SERVICES AGREEMENT

SIGNATURE PAGE

UNIVERSAL WASTE SYSTEMS, INC.

Mark Blackburn, President

Date: _____

CITY OF RIO COMMUNITIES

Mark Gwinn, Mayor

Margaret (Peggy) Gutjahr, Mayor Pro-Tem

Bill Brown, Council

Joshua Ramsell, Council

Jim Winters, Councilor

ATTEST:

Elizabeth (Lisa) Adair, Municipal Clerk

Date: _____