



## Administration Department

P. O. Box 900  
Locust Grove, Georgia 30248

Phone: (770) 957-5043  
Facsimile (770) 954-1223

### Item Coversheet

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**Item:** Agreement – BLS Automated Photo Enforcement

**Action Item:**  Yes  No

**Public Hearing Item:**  Yes  No

**Executive Session Item:**  Yes  No

**Advertised Date:** NA

**Budget Item:** Yes, GF Revenues – Typically – 3230 (Pub Safety)/2650 (Courts)

**Date Received:** August 14, 2020/September 30, 2020

**Workshop Date:** August 17, 2020 – September 21, 2020

**Regular Meeting Date** October 5, 2020

#### Discussion:

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Chief Patton introduced to you the BLS (Blue Line Solutions) proposal for an automated photo enforcement program that is permitted under new Georgia Law within school zones. The resolution allows us to continue with reviewing the agreement as well as preparing for a permit with GDOT that involves the School Board/Superintendent as well as any issues related to our Codes that needs to be updated and added.

#### Recommendation:

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**APPROVE AGREEMENT REGARDING AUTOMATED PHOTO ENFORCEMENT BETWEEN THE CITY OF LOCUST GROVE AND BLUE LINE SOLUTIONS (BLS) FOR SCHOOL ZONES WITH THE CITY AS DESIGNATED, NAMELY LOCUST GROVE ELEMENTARY SCHOOL UNTIL OTHER ZONES ARE ADDED IN THE FUTURE.**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION TO ACCEPT AN AGREEMENT WITH BLUE LINE SOLUTIONS “BLS” IMPLEMENTING A PHOTO SPEED ENFORCEMENT PROGRAM AS AUTHORIZED UNDER TITLE 40 CHAPTER 14 ARTICLE 2 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED (O.C.G.A § 40-14-18 “ENFORCEMENT OF SPEED LIMIT IN SCHOOL ZONES WITH RECORDED IMAGES; CIVIL MONETARY PENALTY; VEHICLE REGISTRATION AND TRANSFER OF TITLE RESTRICTIONS FOR FAILURE TO PAY”); TO AUTHORIZE THE MAYOR, POLICE CHIEF AND CITY MANAGER TO ENGAGE IN THE NECESSARY STEPS TO EFFECTUATE THIS AGREEMENT; TO AUTHORIZE THE CITY ATTORNEY TO REVIEW ANY AND ALL DOCUMENTS RELATED TO THIS PROGRAM; TO AUTHORIZE THE CITY CLERK TO ATTEST ANY AND ALL SIGNATURES RELATED TO SAID IMPROVEMENT PROJECT; TO REPEAL INCONSISTENT RESOLUTIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**W I T N E S S E T H:**

**WHEREAS**, the City of Locust Grove (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia; and,

**WHEREAS**, O.C.G.A § 40-14-18 provides for the placement of enforcement devices within school zones under certain rules and regulations established therein; and,

**WHEREAS**, the City currently has an elementary school located within the boundaries of the City along Martin Luther King, Jr. Boulevard which could be eligible for placement of such an automated enforcement device; and,

**WHEREAS**, the Police Chief recommended that Blue Line Solutions (“BLS”) be used for a photo speed enforcement program as part of a presentation to the Mayor and City Council on August 17, 2020 as attached hereto and incorporated herein as Exhibit “A” and,

**WHEREAS**, an agreement has been prepared and reviewed for the Program subject to approval of the Mayor and City Council; and,

**WHEREAS**, a study for a permit from the Georgia Department of Transportation (GDOT) as well as agreement with the Henry County Board of Education (HCBOE) to complete the project; and,

**WHEREAS**, the Mayor and Council have determined that the need for an automated photo enforcement program at this location is in the best interests of the city for the public good and general welfare, trade, commerce, industry and employment opportunities within the city and the state of Georgia,

**THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOCUST GROVE, GEORGIA, AS FOLLOWS:**

1. **Agreement.** The Mayor and the City Council hereby approve the Agreement for the establishment of an Automated Enforcement Program within the City with BLS as stated in the attached Exhibit "A".
2. **Approval of Execution.** The Mayor and City Manger are hereby authorized to execute all necessary documentation to effectuate this Resolution.
3. **Documents.** The City Clerk is authorized to execute, attest to, and seal any document which may be necessary to effectuate this Resolution, subject to approval as to form by the City Attorney.
4. **Compliance.** The Parties shall ensure that the contract and performance of same comply with House Bill 87 enacted in 2011 by the Georgia General Assembly.
5. **Severability.** To the extent any portion of this Resolution is declared to be invalid, unenforceable or non-binding, that shall not affect the remaining portions of this Resolution.
6. **Repeal of Conflicting Provisions.** All City Resolutions are hereby repealed to the extent they are inconsistent with this Resolution.
7. **Effective Date.** This Ordinance shall take effect immediately.

THIS RESOLUTION adopted this 5<sup>th</sup> day of October, 2020.

\_\_\_\_\_  
Robert Price, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Misty Spurling, City Clerk  
(seal)

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**BLS Agreement**



## **AUTOMATED SPEED ENFORCEMENT SYSTEM AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_ 2019, between **Blue Line Solutions, LLC** (herein "BLS"), and the **City of Locust Grove, GA** (herein "City,") a City of the State of Georgia.

### **WITNESSED:**

WHEREAS, BLS has the legal possession and processes, referred to collectively as the "Automated Speed Enforcement System" (herein "ASE System"), and

WHEREAS, City desires to use the ASE System to monitor excessive speeding infractions and other potential traffic violations, issue traffic notices of violations and evaluate traffic movement and safety, affirms it has no other such equipment or service provider, and has the right, power and authority to execute this Agreement.

NOW THEREFORE, the parties agree:

As used in this Agreement, the following words and terms shall apply:

"**Notice of Liability**" means a notice of liability issued by a competent state or authorized law enforcement agency or by a court of competent jurisdiction relating to an infraction evidenced by the ASE System.

"**Person**" or "**persons**" means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority, or political subdivision thereof or any other form of entity.

"**ASE System**" means Automated Speed Enforcement System, described as photographic traffic monitoring devices capable of accurately detecting a traffic infraction and recording such data with images of such vehicle. Each ASE system will contain a minimum of one LIDAR/camera for each lane of travel in which enforcement is conducted.

"**Violation**" means failure to obey an applicable traffic law or regulation, including, without limitation, operating a motor vehicle in excess of the posted speed limit.

### **2. BLS AGREES TO PROVIDE:**

The scope of work identified in **Exhibit A**.

### **3. City AGREES TO PROVIDE:**

The scope of work identified in **Exhibit B**.



#### **4. TERMS AND TERMINATION**

a. The term of this Agreement shall be for two (2) years beginning on the date of the first notice of a liability is issued and payable and may be automatically extended for three additional 2 (two) year period at the sole option of City. Either party may terminate this Agreement at the expiration of any term providing written notice of its intent not to extend the Agreement at least thirty (30) days prior to the expiration of the current term.

Either party shall have the right to terminate this Agreement by written notice:

- i) At any time during the term of this agreement without cause with 30-day notice;
- ii) If applicable law is changed so as to prohibit or substantially interfere with the operation or feasibility of the ASE System or the parties' obligations under this Agreement;
- iii) For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection may occur if the terminating party notifies the other party of its intent to terminate, stating the specific grounds therefore, and the other party fails to cure the default within sixty (60) days after receiving notice.

b. Upon any termination of this Agreement, the parties recognize that BLS and City will use its best efforts to continue to process any and all pending and legitimate traffic law violations. Accordingly, the parties shall have the following obligations which continue during the termination process: City shall cease using the ASE System, shall allow BLS to retrieve all equipment to BLS within a reasonable time not to exceed 30 days, and shall not generate further images to be processed. Unless reasonably agreed upon otherwise by both parties, BLS and City shall continue to process all images and notices of violation that occurred before termination in accordance with this Agreement and BLS shall be entitled to all Fees specified in the Agreement as if the Agreement were still in effect.

c. Notwithstanding any provision to the contrary this Agreement terminates automatically upon a determination by any Court of jurisdiction, State or Federal, that the ASE System or the underlying infraction are unconstitutional, illegal or otherwise prohibited. Any legislative act, State or Federal, which prohibits the use of the ASE System or the enforcement of the underlying infraction, shall also automatically terminate this agreement.

#### **5. ASSIGNMENT AND EFFECT OF AGREEMENT**

Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the City hereby acknowledges that the performance of BLS's equipment and obligations pursuant to this Agreement require a significant investment by BLS, and that, in order to finance such investment, BLS may be required to enter into certain agreements or



arrangements with financial institutions or other similar entities. The City hereby agrees that BLS shall have the right to assign or pledge its rights under this Agreement in connection with any financing subject to the City's prior written approval, which approval shall not be unreasonably withheld or delayed. The City further agrees that in the event BLS provides written notice to the City that it intends to assign or pledge its rights pursuant to this Agreement, and in the event that the City fails to provide such approval or fails to object within thirty (30) days after its receipt of such notice from BLS, then BLS shall be free to effect such transaction.

This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and assigns as permitted by law.

#### **6. FEES AND PAYMENT**

City shall pay BLS for all equipment, services and maintenance based on the Service Fee schedule indicated in **Exhibit C**.

BLS shall collect and accumulate all payments to City on a monthly basis and provide proper payment to City on or before the 15<sup>th</sup> day of the following month. City shall forward to BLS any payments received by City directly from violators within three (3) business days in order for BLS to process and reconcile all payments due and owing under this Agreement.

#### **7. AVAILABILITY OF INFORMATION**

BLS agrees that all relevant information obtained by BLS through operation of the ASE System shall be made available to City at any time during BLS's normal working hours upon reasonable notice, excluding trade secrets and other confidential or proprietary information not reasonably necessary for the prosecution of notices of violation or the fulfillment of BLS's obligations to City under this Agreement.

#### **8. CONFIDENTIAL INFORMATION**

No information provided by BLS to City will be of a confidential nature, unless specifically designated in writing as proprietary and confidential by BLS. Provided, however, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Open Records Act" or similar laws, insofar as they may be applicable.

#### **9. OWNERSHIP OF SYSTEM**

It is understood by the City that the ASE System, and all associated hardware and software being provided by BLS is, and shall remain, the sole property of BLS, unless separately procured by City. The ASE System is being provided to City only pursuant to the terms of this Agreement. City agrees that it shall not make any modifications to BLS's equipment, nor disassemble or perform any type of reverse engineering to the ASE System, nor infringe on any property or patent rights, nor cause or allow any other Person to do any of the foregoing.



#### **10. LIMITED LIABILITY**

Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement.

#### **11. FORCE MAJEURE**

Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, unusually severe weather, epidemics, strikes, or governmental authority approval delays or denials. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

#### **12. CORRESPONDENCE BETWEEN PARTIES**

All notices required to be given under this Agreement shall be deemed provided upon the date postmarked when mailed by first class mail, or by registered mail, and addressed to the proper party at the address set forth in paragraph 19 below.

#### **13. DISPUTE RESOLUTION**

Both parties desire all disputes arising out of or in connection with this Agreement to be resolved through good-faith negotiations between the parties, and to be followed if necessary by professionally-assisted mediation within 45 days. Any such mediator must be acceptable to each party. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to attempt to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and remain confidential. Each party will bear its own costs in the mediation and will equally share the fees and expenses of the mediator.





**14. ADDITIONAL SERVICES**

Additional systems and services provided by Blue Line Innovations Holdings may be added to this Agreement by mutual consent of the parties in writing as an addendum to this Agreement. All other terms and conditions shall remain the same. In the event the City agrees to contract for other services provided by BLS or companies owned by Blue Line Holdings, LLC whether or not associated with the program herein, City authorize BLS to withdraw invoiced amounts on a one time basis, or monthly basis, whichever is chosen by the City, as payment for products/services. Such services may include but are not limited to In-Car Video Systems, Body Worn Cameras, Video/Evidence Storage, & Automated License Plate Recognition Systems.

**15. VALIDITY AND CONSTRUCTION OF TERMS**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and all remaining provisions of this Agreement shall remain in full force and effect.

**16. ENTIRE AGREEMENT**

This Agreement replaces any previous agreements and discussions and constitutes the entire agreement between the parties with respect to the subject matters herein. No amendments, modifications, or alterations of the terms herein shall be binding unless the same is in writing and duly executed by the parties.

**17. AUDIT RIGHTS**

Each party shall have the right to audit the records of the other party pertaining to the Citations issued pursuant to this Agreement solely for the purpose of verifying the accuracy of payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight hours' notice, at mutually convenient times. The cost of any such audit shall be borne by the party requesting the audit.

**18. COVENANT OF FURTHER ASSURANCES**

All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instrument and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereto or to carry out the intent of this Agreement.



**19. NO AGENCY**

The relationship between the parties shall be that of independent contractors, and the employees, agents and servants of either party shall in no event be considered to be employees, agents, or servants of the other party. This Agreement shall not create an agency relationship between BLS and City and neither party may incur any debts or liabilities or obligations on behalf of the other party, except as specifically provided herein.

**20. NOTICES**

Any notices or demand which under the terms of this Agreement or under any law shall be in writing shall be made by personal service, first class mail, or by certified or registered mail to the parties at the following address:

Notices to Blue Line Solutions  
Mark Hutchinson, CEO  
3903 Volunteer Dr., Suite 400  
Chattanooga, TN 37416

Notices to Locust Grove  
Chief Jesse Patton  
3640 Highway 42  
Locust Grove, GA 30248

**21. COMPLIANCE WITH LAWS**

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, provided it is consistent with the intent of the parties as expressed in this Agreement.



**22. STATE LAW TO APPLY**

This Agreement shall be construed under and in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date accepted by the Customer.

**Blue Line Solutions, LLC.**

\_\_\_\_\_

By: \_\_\_\_\_

City OF \_\_\_\_\_

STATE OF \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Mayor**

Approved and authorized this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

**City Clerk**



## **Exhibit A**

### **BLS Obligations and Scope of Work**

- 1) BLS at the request of City shall perform an analysis on selected roadways to determine potential violation rates and assess the most suitable locations for the ASE System equipment.
- 2) BLS shall provide the quantities of ASE Systems equipment as indicated on Exhibit D. From time to time, the parties may agree to add or subtract the number of ASE Systems to be provided and may modify the location(s) if the parties agree in writing.
- 3) BLS shall provide an automated, web-based processing program for all valid Notices of Liability including image processing, mailing of the initial Notice and a reminder Notice, printing and mailing costs. The "Statutory Period" is thirty (30) days within identifying the driver but no more than sixty (60) days from the date of the violation. The program shall comply with any applicable statute of limitation for filing notices of liability (Statutory Period). Subject to the approval and authorization from City, each Notice shall be delivered by First Class mail to the registered owner within the agreed or statutory period. City shall notify BLS of any Notice of Liability where there is no response, and a second reminder Notice, including a late fee as determined by City, shall be sent by First Class mail after the agreed or mandated time period. Subsequent notices or collections notification may be delivered by First Class, Certified Mail-Return Receipt Requested, or by process servers for additional compensation to BLS as agreed by parties.
- 4) BLS shall provide reasonably available vehicle registration information necessary to issue Notices of Violation resulting from the ASE System assuming BLS is authorized to receive such registration data at no additional cost to the Customer.
- 5) BLS shall provide the City the ability to view and print an Evidence Package and shall include a set of images with related documentation for each notice of violation challenged.
- 6) BLS shall provide necessary training for persons designated by the City, and provide reasonable public relations resources to City;
- 7) BLS shall provide an expert witness as reasonably necessary to establish judicial notice for contested violations to establish the accuracy and technical operations of the ASE System.
- 8) BLS shall provide City access to an electronic file with regular updates of specific Notices of Liability issued and shall update the status of all accounts based on the disposition information provided by City, indicating payments received, Notices of Liability outstanding, and cases otherwise closed, dismissed or resolved.
- 9) BLS shall provide to City a monthly report of ASE System results within fifteen days of the end of each calendar month. The report shall include the following information:
  - i) Total number of violation events.
  - ii) Total number of actionable violation events.
  - iii) Total number of Notices of Liability issued.
  - iv) Total number of Notices of Liability paid.
  - v) Such reports on ongoing operations as are required, or such other reports and documents as are mutually agreed upon between BLS and the City.



- 10) BLS shall provide all routine maintenance of ASE System equipment and timely respond to equipment repairs.
- 11) BLS will provide (2) radar speed signs per school zone for placement prior to enforcement cameras.



**Exhibit B**

**City Obligations and Scope of Work**

- 1) City shall cause an authorized officer of the agency to carefully review each potential violation captured by the ASE System, and shall transmit an electronic signature to each Notice of Liability approved by City. City hereby acknowledges and agrees that the decision to issue a Notice of Liability shall be the sole, unilateral and exclusive decision of the authorized officer in such officer's sole discretion, and in no event shall BLS have the ability or authorization to make a Notice of Liability decision.
- 2) City shall provide a judge or hearing officer and court facilities to schedule and hear disputed citations;
- 3) City shall provide customary fine collection services for all final dispositions for contested violations. City agrees to reasonably pursue payments of valid Notices of Liability with service of follow-up letters or summons as required for contested violations.
- 4) City shall automatically transmit an electronic file in an agreed format to BLS with monthly updates of all Notice of Liability disposition information provided by the City indicating payments received or cases otherwise closed, dismissed or resolved for contested violations.
- 5) City shall direct its departments to cooperate with BLS with respect to required system and program implementation and provide reasonable access to City's personnel and facilities in order to permit BLS and City to fulfill the obligations under this Agreement.
- 6) The City agrees to use due diligence in working with BLS to acquire in a timely manner any necessary permits under its control, and approvals or other necessary documentation from the City as necessary for the operation of the ASE System.
- 7) City shall ensure the program and its enforcement procedures comply with all applicable laws and/or policies. City shall ensure all necessary GA DOT permits, as well as, any other necessary permits necessary to erect ASE systems in school zones are secured by school district, City or other government agency. City will be solely responsible for all placement of warning signs in strict compliance with DOT regulations. City shall provide any necessary permits at no cost to BLS.
- 8) City shall complete and sign letter to NLETS authorizing BLS to retrieve vehicle data records for processing.
- 9) As necessary, City shall provide assistance to BLS in obtaining access to vehicle ownership records data, and if requested, provide a letter and support for BLS to use with appropriate licensing bureau agencies indicating that BLS is acting as an authorized agent of City for the purposes of accessing vehicle ownership information on behalf of City.
- 10) City will make available to BLS their Public Works Department, Electricians, or other staff to determine locations of poles, placement of poles, gaining access electricity, electricity hookup, etc. needed. City will obtain all city, state, and county or special permits needed for placement of poles, electricity, or any other service needed for the installation and usage of the ASE System. BLS with written consent may assist with installation at the City's cost.



- 11) City shall operate the ASE System each day school is in session, as authorized by law throughout the duration of the agreement. City shall supply BLS with appropriate school schedules and times for pre-programming of cameras for use, as provided by the school system.
- 12) City shall not capture infractions with ASE System outside the permitted time according to state statute. This includes early dismissals, snow days, school cancellation, and etc. City will have the ability to turn ASE System off during unpermitted use periods, however, may make a written request for BLS to turn ASE System off during unpermitted time periods.
- 13) City shall be responsible for reporting unpaid citations to the Department of Revenue in accordance with statutory requirements.
- 14) City shall properly reimburse BLS for any damage to the ASE System caused by City, its employees or authorized agents.
- 15) City shall issue a letter to BLS showing its authorized use for pole identified for ASE System to be mounted.
- 16) City shall provide a project manager or other designated individual with authority to execute City's responsibilities under the Agreement



**Exhibit C  
Service Fees**

The City agrees to pay BLS the Fee(s) as itemized below:

Revenue of paid Notice of Liability shall be shared between the two parties:

The City's portion shall be 65% of all paid Notice of Liabilities and BLS's portion shall be 35% of all paid Notice of Liabilities. No fees or charges will be assessed to the agency for non-paid violations.

BLS provides all ASE equipment, installation, wireless integration, & infrastructure. ASE System equipment and installation costs are recovered by BLS in 24 equal monthly installments from net revenue generated and apportioned to BLS from revenue share beginning from the first revenue disbursement to the City from each ASE system.

**Fees Charged to Violators**

- A credit card processing fee of \$3.90 to be charged to the violator using a credit/debit card (unless prohibited by state statute) for violation payment paid via the internet. The fee will be \$4.90 for credit/debit card payments processed manually for phone payments. Such processing fees shall be collected by BLS during payment of violation.





**Exhibit D**

**Number and Locations of ASE System Equipment:**

The number of ASE System cameras and equipment, as well as the locations for installation will be determined after a careful analysis by Agency and BLS personnel, considering traffic dynamics, volume and safety assessments on the Customer's roadways. Based on such analysis, BLS and Customer have determined the following:

\_\_\_\_\_ ASE System(s) will be provided: Additional units may be added without contract amendment.

Agreed to this date:

\_\_\_\_\_  
Agency Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Blue Line Solutions, LLC Signature

\_\_\_\_\_  
Date



## Administration Department

P. O. Box 900  
Locust Grove, Georgia 30248

Phone: (770) 957-5043  
Facsimile (770) 954-1223

### Item Coversheet

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**Item:** Extension of Water Tank Maintenance with American Tank

**Action Item:**  Yes  No

**Public Hearing Item:**  Yes  No

**Executive Session Item:**  Yes  No

**Advertised Date:** N/A

**Budget Item:** Fund 505 – Increase of 8.9% over past three (3) years.

**Date Received:** September 16, 2020

**Workshop Date:** September 21, 2020

**Regular Meeting Date** October 5, 2020

#### Discussion:

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The attached draft contracts are for extension of maintenance for the three water tanks: 250,000-gallon Highway 42 Tank, the 500,000-gallon [N/F] Horsetown Tank, and the 750,000-gallon tank on MLK, Jr. Drive. American Tank Maintenance has performed rather well in their initial 3-years of work with us, and we would like to recommend an extension at this time for up to three (3) more years. There is an increase of 8.9% over the prior three years of outlay; however, this would be expected over the life of the prior proposal and agreement.

#### Recommendation:

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**APPROVE A RESOLUTION AUTHORIZING THE CITY OF LOCUST GROVE TO EXTEND AN EXISTING WATER TANK MAINTENANCE SERVICES AGREEMENT WITH AMERICAN TANK MAINTENANCE ON THE THREE TANKS LOCATED AT HIGHWAY 42, PRICE DRIVE/HORSETOWN, AND MLK, JR. BOULEVARD.**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY OF LOCUST GROVE TO EXTEND AN EXISTING WATER TANK MAINTENANCE SERVICES AGREEMENT WITH AMERICAN TANK MAINTENANCE; TO AUTHORIZE THE MAYOR TO SIGN DOCUMENTS NECESSARY TO EFFECTUATE THIS RESOLUTION; TO AUTHORIZE THE CITY ATTORNEY TO PREPARE DOCUMENTS NECESSARY TO EFFECTUATE THIS RESOLUTION; TO AUTHORIZE THE CITY CLERK TO ATTEST SIGNATURES AND AFFIX THE OFFICIAL SEAL OF THE CITY, AS NECESSARY; TO REPEAL INCONSISTENT RESOLUTIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES**

***W I T N E S S E T H :***

**WHEREAS**, the City of Locust Grove ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia; and

**WHEREAS**, the City wishes to extend a Water Tank Maintenance Agreement (the "Agreement") with American Tank Maintenance for three (3) elevated water tanks at Highway 42 (250,000 gallons), N/F Horsetown/Price Drive (500,000 gallons) and MLK Drive (750,000 gallons) in Locust Grove; and

**WHEREAS**, American Tank Maintenance has performed very well in their initial three years of service of those tanks within the City and has offered to continue service at a new, revised steady fee structure beginning in 2021 and up until December 31, 2023 under the existing 1-year term extensions; and

**WHEREAS**, the Mayor and Council of the City of Locust Grove, in the exercise of their sound judgment and discretion, after giving thorough consideration to all the implications involved, and keeping in mind the public interest and welfare of the citizens of the City, have determined that leasing said equipment would be advantageous to and would benefit the citizens of the City.

**THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOCUST GROVE, GEORGIA, AS FOLLOWS:**

1. **American Tank Maintenance Agreement.** The Locust Grove City Council hereby authorizes the Mayor to enter into the extended Water Tank Maintenance Services Agreement for the respective tanks as permitted under Georgia law and in substantially the same terms set forth in Exhibit "A" attached hereto and incorporated herein by reference, subject to review and approval as to form by the City Attorney.

2. **Authorization for Mayor.** That the Locust Grove City Council hereby authorizes the Mayor to execute said Agreement and those documents necessary to effectuate this Resolution. A copy of said documents shall be filed with the City Clerk.

3. **Attestation.** That the Locust Grove City Council hereby authorizes the City Clerk or Assistant City Clerk to attest the signature of the Mayor appearing on the documents, to affix the official seal of the City thereto as necessary to effectuate this Resolution and to place this Resolution and an executed copy of all such documents regarding this Resolution among the minutes or official records of the City for future reference.

4. **Authorization for Attorney.** The Locust Grove City Council hereby authorizes the City Attorney to review as to form and conformance with state law said Agreements and any and all documents necessary to effectuate this Resolution.

5. **Severability.** To the extent any portion of this Resolution or said Agreements declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this Resolution or said Agreements.

6. **Repeal of Conflicting Provisions.** Resolutions or agreements in conflict with this Resolution or the terms of the attached Agreements are repealed to the extent of the conflict.

7. **Effective Date.** This Resolution shall take effect immediately.

**THIS RESOLUTION** adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
ROBERT PRICE, MAYOR

ATTEST:

\_\_\_\_\_  
MISTY SPURLING, CITY CLERK  
(seal)

APPROVAL AS TO FORM:

\_\_\_\_\_  
ANDY WELCH, City Attorney

**EXHIBIT "A"**

**WATER TANK MAINTENANCE AGREEMENTS WITH AMERICAN TANK  
MAINTENANCE:**

**250,000 GALLON ELEVATED TANK ON HIGHWAY 42**

**500,000 GALLON ELEVATED TANK AT N/F HORSETOWN/PRICE ROAD**

**750,000 GALLON ELEVATED TANK ON MLK, JR. DRIVE**

**This agreement entered into by and between the City of Locust Grove hereinafter known as the Owner, the American Tank Maintenance, LLC hereinafter known as the Company.**

**The Owner agrees to employ the Company to provide the professional services needed to maintain its 250,000-gallon water storage tank located at Highway 42 Tank.**

**This agreement outlines the Company's responsibility and accountability for the care and maintenance of the above-referenced water storage tank. The Company's care and maintenance shall include the following:**

**The Company shall furnish all specialized services including engineering and inspection services necessary to maintain and care for the water storage tank during the term of this agreement. Maintenance and care shall include: steel replacement, steel components, expansion joints, water level indicators, manhole covers and/or gaskets, and other components of the water storage tank.**

**The Company shall perform visual inspections and service the water storage tank beginning in Contract Year 1. The water storage tank and its components including the safety, sanitary, structure, security and coatings aspects of the water storage tank shall be inspected and the findings documented to ensure that the water storage tank is in a sound and watertight condition.**

**The Company shall schedule and coordinate a washout inspection of the water storage tank every two years with the Owner beginning in Contract Year 2. The Owner is responsible for draining the water storage tank. The Company shall clean the water storage tank of all mud, silt, and other accumulations which may be harmful to the water storage tank and/or its cleaning the water storage tank the Company shall inspect and document the condition as outlined in the preceding paragraph. Once the cleaning and inspection services are completed the Company shall disinfect the interior surfaces of the water storage tank utilizing AWWA Spray Method #2. A written report of the documented findings including photographs shall be made available to the Owner via mail or electronically.**

**The Company shall perform surface preparation and paint the exterior and/or interior surfaces of the water storage tank at such time as needed. The need for exterior painting shall be determined by the appearance and protective condition of the existing coating system and the Company shall use the same color of the existing coating system. The need for interior painting shall be determined by the thickness of the existing coating system and its protective condition.**

**The Company shall perform all services and utilize products which shall be equal to, or exceed the standards of the State of Georgia, the American Water Works Association, and the Steel Structures Painting Council. The Company shall perform all services relating to the interior of the water storage tank in accordance with procedures outlined in American Water Works Association D-102 standards.**

**The Company shall utilize coating systems which best suit the site conditions, environment, and general location of the water storage tank and are in compliance with local, state and federal statutes.**

**The Company shall install and maintain an anti-climb deterrent device on the access ladder to deter unauthorized access to the water storage tank. The Company shall install and maintain locks on all hatches of the water storage tank to deter unauthorized entry. The keys to the locks shall remain in the possession of the Owner and the Company.**

The Company shall provide emergency service to handle any problems covered by this agreement with the water storage tank. Reasonable mobilization time shall be acceptable to the Owner.

If the Owner needs and requests, then the Company shall provide pressure relief valves to the Owner for the Owner's use during service events which require the water storage tank to be drained.

The Owner shall have the right to continue this agreement for an indefinite period of time providing that the annual fee is paid in accordance with the terms of this agreement. The Owner shall have the right to terminate this agreement by sending written notice to American Tank Maintenance, LLC, P.O. Box 130, Warthen, GA 31094. The Owner's right to termination shall be subject to any agreement provisions incorporated herein.

The Company shall maintain and furnish current certificates of insurance coverage to the Owner during the duration of this agreement.

Until either party gives the other party three months advance notice of termination, this agreement shall become effective on the date of signature by party last to sign and shall remain in effect until 11:59 pm on December 31<sup>st</sup>, 2020 at which time the agreement shall terminate without any financial obligation of the City and then shall renew automatically at 12:00 a.m. on the first day of the next calendar year for an additional 1-year term. At the end of each subsequent one-year term the agreement shall terminate as of 11:59 p.m. on the last day of the year with no financial obligations being owed by the City and then automatically renew at 12:00 a.m. on the first day of the next calendar year for each subsequent one-year term but not to exceed a total of ten single-year terms. This agreement is intended and should be construed to comply with O.C.G.A. §36-60-13. The annual fee for each subsequent contract year shall be \$13,143.00 per year. The maximum number of renewal years shall not exceed three (3) and thus, unless otherwise terminated, this contract shall terminate automatically at 11:59 pm or December 31, 2023.

The annual fee shall be due and payable in quarterly installments beginning March 1, 2021.

The Owner and the Company agree that any future mandated environmental, health or safety requirements which cause significant changes in cost of services provided under this agreement shall be cause for modification of this agreement. The Company is accepting this water storage tank under this agreement based on the current existing structure, components, location and surroundings. Any modification to the water storage tank, including antenna installations, and changes in surroundings especially real estate development shall be cause for modification of this agreement. This agreement does not include the cost for and/or liability on the part of the Company for: containment, removal and/or disposal of any hazardous waste materials, electrical wiring or components, operational problems due to cold weather, Acts of God, structural damage due to antenna installations or other attachments for which the tanks were not originally designed, repairs to the foundation of the water storage tank, operational or structural problems caused by physical conditions below the surface of the ground, acts of terrorism, or other conditions which are beyond the Owner's and/or Company's control.

The Company reserves the right to assign any outstanding receivables from this agreement to its bank or other lending institutions as collateral for any loans or lines of credit.

The Company covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS, the Owner/City and the elected officials, employees, officers, directors, agents and representatives of the City, individually and collectively ("Indemnitees"), from and against any and all costs, claims, liens, damages, losses, expenses,

fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner/City arising out of a third-party claim to the extent arising from any negligent acts or omissions of the Company, any agent, officer, director, representative, employee, consultant or subcontractor of the Company, or their respective officers, agents employees, directors or representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability arising from the negligence of the Owner/City or an Indemnitee. IN THE EVENT THE COMPANY AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH APPLICABLE LAW, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY OR OFFICIAL IMMUNITY AVAILABLE TO THE OWNER OR INDEMNITEES UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER STATE LAW.

This agreement shall be binding upon successors, legal representatives, and assigns of the respective parties hereto.

This Agreement is signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Owner:

American Tank Maintenance, LLC:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

The above signatories certify that they are duly authorized to sign the Agreement on behalf of the entities represented.



**This agreement entered into by and between the City of Locust Grove hereinafter known as the Owner, the American Tank Maintenance, LLC hereinafter known as the Company.**

**The Owner agrees to employ the Company to provide the professional services needed to maintain its 500,000-gallon water storage tank located at [N/F] Horsetown Tank.**

**This agreement outlines the Company's responsibility and accountability for the care and maintenance of the above-referenced water storage tank. The Company's care and maintenance shall include the following:**

**The Company shall furnish all specialized services including engineering and inspection services necessary to maintain and care for the water storage tank during the term of this agreement. Maintenance and care shall include: steel replacement, steel components, expansion joints, water level indicators, manhole covers and/or gaskets, and other components of the water storage tank.**

**The Company shall perform visual inspections and service the water storage tank beginning in Contract Year 2. The water storage tank and its components including the safety, sanitary, structure, security and coatings aspects of the water storage tank shall be inspected and the findings documented to ensure that the water storage tank is in a sound and watertight condition.**

**The Company shall schedule and coordinate a washout inspection of the water storage tank every two years with the Owner beginning in Contract Year 1. The Owner is responsible for draining the water storage tank. The Company shall clean the water storage tank of all mud, silt, and other accumulations which may be harmful to the water storage tank and/or its contents. The Company shall utilize high pressure equipment to perform this operation. Upon cleaning the water storage tank, the Company shall inspect and document the condition as outlined in the preceding paragraph. Once the cleaning and inspection services are completed the Company shall disinfect the interior surfaces of the water storage tank utilizing AWWA Spray Method #2. A written report of the documented findings including photographs shall be made available to the Owner via mail or electronically.**

**The Company shall perform surface preparation and paint the exterior and/or interior surfaces of the water storage tank at such time as needed. The need for exterior painting shall be determined by the appearance and protective condition of the existing coating system and the Company shall use the same color of the existing coating system. The need for interior painting shall be determined by the thickness of the existing coating system and its protective condition.**

**The Company shall perform all services and utilize products which shall be equal to, or exceed the standards of the State of Georgia, the American Water Works Association, and the Steel Structures Painting Council. The Company shall perform all services relating to the interior of the water storage tank in accordance with procedures outlined in American Water Works Association D-102 standards.**

**The Company shall utilize coating systems which best suit the site conditions, environment, and general location of the water storage tank and are in compliance with local, state and federal statutes.**

**The Company shall install and maintain an anti-climb deterrent device on the access ladder to deter unauthorized access to the water storage tank. The Company shall install and maintain locks on all hatches of the water storage tank to deter unauthorized entry. The keys to the locks shall remain in the possession of the Owner and the Company.**

The Company shall provide emergency service to handle any problems covered by this agreement with the water storage tank. Reasonable mobilization time shall be acceptable to the Owner.

If the Owner needs and requests, then the Company shall provide pressure relief valves to the Owner for the Owner's use during service events which require the water storage tank to be drained.

The Owner shall have the right to continue this agreement for an indefinite period of time providing that the annual fee is paid in accordance with the terms of this agreement. The Owner shall have the right to terminate this agreement by sending written notice to American Tank Maintenance, LLC, P.O. Box 130, Warthen, GA 31094. The Owner's right to termination shall be subject to any agreement provisions incorporated herein.

The Company shall maintain and furnish current certificates of insurance coverage to the Owner during the duration of this agreement.

Until either party gives the other party three months advance notice of termination, this agreement shall become effective on the date of signature by party last to sign and shall remain in effect until 11:59 pm on December 31<sup>st</sup>, 2020 at which time the agreement shall terminate without any financial obligation of the City and then shall renew automatically at 12:00 a.m. on the first day of the next calendar year for an additional 1-year term. At the end of each subsequent one-year term the agreement shall terminate as of 11:59 p.m. on the last day of the year with no financial obligations being owed by the City and then automatically renew at 12:00 a.m. on the first day of the next calendar year for each subsequent one-year term but not to exceed a total of ten single-year terms. This agreement is intended and should be construed to comply with O.C.G.A. §36-60-13. The annual fee for each subsequent contract year shall be \$18,862.00 per year. The maximum number of renewal years shall not exceed three (3) and thus, unless otherwise terminated, this contract shall terminate automatically at 11:59 pm or December 31, 2023.

The annual fee shall be due and payable in quarterly installments beginning March 1, 2021.

The Owner and the Company agree that any future mandated environmental, health or safety requirements which cause significant changes in cost of services provided under this agreement shall be cause for modification of this agreement. The Company is accepting this water storage tank under this agreement based on the current existing structure, components, location and surroundings. Any modification to the water storage tank, including antenna installations, and changes in surroundings especially real estate development shall be cause for modification of this agreement. This agreement does not include the cost for and/or liability on the part of the Company for: containment, removal and/or disposal of any hazardous waste materials, electrical wiring or components, operational problems due to cold weather, Acts of God, structural damage due to antenna installations or other attachments for which the tanks were not originally designed, repairs to the foundation of the water storage tank, operational or structural problems caused by physical conditions below the surface of the ground, acts of terrorism, or other conditions which are beyond the Owner's and/or Company's control.

The Company reserves the right to assign any outstanding receivables from this agreement to its bank or other lending institutions as collateral for any loans or lines of credit.

The Company covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS, the Owner/City and the elected officials, employees, officers, directors, agents and representatives of the City, individually and

collectively ("Indemnitees"), from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner/City arising out of a third-party claim to the extent arising from any negligent acts or omissions of the Company, any agent, officer, director, representative, employee, consultant or subcontractor of the Company, or their respective officers, agents employees, directors or representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability arising from the negligence of the Owner/City or an Indemnitee. IN THE EVENT THE COMPANY AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH APPLICABLE LAW, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY OR OFFICIAL IMMUNITY AVAILABLE TO THE OWNER OR INDEMNITEES UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER STATE LAW.

This agreement shall be binding upon successors, legal representatives, and assigns of the respective parties hereto.

This Agreement is signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Owner:

American Tank Maintenance, LLC:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

The above signatories certify that they are duly authorized to sign the Agreement on behalf of the entities represented.

**This agreement entered into by and between the City of Locust Grove hereinafter known as the Owner, the American Tank Maintenance, LLC hereinafter known as the Company.**

**The Owner agrees to employ the Company to provide the professional services needed to maintain its 750,000-gallon water storage tank located at MLK Tank.**

**This agreement outlines the Company's responsibility and accountability for the care and maintenance of the above-referenced water storage tank. The Company's care and maintenance shall include the following:**

**The Company shall furnish all specialized services including engineering and inspection services necessary to maintain and care for the water storage tank during the term of this agreement. Maintenance and care shall include: steel replacement, steel components, expansion joints, water level indicators, manhole covers and/or gaskets, and other components of the water storage tank.**

**The Company shall perform visual inspections and service the water storage tank beginning in Contract Year 2. The water storage tank and its components including the safety, sanitary, structure, security and coatings aspects of the water storage tank shall be inspected and the findings documented to ensure that the water storage tank is in a sound and watertight condition.**

**The Company shall schedule and coordinate a washout inspection of the water storage tank every two years with the Owner beginning in Contract Year 1. The Owner is responsible for draining the water storage tank. The Company shall clean the water storage tank of all mud, silt, and other accumulations which may be harmful to the water storage tank and/or its contents. The Company shall utilize high pressure equipment to perform this operation. Upon cleaning the water storage tank, the Company shall inspect and document the condition as outlined in the preceding paragraph. Once the cleaning and inspection services are completed the Company shall disinfect the interior surfaces of the water storage tank utilizing AWWA Spray Method #2. A written report of the documented findings including photographs shall be made available to the Owner via mail or electronically.**

**The Company shall perform surface preparation and paint the exterior and/or interior surfaces of the water storage tank at such time as needed. The need for exterior painting shall be determined by the appearance and protective condition of the existing coating system and the Company shall use the same color of the existing coating system. The need for interior painting shall be determined by the thickness of the existing coating system and its protective condition.**

**The Company shall perform all services and utilize products which shall be equal to, or exceed the standards of the State of Georgia, the American Water Works Association, and the Steel Structures Painting Council. The Company shall perform all services relating to the interior of the water storage tank in accordance with procedures outlined in American Water Works Association D-102 standards.**

**The Company shall utilize coating systems which best suit the site conditions, environment, and general location of the water storage tank and are in compliance with local, state and federal statutes.**

**The Company shall install and maintain an anti-climb deterrent device on the access ladder to deter unauthorized access to the water storage tank. The Company shall install and maintain locks on all hatches of the water storage tank to deter unauthorized entry. The keys to the locks shall remain in the possession of the Owner and the Company.**

The Company shall provide emergency service to handle any problems covered by this agreement with the water storage tank. Reasonable mobilization time shall be acceptable to the Owner.

If the Owner needs and requests, then the Company shall provide pressure relief valves to the Owner for the Owner's use during service events which require the water storage tank to be drained.

The Owner shall have the right to continue this agreement for an indefinite period of time providing that the annual fee is paid in accordance with the terms of this agreement. The Owner shall have the right to terminate this agreement by sending written notice to American Tank Maintenance, LLC, P.O. Box 130, Warthen, GA 31094. The Owner's right to termination shall be subject to any agreement provisions incorporated herein.

The Company shall maintain and furnish current certificates of insurance coverage to the Owner during the duration of this agreement.

Until either party gives the other party three months advance notice of termination, this agreement shall become effective on the date of signature by party last to sign and shall remain in effect until 11:59 pm on December 31<sup>st</sup>, 2020 at which time the agreement shall terminate without any financial obligation of the City and then shall renew automatically at 12:00 a.m. on the first day of the next calendar year for an additional 1-year term. At the end of each subsequent one-year term the agreement shall terminate as of 11:59 p.m. on the last day of the year with no financial obligations being owed by the City and then automatically renew at 12:00 a.m. on the first day of the next calendar year for each subsequent one-year term but not to exceed a total of ten single-year terms. This agreement is intended and should be construed to comply with O.C.G.A. §36-60-13. The annual fee for each subsequent contract year shall be \$20,438.00 per year. The maximum number of renewal years shall not exceed three (3) and thus, unless otherwise terminated, this contract shall terminate automatically at 11:59 pm or December 31, 2023.

The annual fee shall be due and payable in quarterly installments beginning March 1, 2021.

The Owner and the Company agree that any future mandated environmental, health or safety requirements which cause significant changes in cost of services provided under this agreement shall be cause for modification of this agreement. The Company is accepting this water storage tank under this agreement based on the current existing structure, components, location and surroundings. Any modification to the water storage tank, including antenna installations, and changes in surroundings especially real estate development shall be cause for modification of this agreement. This agreement does not include the cost for and/or liability on the part of the Company for: containment, removal and/or disposal of any hazardous waste materials, electrical wiring or components, operational problems due to cold weather, Acts of God, structural damage due to antenna installations or other attachments for which the tanks were not originally designed, repairs to the foundation of the water storage tank, operational or structural problems caused by physical conditions below the surface of the ground, acts of terrorism, or other conditions which are beyond the Owner's and/or Company's control.

The Company reserves the right to assign any outstanding receivables from this agreement to its bank or other lending institutions as collateral for any loans or lines of credit.

The Company covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS, the Owner/City and the elected officials, employees, officers, directors, agents and representatives of the City, individually and

collectively ("Indemnitees"), from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner/City arising out of a third-party claim to the extent arising from any negligent acts or omissions of the Company, any agent, officer, director, representative, employee, consultant or subcontractor of the Company, or their respective officers, agents employees, directors or representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability arising from the negligence of the Owner/City or an Indemnitee. IN THE EVENT THE COMPANY AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH APPLICABLE LAW, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY OR OFFICIAL IMMUNITY AVAILABLE TO THE OWNER OR INDEMNITEES UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER STATE LAW.

This agreement shall be binding upon successors, legal representatives, and assigns of the respective parties hereto.

This Agreement is signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Owner:

American Tank Maintenance, LLC:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

The above signatories certify that they are duly authorized to sign the Agreement on behalf of the entities represented.



## Administration Department

P. O. Box 900  
Locust Grove, Georgia 30248

Phone: (770) 957-5043  
Facsimile: (866) 364-0996

### Item Coversheet

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**Item:** Contract for Sanitation Services – Advanced Disposal

**Action Item:**  Yes  No

**Public Hearing Item:**  Yes  No

**Executive Session Item:**  Yes  No

**Advertised Date:** N/A

**Budget Item:** Yes, Sanitation enterprise funds

**Date Received:** September 16, 2020/September 30

**Workshop Date:** September 21, 2020

**Regular Meeting Date:** October 5, 2020

#### Discussion:

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As awarded in the August Special Called Meeting, we have produced a revised Contract with the language within those guidelines. This Ordinance/Contract should be good to go.

#### Recommendation:

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**Recommend Ordinance approving Contract with Advanced Disposal for Sanitation Services.**

## **ORDINANCE**

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**AN ORDINANCE TO ENTER INTO CONTRACT BETWEEN THE CITY OF LOCUST GROVE AND ADVANCED DISPOSAL SERVICES, LLC FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES; TO AUTHORIZE THE MAYOR TO SIGN ALL DOCUMENTS NECESSARY TO EFFECTUATE SAID CONTRACT; TO AUTHORIZE THE CITY CLERK TO ATTEST SIGNATURES AND AFFIX THE OFFICIAL SEAL OF THE CITY OF LOCUST GROVE, AS NECESSARY; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES**

**WHEREAS**, The City is authorized to enter into contracts and agreements with other governments and entities and with private persons, firms, and corporations pursuant to Article 9, Section 4, Paragraph 2 of the Constitution of the State of Georgia, regarding the provision of services; and

**WHEREAS**, the City wishes to authorize the Mayor to enter into and execute a contract for residential solid waste collection services between the City and Advanced Disposal Services, LLC (the "Contract"). Said Contract is attached hereto as **Exhibit "A"** and made a part hereof; and

**WHEREAS**, the City wishes to agree to the terms of the Contract attached hereto as **Exhibit "A"** with Advanced Disposal Services, LLC regarding residential solid waste collection services;

**WHEREAS**, the City finds that the foregoing action is necessary and beneficial to its citizens.

### **THE COUNCIL OF THE CITY OF LOCUST GROVE HEREBY ORDAINS**

**SECTION 1.** The Contract between the City and Advanced Disposal Services, LLC as attached hereto and incorporated herein by reference as **Exhibit "A"** is hereby approved.

**SECTION 2. Approval of Execution.** The Mayor is hereby authorized to execute the Contract as described in **Exhibit "A"** upon delivery of a signed version by Advanced Disposal Services, LLC, and the City Manager or his designee is authorized to take those actions necessary to effectuate this ordinance and perform the obligation of the City under said Agreement.

**SECTION 3. Documents.** The City Clerk is authorized to execute, attest to, and seal any documents which may be necessary to effectuate the Agreement.



**SECTION 4. Severability.** The preamble of this Ordinance is incorporated herein and made a part hereof by reference to same. In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of Locust Grove that such adjudications shall in no manner affect the other sections, sentences, clauses, or phases of this ordinance which shall remain in full force and effect as if the invalid or unconstitutional section, sentence, clause or phrase were not originally part of the ordinance.

**SECTION 5. Repeal of conflicting provisions.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 6. Effective date.** This ordinance shall become effective immediately upon its adoption by the Mayor and the City Council of Locust Grove.

**SO ORDAINED** this 5<sup>th</sup> day of October 2020.

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Robert S. Price, Mayor

ATTEST:

APPROVED AS TO FORM:

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Misty Spurling, City Clerk

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City Attorney

(Seal)

**EXHIBIT "A"**

**RESIDENTIAL SOLID WASTE COLLECTION SERVICES CONTRACT BETWEEN  
THE CITY OF LOCUST GROVE  
AND ADVANCED DISPOSAL SERVICES, LLC**

**AGREEMENT FOR  
RESIDENTIAL SOLID WASTE COLLECTION SERVICES**

THIS AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES (this "Agreement") made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, (the "Effective Date") by and between the City of LOCUST GROVE, a political subdivision of the State of GEORGIA and, by and through its Mayor and Council ("City") and Advanced Disposal ("Contractor").

**WHEREAS**, it is necessary for City to promote, preserve and protect the public health of its citizens and the removal of garbage, rubbish and other waste material generated within the City is a valid exercise of powers of the City; and

**WHEREAS**, the granting of an exclusive Agreement pursuant to this Agreement to a private company for the collection, transportation and disposal of solid waste is a valid function of City and such Agreement is proprietary in nature; and

**WHEREAS**, City and Contractor are desirous of entering into this Agreement, under the terms of which, Contractor shall have an exclusive Agreement for a specified period of time for the collection of Residential Solid Waste; and

**WHEREAS**, the City has conducted an investigation and has determined that the Contractor and its affiliates have a proven reputation for providing the types of services required under this Agreement and that the Contractor has access to significant capital resources that would be available to fund the fulfillment of its responsibilities under this Agreement, all of which should greatly benefit City; and

**WHEREAS**, City and Contractor have agreed to the conditions, terms, rates, provisions and considerations under which Contractor shall perform such solid waste collection, transportation and disposal services as herein set out, and for the compensation as hereinafter provided and the City has deemed it to be in the best interest of the City and the residents of the City to enter into this Agreement upon such terms and conditions set forth herein in order to ensure high quality services by the Contractor to the residents of the City ; and

**WHEREAS**, City agrees to pay for the Services to be provided by Contractor as set forth herein.

**NOW THEREFORE**, in consideration for the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**Section 1.0 - Definitions**

For purposes of this Agreement, the following terms shall be defined as follows; provided however, nothing contained herein shall be interpreted to require the Contractor to undertake any conduct which is contrary to federal, state or local law.

1.1 **“Agreement”** has the meaning set forth in the first paragraph above, and includes all Schedules and Exhibits attached hereto.

1.2 **“Biomedical Waste”** shall mean pathological waste, biological waste cultures and stocks of infectious agents and associated biologicals, sharps, chemotherapy waste, discarded medical equipment and parts, not including expendable supplies and materials which have not been decontaminated.

1.3 **“Bulky Waste”** means discarded household items that will not fit within an empty 95 gallon cart, thus too large or too bulky to be collected by Contractor as contemplated by this Agreement, including but not limited to items such as mattresses and box springs, indoor/outdoor furniture, large toys, bicycles, fish aquariums, sofas, chairs, tables, white goods, and other similar household items.

1.4 **“C&D Materials”** means waste building materials and rubble, excluding Hazardous Waste, resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures. Such waste includes, but is not limited to, wood, bricks, metal, concrete, wall board, paper, cardboard, carpeting, construction materials resulting from remodeling, inert waste landfill material, and other non-putrescible wastes which have a low potential for groundwater contamination.

1.5 **“Cart”** means a rollout receptacle for Residential Solid Waste with a capacity of 95 gallons, constructed of plastic, metal or fiberglass, having handles of adequate strength for lifting, and having a tight fitting lid. Carts may be those provided and owned by the City. If City has not provided Contractor with written notice that the City has supplied customers with Carts, then Contractor will supply Carts to customers.

1.6 **“City”** means the City of Locust Grove which shall include, for purposes of this Agreement, the incorporated area of the City and the areas outside the corporate bounds of the City and receiving City service(s).

1.7 **“Contractor”** has the meaning set forth in the first paragraph above.

1.8 **“Curbside”** means the location that is within at least four (4) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location designated by the Contractor that will provide a safe and efficient accessibility to the Contractor’s personnel and vehicles for the placement of Carts and Bulky Waste for collection pursuant to the terms of this Agreement. For purposes of this Agreement, public road or public right-of-way means a road owned and maintained by the City or special district, or a road on private property for which an easement has been granted to the public and such road is constructed and maintained to a standard whereby access is available by the Contractor’s vehicles.

1.9 **“Customer”** means the owner and/or occupant of a Residential Premises.

1.10 **“Disabled Person”** means the owner or tenant of the Residential Premises who is disabled to the extent that he or she is incapable of placing his or her Cart at the Curbside location

for collection by the Contractor and otherwise complies with the provisions of Section 3.3 below. Disabled Person shall not include any person located at commercial premises.

1.11 **“Effective Date”** means the date on which last party executes this Agreement as noted on the signature pages.

1.12 **“Force Majeure”** means any act, event, or condition having a direct material adverse effect on a party’s ability to perform any obligation, agreement or covenant under this Agreement, including without limitation, Contractor’s ability to collect, transport or dispose of Residential Solid Waste, if such act, event, or condition is beyond the reasonable control of the party. Such acts, events, or conditions shall include, but shall not be limited to, the following: (a) an act of God, lightning, earthquake, fire, severe weather conditions, epidemic, land-slide, drought, hurricane, tornado, storm, explosion, partial or entire failure of utilities, flood, nuclear radiation, act of a public enemy, war, blockade, insurrection, riot or civil disturbance, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the act of any governmental body on behalf of any public, quasi-public, or private entity; or (b) the order, judgment, action, or determination of any federal, state, or local court, administrative agency, or governmental body (excepting decision interpreting federal, state, and local tax laws), which adversely affects the: (i) the ability of Contractor to perform the services contemplated hereunder; (ii) the right or ability of the Contractor to dispose of the Residential Solid Waste or (iii) the suspension, termination, interruption, denial, or failure or renewal or issuance of any permit, license, consent, authorization, or approval necessary to for Contractor to perform the services contemplated hereunder

1.13 **“Garbage”** means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other farm products. Garbage does not include Hazardous Waste or Biomedical Waste.

1.14 **“Hazardous Waste”** means any and all (a) hazardous substances, pollutants, and contaminants, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, solid or hazardous wastes, as defined by the Resource Conservation and Recovery Act, as amended, hazardous materials, as defined by the Hazardous Materials Transportation Act, as amended, toxic substances, as defined by the Toxic Substances Control Act, as amended, toxic chemicals or extremely hazardous substances, as defined by the Emergency Planning and Community Right-To-Know Act, as amended, hazardous air pollutants, as defined by the Clean Air Act, as amended, and hazardous substances, as defined by the Clean Water Act, as amended; (b) any other toxins, chemicals, wastes, substances, or materials which is ineligible under local, state or federal law for disposal at the intended disposal site utilized by Contractor; (c) any material that requires other than normal handling, storage, management, transfer or disposal; or (d) any other material that may cause applicable air quality or water standards to be violated by the normal operation of the disposal site to be utilized by the Contractor, or because of its size, durability or composition cannot be disposed of at such disposal site or has a reasonable possibility of otherwise adversely affecting the operation or useful life of such disposal site.

1.15 “Non-Curbside Services” has the meaning set forth in Section 3.3.

1.16 “Overage” has the meaning set forth in 1.18 “Residential Solid Waste” below, but that shall from time to time be placed outside the Cart either on top, by the side, or both locations that is merely occasional and not routine action of the Customer.

1.17 “Residential Premises” means a dwelling within the City occupied by a person or group of persons, including single family homes, duplexes, triplexes, quadraplexes, multifamily townhomes and condominium developments (without centralized trash collection), and mobile homes whether such mobile homes are registered as vehicles or assessed as real property.

1.18 “Residential Solid Waste” means all Garbage and Rubbish generated by a Residential Premises, excluding automobile parts, tires, C&D Materials, , Bulky Waste, White Goods, Hazardous Waste, or any Unacceptable Waste or materials as determined by the Contractor. This definition also includes commercial establishments (primarily within the historic downtown vicinity) generating waste suitable for use of one or more 95-gallon carts.

1.19 “Rubbish” means non-putrescible solid waste consisting of paper, rags, cardboard, cartons, wood, rubber, plastics, glass, crockery, metal cans or other such waste.

1.20 “Services” has the meaning set forth below in Section 2.2.

1.21 “Sludge” means byproducts from the City’s Indian Creek Wastewater Pollution Control Plant pressing process containing residual solids as well as some liquid contained within the solids that must be transported to a landfill designated for the acceptance of said waste.

1.22 “Special Waste” means any and all treated/de characterized (formerly hazardous) wastes; polychlorinated biphenyl (PCB) wastes; industrial process wastes; asbestos containing material; chemical containing equipment; demolition debris; incinerator ash; medical wastes; off-spec chemicals; sludges; spill cleanup wastes; underground storage tank (UST) soils; and wastes from service industries.

1.23 “Term” has the meaning set forth below in Section 2.4.

1.24 “Unacceptable Waste” mean (a) waste and materials that are not part of the Services contemplated hereunder as determined by Contractor, (b) Hazardous Waste, Biomedical Waste, Special Waste, tires, paints, paint solvents, unemptied aerosol cans, compressed gas cylinders, large engine parts, small engines containing oils or fuels, chemicals, large glass panes, large tree debris, stumps, ammuniton of any type, dead animals larger than 10 lbs., and firearms, (c) waste of which the acceptance and handling by Contractor would cause a violation of any permit condition, legal or regulatory requirement, substantial damage to Contractor's vehicles, equipment or facilities, or present a substantial danger to the health or safety of the public or Contractor’s employees,(d) the term does not include stumps, roots, or shrubs with intact root balls, and specifically excludes all wood that has been treated or preserved with chromated copper arsenate (CCA), pentachlorophenol, or other chemicals which have been classified as known human carcinogens by the United States Environmental Protection Agency, and (e) waste which

is or may be prohibited from disposal at the applicable disposal site by local, federal or state law, regulation, rule, code, ordinance, order, permit or permit condition.

1.25 “White Goods” means household appliances such as refrigerators, stoves, washers, dryers, water heaters and other large enameled appliances, which do not contain PCB or CFC units and have been officially certified to that effect, and in the case of freezers and refrigerators, which have had the doors removed.

1.26 “Yard Trash” means leaves, brush, grass clippings, shrub and tree prunings, discarded Christmas trees, nursery and greenhouse vegetative residuals, and vegetative matter resulting from landscaping development and maintenance at a Residential Premises other than mining, agricultural, and silvicultural operations..

## **Section 2.0 – Scope of Agreement**

2.1 Recitals: Conflict. The parties hereto acknowledge and agree that the “whereas” recitals set forth above are true and correct and are hereby incorporated herein by this reference.

2.2 Scope. The performance of this scope of work and Contractors’ obligations under Section 3.0 of this Agreement constitutes the Services the Contractor is required to provide in accordance with this Agreement. The work under this Agreement shall consist of the collection of Residential Solid Waste once a week at curbside by Contractor from the Residential Premises. In the performance of the Services, Contractor shall also provide the supervision, materials, and equipment necessary to complete the Services in accordance with the terms of this Agreement. Collection of Residential Solid Waste shall be mandatory for all Residential Premises in the City, and all such Residential Premises shall be required by the City to use the Services to be provided by Contractor pursuant to this Agreement. The scope of the Services to be provided by Contractor hereunder shall not be amended or modified without the mutual consent of the parties hereto.

2.3 Exclusivity. During Term of this Agreement, Contractor shall provide the Services and in accordance with the terms of this Agreement and shall have the sole and exclusive right to provide the Services throughout the City. The City hereby grants, and the Contractor hereby accepts, the sole and exclusive Agreement, license, and privilege to provide the Services during the Term of this Agreement and all renewal terms thereto. All such rights shall be exclusive to the Contractor and no other person or entity except the Contractor may offer or provide the Services as contemplated hereby. The City further agrees that so long as Contractor is not in default hereunder, it will not enter into any agreement or understanding with any other person or entity for performance of the Services contemplated hereby during the Term hereof.

2.4 Term. The term of this Agreement shall be from the Effective Date of this Agreement through December 31, 2021. No earlier than ninety (90) days and not later than sixty (60) days before December 31<sup>st</sup> of the final year of each Term including any extension of this Agreement Contractor or City may enter into good faith negotiations with the other party and agree upon rates with adjustments, if any, and modification to any other terms of this Agreement. This Agreement or any amendments thereto will be renewed automatically for a maximum of two one-year terms unless either party provides at least sixty (60) days prior

written notice to the other party of its intent not to renew the Agreement prior to December 31<sup>st</sup> of each calendar year during the Terms of this Agreement. Notwithstanding any other provision of this Agreement, at the conclusion of each one-year term, the Agreement terminates absolutely; and the debts, if any, incurred by the City to Contractor are automatically and absolutely extinguished, satisfied and non-existent at the expiration of each one-year term regardless of whether the Agreement is renewed.

### **Section 3.0 – Contractor Responsibilities**

#### **3.1 Services Provided**

3.1.1 **Residential Solid Waste.** Contractor shall collect Residential Solid Waste that is timely placed in a Cart from each Residential Premises one (1) time per week at Curbside. The Customer located at the Residential Premises shall place only bagged Residential Solid Waste in the Cart and shall place the Cart at Curbside by 6:00 am on the designated collection day. Contractor shall not be deemed to be in default in any manner of this Agreement in the event Contractor fails or refuses to collect any such Residential Solid Waste from any Residential Premises because such Residential Solid Waste was not timely placed in a Cart at Curbside in accordance with this Agreement. Contractor shall not be responsible for collection of any Residential Solid waste not properly and timely placed in a Cart in the proper location at Curbside at the designated time and on the designated date and has the right to refuse to collect all Unacceptable Waste. Contractor will collect cart contents only. Overage as defined in 1.17 of this Agreement placed outside cart *may* be collected at the discretion of the Contractor only to the extent of occasional placement due to holiday or other event and may be rejected by the Contractor if found to be a routine practice requiring the purchase of an additional cart by the Resident. Notice shall be given to the Customer of the need for additional cart as well as to the City. Personal carts will not be collected.

3.1.2 **Bulky Waste.** The City shall collect Bulky Waste from the Residential Premises that generated such Bulky Waste on a weekly basis. Coordination of Residential Collection and Bulk Collection shall be made between the Contractor and the City to ensure that Customers are aware of any changes in collection dates and conditions of collection of each category of trash.

3.1.3. **Disposal of Waste.** Contractor may deliver all Residential Solid Waste collected by Contractor to a disposal or other processing facility as determined by the Contractor in its sole discretion.

#### **3.2 Carts**

If elected under Section 1.5 of this Agreement, the City shall furnish new Carts for every Residential Premises receiving the Services as contemplated by this Agreement. Such Carts shall at all times remain the property of the City of Locust Grove. It shall be the responsibility of the Customers of the Residential Premises to properly use and safeguard the Carts. It shall be the responsibility of Contractor to properly use and not



damage or destroy the Carts in performance of the Services. City shall maintain the Carts in reasonably good condition, normal wear and tear excepted. Each Customer has the care, custody and control of any Cart furnished by City and such Customer shall have responsibility, and shall be liable, for all loss and damage, normal wear and tear excepted, to such Cart and for the cleanliness and safekeeping of such Cart. City shall have the right to charge Contractor or Customers for the cost of repair or replacement of Carts, including delivery fees, if such repair or replacement is required as a result of abuse, misuse or damage, fire, or theft.

### **3.3 Non-Curbside Service for Disabled Persons**

Contractor shall provide back/side-door Residential Solid Waste collection services ("Non-Curbside Service") to Disabled Persons as identified by the City who are physically unable to place the Cart at Curbside for collection by Contractor at the designated time and date contemplated by this Agreement. In no case will the quantity of persons receiving Non-Curbside Services exceed two percent (2%) of the total Residential Premises located in the City. Contractor shall provide Non-Curbside Service at no additional charge over the Service Fees then in effect for those residents not physically able to take Carts to Curbside, provided however, that such exemptions will be granted only if there is no other occupant of the Residential Premises physically capable of placing the Cart at Curbside. Prior to Contractor being required to provide such Non-Curbside Service to any person, any such person requesting Non-Curbside Service must obtain a physician's certificate certifying such disability and provide the physician's certificate to the Contractor. In no event will Non-Curbside Service be provided at a distance of more than 150 feet from the public roadway. In the event Non-Curbside Service is provided pursuant to this Section 3.3, the Disabled Person shall use the Cart for storage of Residential Solid Waste but must place the Residential Solid Waste in bags, designed to accommodate storage of waste, each bag not to exceed 30 pounds in weight. Non-Curbside Services are not available for the collection of Bulky Waste and shall only be provided to Disabled Persons at Residential Premises.

### **3.4 Location of Carts for Collection**

Carts shall be placed at Curbside for collection service as described herein. Carts shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Carts shall be placed as close as practicable to an access point for the Contractor's collection vehicle that permits access by Contractor's collection vehicle to the Carts without endangering Contractor's employees or equipment.

### **3.5 Hours and Days of Operation; Holidays**

3.5.1 Collection of Residential Solid Waste under this Agreement shall not start before 6:00 AM nor continue after 7:00 PM each day. No collection of Residential Solid Waste under this Agreement shall take place on any Sunday.

3.5.2 The following shall be holidays for the purpose of this Agreement (each a "Holiday"):

New Years' Day  
Thanksgiving Day  
Christmas Day

Independence Day  
Labor Day  
Memorial Day

Contractor may decide to observe any or all of the above mentioned Holidays by suspension of Services on the Holiday, but such decision does not relieve the Contractor of its obligation to provide the Residential Solid Waste collection service at least four days per week (Monday - Saturday) within the week the Holiday occurs (a "Holiday Week"). The Contractor shall be responsible for properly publicizing any changes in collection schedules due to observance of Holidays or for other reasons.

### 3.6 Routes of Collection

Collection routes shall be established by the Contractor. Contractor shall submit a map designating the collection routes with the days of pick-up to the City for its approval, which approval shall not be unreasonably withheld. The Contractor may from time-to-time propose to City for approval changes in routes or days of collection, which approval shall not be unreasonably withheld.

### 3.7 Complaints; Missed Collections; Cart Overage

3.7.1 Contractor shall furnish the City instructions for contacting the Contractor in the event of Customer complaints. Contractor shall also furnish each Residential Premises with instructions for contacting Contractor by local telephone for information or for service complaints. All complaints made to Contractor shall be given prompt and courteous attention.

3.7.2 In the case of alleged missed scheduled collections for Residential Solid Waste (a "Missed Collection"), Contractor shall investigate and advise the City how it will address the issue within twenty-four (24) hours after the complaint is received. Contractor will be responsible for receiving all reports of Missed Collections from Residential Premises and rectifying the Missed Collection with the Customer located at the Residential Premises. In the event the Missed Collection was due solely to the fault of the Contractor and such Missed Collection was not due to an event of Force Majeure, Contractor shall collect the Residential Solid Waste from such Residential Premises within one day of receipt of the complaint, except if Missed Collection deadline falls on Sunday.

3.7.3 In the event of Cart Overage, the Contractor shall use discretion on whether to provide service in collection, especially for events such as holidays where one might expect some overage amount. For more routine overage, Contractor shall notify the City and Customer that they will need to purchase an additional cart for service.

### **3.8 Collection Equipment and Personnel**

3.8.1 The Contractor shall provide an adequate number of vehicles and personnel for regular collection Services. All collection vehicles and other equipment shall be kept in good repair, normal wear and tear excepted. Each collection vehicle shall have clearly visible on each side the identity and telephone number of the Contractor. All Residential Solid Waste hauled by the Contractor shall be so contained, tied, covered, or enclosed such that leaking, spilling, or blowing are prevented.

3.8.2 The Contractor shall assign a qualified person or persons to be in charge of its performance of this Agreement. The Contractor's employees performing the Services contemplated hereunder shall wear a uniform or shirt bearing the Contractor's name. Each employee of Contractor who drives a vehicle pursuant to his or her duties in the performance of this Agreement shall, at all times, carry a valid Georgia driver's license for the type of vehicle he or she is driving. The Contractor shall provide operating and safety training for all personnel.

### **3.9 Access**

The Contractor shall be required to provide the collection Services described herein to all Residential Premises located on publicly-owned roadways accessible to standard solid waste collection vehicles. The City shall maintain all publicly-owned roads and bridges in a condition that affords safe access by Contractor's standard solid waste collection vehicles. The City shall require occupants of Residential Premises to place Carts at Curbside for collection in accordance with the terms and conditions of this Agreement. The City shall require the Customer located at the Residential Premises not accessible to standard solid waste collection vehicles to place Carts at an accessible location on a publicly-owned roadway as determined by the Contractor. Contractor shall not be liable in any way, and shall not be deemed to be in breach of this Agreement, for the failure to collect any Residential Solid Waste or other acceptable materials in the event Contractor did not have or was denied access to the Residential Premises or to the Customer's Cart and other materials to be collected as provided hereunder.

### **3.10 Office**

The Contractor shall maintain an office or such other facilities through which it can be contacted. It shall be equipped with sufficient local service telephones and shall have a person to answer such telephones from 8:00 a.m. to 5:00 p.m. daily Monday through Friday. An internet website with ability to interact with customers and the City is preferred, with electronic mail address for information and/or customer service matters.

### **3.11 Natural Disasters**

In the event of a hurricane, tornado, major storm or other natural disaster, the Contractor's sole responsibility shall be to reestablish regular routes and schedules for the

Services as soon after the natural disaster as possible. The collection of Residential Solid Waste shall not be the highest priority. The collection of debris generated by a natural disaster shall be the responsibility of the Contractor. The Contractor agrees to provide reasonable cooperation, at no additional cost to the City, unless agreed to by the parties, collecting the debris in the aftermath of a natural disaster in an effort to return the City to its pre-disaster state. The Contractor shall resume its performance of Services as soon as commercially practicable after such storm or disaster.

### **3.12 Compliance With Law: Permits**

The Contractor shall comply with all applicable local, state and federal laws, rules, regulations, ordinances and statutes in the performance of this Agreement; provided, however that this Agreement shall govern the obligations of the Contractor where there exists conflicting ordinances of the City on the subject, and the City agrees to waive the requirements of such ordinances in the event of such a conflict. In the event that the collection or disposal of any solid waste hereunder shall become restricted or prohibited by any such applicable law, ordinance, statute, rule or regulation, such type of waste shall be eliminated from the requirements and provisions of this Agreement. Contractor shall obtain all applicable permits, licenses and other approvals necessary to perform the Services.

### **3.13 Delinquent and Closed Accounts**

The Contractor shall discontinue the Services at any Residential Premises if directed to do so, in writing, by the City. Upon further written notification by the City, the Contractor shall resume the Services contemplated hereunder on the next regularly scheduled collection day.

## **Section 4.0 – City Responsibilities**

**4.1 Initiation of Accounts and Billing:** The City will be responsible for billing and collecting the Service Fee for the Services rendered by Contractor from all Residential Premises. The City will also be responsible for setting up all new accounts with respect to newly constructed Residential Premises and receiving any necessary information from such new Residential Premises and for referring the owners of such new Residential Premises to the Contractor so that the Contractor can initiate service.

**4.2 Public Education and Outreach:** The Contractor will work with the City for conducting all formal public education programs and outreach related to the Services. The City will proof and approve all public education/information materials as camera-ready copy, including information to be included in packages to be distributed by the City with the Carts and via the City's Internet site.

**4.3 Service Referrals:** The City will be responsible for referring to Contractor any service requests by the Customers and/or complaints of which the City becomes aware that are not reported directly to the Contractor.

**4.4 Compliance With law:** The City shall comply with all applicable local, state and federal laws, rules, regulations, ordinances, consents, judgments and statutes in the performance of this Agreement.

## **Section 5.0 – Compensation**

### **5.1 Fees and Payment**

5.1.1 Beginning on the Effective Date, for and in consideration of the Services to be performed in accordance with this Agreement, the City will pay the Contractor the Service Fees set forth on Exhibit A attached hereto and incorporated herein, as may be adjusted pursuant to the terms of this Agreement. The City shall pay the Service Fees to Contractor by the 30<sup>th</sup> day of each calendar month for the Services rendered during the previous calendar month. The City shall submit, together with payment, a statement of the Services Fees that the City believes to be due and owing to Contractor for the Services rendered by the Contractor during the previous calendar month (the “Statement of Fees”) based the terms and conditions of this Agreement. Such Statement of Fees shall include the number of Residential Premises receiving the Services. The City shall pay to the Contractor the amounts set forth in the Statement of Fees and otherwise as contemplated hereby. Upon receipt of the Statement of Fees issued by the City, the Contractor shall notify the City of any dispute it may have with respect to the City’s Statement of Fees, provided that the City shall pay all undisputed amounts in accordance with this Agreement. If the parties are unable to settle any such disputes with respect to any Statement of Fees within a commercially reasonable time, then the parties shall submit such dispute to the dispute resolution procedure set forth in Section 10.2.

5.1.2. The City shall submit statements and collect the fees for the Services rendered by Contractor from all Residential Premises, including those accounts which are delinquent. The Contractor shall be entitled to payment for Services rendered irrespective of whether or not the City collects amounts owed from the Residential Premises.

### **5.2 Service Fee Adjustments**

5.2.1 The Service Fees payable to the Contractor pursuant to a Term of this Agreement may be adjusted through a petition to Mayor and Council for approval or denial for an increase on the basis of 100% of the increase, if any, in the Consumer Price Index for All Rural Consumers, U.S. Rural City Average, by expenditure category and commodity and service group, Water and Sewer and Trash Collection Services, as published by the U.S. Department of Labor, Bureau of Labor Statistics (the “CPI”), during the immediately preceding twelve(12)-month period. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may then be available so as to carry out the intent of this provision.

5.2.2 The Contractor shall have the right to petition Mayor and Council for approval or denial to receive reimbursement from the City for increases, if any, in the cost of diesel fuel during the Term of this Agreement. Before September 1, 2021 (the "Fuel Adjustment Date"), the Contractor may notify the City in writing of the amount of such reimbursement as calculated pursuant to this Section 5.1 (the "Fuel Adjustment Notice"). Within thirty (30) days after the receipt by the City of the Fuel Adjustment Notice, the City may reimburse the Contractor an amount equal to any increases in the average cost of diesel fuel as reported by the U.S. Department of Energy, Energy Information Administration, [www.eia.doe.gov](http://www.eia.doe.gov), Lower Atlantic East Lower Atlanta (PADD 1C) No 2 Diesel Ultra Low Sulfur (0-15ppm) Retail Sales by All Sellers (the "Index") during the preceding twelve month period (the "Service Fee Fuel Adjustment") over the Base Cost per Gallon of Diesel Fuel. For purposes of the Service Fee Fuel Adjustment, the Base Cost per Gallon of Diesel Fuel as of the date hereof shall be \$ 2.864. In the event of an increase in the average Base Cost per Gallon of Diesel Fuel as reported by the Index on the Fuel Adjustment Date, Contractor shall certify to the City the number of gallons of diesel fuel consumed by Contractor in the performance of this Agreement during the preceding twelve-month period. The Service Fee Fuel Adjustment shall then be calculated based on such number of gallons of diesel fuel multiplied by the increase, if any, in the average cost per gallon of diesel fuel as reported by the Index over the Base Cost per Gallon of Diesel Fuel.

### 5.3 Other Service Fee Adjustments

In addition to the adjustments to the Service fees set forth in Section 5.2.1, the Service Fees may also be adjusted to compensate Contractor with a petition to Mayor and Council to approve or deny due to increases, if any, in the Contractor's costs of disposal of the solid waste collected by Contractor in connection with the Services, including without limitation, due to any increases in transportation cost due to changes in location of the final disposal facility accepting such solid waste. The City agrees that Contractor may also increase rates from time to time, to adjust for increases in operational costs or expenses incurred by Contractor: (a) as a result of a "Change In Law," imposed prospectively. A Change In Law means any amendment to, or promulgation of any federal, state, City, city, or local statute, regulation, or ordinance after the date of this Agreement that imposes, changes, modifies, and/or alters requirements upon: (i) performing the Services; (ii) the operation of the applicable disposal facility accepting the solid waste collected pursuant to this Agreement; or (iii) the disposal of Residential Solid Waste, or which statute, regulation, or ordinance requires the Contractor to seek either an amendment or modification to, or reissuance of any required permits, licenses, certificates of public convenience and necessity, approval or authorization issued by any governmental body entitling the Contractor to perform the Services; (b) due to any new or additional Fees and Taxes imposed after the date hereof. Fees and Taxes means any federal, state, local or other taxes, assessments, fees, host charges, surcharges, or similar charges directly or indirectly related to the Collection

Services which are imposed on the Contractor by law, ordinance or regulation imposed prospectively; and (c) a result of an event of Force Majeure that materially and adversely affects the cost of collection, transportation or disposal of solid waste by Contractor. In addition to the foregoing, the Contractor may be permitted to charge for Non-Curbside Collection if, during the preceding period, the number of Service Units qualifying for such Collection reached three percent (2%) of Residential Premises.

#### **Section 6.0 - Indemnity**

**Indemnification & Hold Harmless:** The Contractor covenants and agrees to take and assume all risk and responsibility for the Work rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to on account of the performance or character of the Services rendered, and materials used pursuant to this Agreement. Contractor shall defend, indemnify and hold harmless the City of Locust Grove, its officers, boards, commissions, elected and appointed officials, employees, servants, volunteers and agents (hereinafter referred to as ("City of Locust Grove Parties")) from and against any and all claims, injuries, suits actions, judgments, damages losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense, (hereinafter "Liabilities") which may be alleged or result from the Services and materials used, the performance of contracted Services, or the actions otherwise of the Contractor or any subcontractor or anyone directly or indirectly employed by the Contractor or subcontractor or anyone else for whose acts the Contractor or subcontractor may be liable, regardless of whether or not the actions are caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of the City of Locust Grove or City of Locust Grove Parties. These obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this provision. Furthermore, in the event of any and all claims against the City of Locust Grove or City of Locust Grove Parties by any employee of the Contractor or any subcontractor or anyone directly or indirectly employed by the Contractor or subcontractor or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by the Contract or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the City of Locust Grove and City of Locust Grove Parties shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions that occurred during the performance of this Agreement or the materials used during the performance of this Agreement.

#### **Section 7.0 – Insurance**

The Contractor shall at all times during the Agreement maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability, and Property Damage Insurance. All insurance shall be by insurers and for policy limits acceptable to the City and before commencement of work hereunder the Contractor agrees to furnish the City certificates of

insurance or other evidence satisfactory to the City to effect that such insurance has been procured and is in force.

For the purpose of this Agreement, the Contractor shall carry the following types of insurance in at least the limits specified below:

<u>COVERAGES</u>	<u>LIMITS OF LIABILITY</u>
Workers' Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability	\$500,000 each occurrence
Except Automobile	\$1,000,000 aggregate
Property Damage Liability	\$500,000 each occurrence
Except Automobile	\$500,000 each occurrence
Automobile Bodily Injury Liability	\$500,000 each person
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$500,000 each occurrence

### **Section 8.0 – Title to Waste**

Title to the Residential Waste to be collected under this Contractor shall pass to the Contractor once it is placed in the vehicle under control of the Contractor; provided however, that the Contractor shall not accept title to waste or materials that are Unacceptable Waste regardless of whether the Unacceptable Waste is loaded in the vehicle or unloaded, and title to such waste shall remain at all times with the generator thereof. The Contractor shall not be required to collect or dispose of Unacceptable Waste set-out by any Residential Premises.

### **Section 9.0 – Events of Default: Remedies**

9.1 Events of Default by Contractor. The following shall constitute events of default on the part of the Contractor except to the extent caused by the occurrence of an event of Force Majeure or the acts of, or failure to act by, the City, its officers, employees, agents or representatives:

- 9.1.1 Failure by the Contractor to perform any material obligation of the Contractor under the terms of this Agreement, and continuance of such failure after (i) written notice thereof has been provided by the City specifying such failure and requesting that such condition be remedied, and (ii) Contractor's failure to cure the default or immediately initiate and diligently pursue reasonable action and cure such nonperformance within fifteen (15) days after receiving notice from the City (provided, if such failure is of a nature that it cannot be cured within such fifteen (15) day period, Contractor shall not be in default if Contractor commences the curing of such failure within such fifteen (15) day period, and diligently pursues the curing thereof; or
- 9.1.2 The Contractor becomes insolvent or bankrupt and cannot to pay its when they become due, files a petition in bankruptcy or has such a petition filed



against it (and fails to lift any stay imposed thereby within ninety (90) days after such stay becomes effective), has a receiver appointed with respect to all or substantially all of its assets; makes an assignment for the benefit of creditors; or ceases to do business in the ordinary course.

9.2 Events of Default by City. The following shall constitute events of default on the part of the City, except to the extent excused by the occurrence of an event of Force Majeure or the act of, or failure to act by, the Contractor:

9.2.1 A failure by the City to timely perform any obligation under the terms of this Agreement, and the continuance of such failure after (i) written notice thereof has been provided by the Contractor specifying such failure and requesting that such condition be remedied, and (ii) City's failure to cure the default or immediately initiate and diligently pursue reasonable action and cure such nonperformance within fifteen (15) Days after receiving notice from the Contractor (provided, if such failure is of a nature that it cannot be cured within such fifteen (15) day period, the City shall not be in Default if Contractor commences the curing of such failure within such fifteen (15) day period, and diligently pursues the curing thereof; provided however, the City shall immediately be in default of this Agreement in the event the City fails to pay any amount owing to Contractor when due, and Contractor shall have no such obligation to provide any notice thereof to the City or to provide the City with such fifteen (15) day period to cure such default; or

9.2.2. The City becomes insolvent or bankrupt and cannot to pay its when they become due, files a petition in bankruptcy or has such a petition filed against it (and fails to lift any stay imposed thereby within ninety (90) days after such stay becomes effective), has a receiver appointed with respect to all or substantially all of its assets; makes an assignment for the benefit of creditors; or ceases to do business in the ordinary course.

9.3. Remedies Upon an Event of Default

9.3.1 If a party is in default pursuant to this Section 9, then, at the option of the non-defaulting party, this Agreement may be immediately terminated or suspended upon written notice to the defaulting party as contemplated by this Section 9, or this Agreement may be continued in force and the non-defaulting party shall have the right to take whatever action at law or in equity deemed necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement, or to enforce performance of any covenant or obligation of the defaulting party under this Agreement; provided however, notwithstanding any alleged default by Contractor, or the election of any remedy by City in the event of such default by Contractor, City agrees to pay the Service Fees due and owing to Contractor for all Services rendered in accordance with this Agreement.

9.3.2. The rights and remedies under this paragraph shall be in addition to those otherwise allowed by law or in equity. Any and all rights and remedies which either party may have under this Agreement, at law or in equity, shall be cumulative and

shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law. Any rights of the Contractor not expressly granted in this Agreement are reserved by Contractor. Any rights of City not expressly granted in this Agreement are reserved by the City.

9.3.3 The failure of either party at any time to require performance by the other party of any provisions hereof shall in no way affect the right of such party thereafter to enforce the same. Nor shall waiver by either party of any breach of any provisions hereof be taken or held to be waived of any succeeding breach of such provisions or as a waiver of any provision itself. Further, each party agrees that the other would be irreparably damaged if any provisions of this Agreement were not performed in accordance with its specific terms or was otherwise breached. Therefore, to the extent provided by law, the parties agree that the non-breaching party shall be entitled to an injunction or injunctions, without being required to post any form of bond, to prevent breaches of this Agreement or any of its provisions by the breaching party and to specifically enforce this Agreement or any of its terms and provisions, in addition to any other remedy to which the non-breaching party may be entitled, at law or in equity.

9.3.4 In addition to the forgoing and any other rights or remedies that Contractor may have pursuant to this Agreement or at law or in equity, in the event the City fails to make any payment to Contractor when due as required by the provisions of this Agreement, the City shall immediately provide Contractor with a complete list of all Residential Premises and any other person or entity receiving collection Services by Contractor as provided for hereunder, such list to include such information as Contractor deems necessary. The City expressly acknowledges and agrees that in such an event of default by City, Contractor shall have the right, but not the obligation, without any further action by the parties hereto, to bill such Residential Premises and any other person or entity directly for the collection Services rendered by Contractor, to terminate or suspend any collection Services immediately upon nonpayment by such Residential Premises and to pursue any rights and remedies available to Contractor at law or in equity as a result of such nonpayment.

#### 9.4 Force Majeure.

Except in the case of nonpayment of the Service Fees by the City and the agreements and obligations by the City set forth in Section 2.2 and 2.3, in the event either party is rendered unable, in whole or in part, to perform its obligations hereunder due to an event of Force Majeure, it shall notify the other party of such event and the obligations of such party may be suspended during the continuation of any inability so caused by such event of Force Majeure. Except in the case of nonpayment of the Service Fees by the City for services actually performed prior to the Force Majeure and the agreements and obligations by the City set forth in Section 2.2 and 2.3, neither party shall be liable in any manner, and neither party shall be considered in default hereunder, for any failure to

perform its respective obligations under this Agreement if such failure to perform is due to an event of Force Majeure. A Force Majeure does not exist unless the party asserting a Force Majeure (“Asserting Party”) provides the other party written notice of the act, event or condition which the Asserting Party deems a Force Majeure and the duration in which such party anticipates the Force Majeure will affect the Affecting Party’s obligations under this Agreement. Within 48 hours, the other party has a right to object and propose a reasonable alternative duration for the asserted Force Majeure, which shall control unless disputed by the Asserting Party, in accordance with Section 9.3 of this Agreement.

**Section 10.0 – Miscellaneous Provisions**

10.1 **Notice.** Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by a nationally recognized overnight delivery service, or certified mail, postage prepaid as follows:

As to the City:

City Manager  
3644 Highway 42  
Locust Grove, GA 30248  
Phone:770 957-5043

As to Contractor:

Steve Edwards  
Charlie Gray, Southern Regional VP  
120 Rodeo Drive  
Jackson, GA 30233

Notices shall be effective upon delivery or refusal of delivery at the address as specified above. Changes in the respective addresses to which such notice is to be directed, may be made from time to time by written notice.

10.2 **Dispute Resolution**

(a) Before either party may take any legal action against the other to enforce the terms and conditions of this Agreement, the party seeking redress must first present all claims to be litigated before a mediator for mediation. If a mediator cannot be agreed upon by the parties of this Agreement, the mediator shall be selected by the presiding judge of Henry County’s Superior Court. The petition for mediation shall be provided to the other party to this Agreement in the manner provided for notices in this Agreement. Mediation shall be completed within sixty (60) days from the date a mediator is selected. The cost of the mediator shall be divided equally between the parties. The parties shall participate in mediation in good faith. As a jurisdictional prerequisite, the completion of mediation or the passage of sixty (60) days after selection of a mediator must occur before either party may file suit to enforce any provision of this Agreement.

(b) This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Georgia, excluding the laws applicable to

conflicts or choice of law. The parties hereby consent to the personal jurisdiction of the state and federal courts within Henry County, and the United States District Court for the Northern District of Georgia, for the adjudication of all matters relating to, or arising under, this Agreement.

### 10.3 Independent Contractor

Contractor, in the performance of this Agreement, is acting as an independent contractor and not as an employee, agent, partner or joint venturer of City, and neither party shall not hold itself out as such or knowingly permit another to rely on such belief. Nothing in this Agreement is intended or shall be construed to create any association, partnership, joint venture or employment relationship between the parties, nor shall City have any right to enter into any agreement or commitment on behalf of Contractor or to bind Contractor in any respect whatsoever. Contractor's personnel shall not be considered employees of the City by reason of their performance of the Services or other work or services contemplated by this Agreement and Contractor shall bear sole responsibility for all payroll and employment taxes relating to Contractor's personnel.

### 10.4 Entire Agreement; Binding Agreement

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modifications concerning this instrument shall be of no force or effect and this Agreement may not be amended or modified except by a subsequent modification in writing signed by the parties hereto. This Agreement shall inure to the benefit of and shall be binding upon the Contractor, the City and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

### 10.5 Severability

If any part of this Agreement for any reason is declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. It is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may, for any reason, be hereinafter declared invalid.

### 10.6 No Waiver.

Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**10.7 Captions**

The titles or headings preceding any section or paragraph are for reference and convenience only and shall be in no way construed to be a material part of this Agreement.

**10.8 Assignment**

No assignment or transfer of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Contractor without the express written consent of the City, such consent not to be unreasonably withheld or delayed; provided however, the Contractor may assign or transfer this Agreement to an affiliate with the consent of the City.

**10.9 Counterparts**

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**10.10 Representations**

The City represents and warrants to Contractor and covenants and agrees as follows:

(a) The parties signing this Agreement on behalf of the City have been authorized to do so by specific action of Mayor and Council adopted the \_\_\_\_\_ in open meeting and of record in its official minutes.

(b) The City validly exists as a political subdivision under the laws of the State of GEORGIA. The City has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The City's MAYOR has duly authorized the execution and delivery of this Agreement and this Agreement constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms. Without limiting the generality of any of the foregoing, the City has provided all public notices and held all public meetings, hearings, and the like required by applicable law, rule, regulation, or ordinance in connection with the City's and execution of this Agreement.

(c) No consents or approvals are needed for the entering into or performance of this Agreement by the City. Neither the entering into nor the performance of this Agreement by the City will result in a violation of or be in conflict with any statute, rule, regulation, ordinance, agreement, instrument, judgment, decree, or order to which the City is a party or by which the City or its assets is bound.

(d) There is no action, suit, judgment, consent order or investigation or proceeding pending or, to the best of the City's knowledge and belief, threatened, relating to this Agreement. The City will notify Contractor promptly if any such action, suit, investigation or proceeding is instituted or threatened. In connection with the execution, delivery and performance of this Agreement, the City is in compliance with all applicable federal, state and local laws, rules, regulations,

orders, ordinances, judgments permits, licenses, approvals, and variances, and the City has not received any notice of any complaint or violation of any of the foregoing. The City will notify the Contractor promptly upon receipt of any complaint or notice of non-compliance with any of the foregoing.

(e) The representations and warranties of the City are true and correct in all material respects at and as of the Effective Date and continuing during the Term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date evidenced on the first page hereof.

**CITY OF LOCUST GROVE**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Robert Price  
Title: Mayor

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
Name: Misty Spurling  
Title: City Clerk  
Date: \_\_\_\_\_

**Advanced Disposal Services**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Charlie Gray  
Title: Regional Vice President  
Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_

**EXHIBIT A**

**PRICING SHEET FROM RFP SUBMITTAL**  
**PLUS HAUL RATE FOR SLUDGE**



# CITY OF LOCUST GROVE

## COLG2020-540-01 Res/Comm. Solid Waste Pricing Sheet (sealed separately)

Garbage Service once a week with a 95-gallon city-owned/maintained cart (per month)	\$ <u>8.95</u>
Additional residential cart service (for those that desire a additional carts – per month)	\$ <u>8.00</u>
One eight yard contractor owned FEL Dumpster service once a week at Public Safety Building 25 Frances Ward Drive	No Charge
Three (3) two yard contractor-owned FEL Dumpster service once a week at the Wastewater Plant	No Charge
Service for up to four (4) city-owned 95 gallon rolling carts at City Hall	No Charge
One twenty-yard enclosed recycling contractor owned roll off container for single stream recyclables with 1 to 2 hauls per month (Please note any particular exceptions or conditions on recycling materials, etc.)	No Charge
One thirty yard contractor owned roll off container for construction and demolition debris with 2 to 3 hauls per month (Please note if Rental Rate is included in Haul Rate by putting "Incl." in that particular field. Also note any particular conditions or limitations.)	Monthly Container Rental Rate \$ <u>inc.</u>  Haul Rate \$ <u>175</u>  Tonnage Rate \$ <u>43.50</u>
One Thirty Five yard contractor owned roll off compactor for municipal solid Waste with 2 to 3 hauls per month (Please note if Rental Rate is included in Haul Rate by putting "Incl." in that particular field. Also note any particular conditions or limitations.)	Monthly Container Rental Rate \$ <u>inc.</u>  Haul Rate \$ <u>175</u>  Tonnage Rate \$ <u>43.50</u>
One twenty yard contractor owned roll off container for metals with 1 pull per month (City receives all rebates) (Please note if Rental Rate is included in Haul Rate by putting "Incl." in that particular field. Also note any particular conditions or limitations.)	Monthly Container Rental Rate \$ <u>inc.</u>  Haul Rate \$ <u>175</u>



<p><b>EXCEPTIONS:</b> (Please note any exceptions from the minimum requirements of this RFP that you are unwilling or unable to do which will require the City to perform task or seek additional contract service) Place a "check mark" or "X" in box along with separate sheet or sheets explaining the exceptions.</p>	
<p><b>Alternatives:</b> (Please note the item related to service as discussed within the RFP and/or the Pre Proposal Meeting). Here is where to include items such as service with provided carts by the waste hauler instead of the city, Curbside Recycling as an additional cost option, and Bulk Pickup on an established basis (i.e. weekly with normal pickup, monthly, or subscribed or other type of pre-arranged service). Place a "check mark" or "X" in box along with separate sheet or sheets explaining the Alternatives along with cost.</p>	<p>Every other week Recycle with 65 gallon carts \$3.75/month per home</p> <hr/> <p>ADS will continue Bulk collection for \$1.15 per month per home</p> <hr/> <p>ADS will continue to provide carts for the same price of \$9.95 per home</p> <hr/> <p>ADS can provide a disposal rate of \$43.50 to Locust Grove at our Jackson Transfer Station for bulk waste. 12 miles away 20 Minutes South of Locust Grove in Jackson.</p> <hr/> <p>Work with local transfer station to get volume to Wolf Creek Landfill</p>

**Haul of Sludge from the City's Wastewater Pollution Control Plant**

**1 – 20.00YD Roll Off Trash (Liner Included)     \$185.00/Haul**

**On-Demand should City not be able to meet hauling demand.  
City is responsible for Fees at the Pine Ridge Facility**



## Administration Department

P. O. Box 900  
Locust Grove, Georgia 30248

Phone: (770) 957-5043  
Facsimile: (866) 364-0996

### Item Coversheet

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**Item:** Bowden Street RR Crossing/Closure/MOU with NS Corp.

**Action Item:**  Yes  No

**Public Hearing Item:**  Yes  No

**Executive Session Item:**  Yes  No

**Advertised Date:** N/A

**Budget Item:** Yes, Revenues and Pub Works

**Date Received:** September 30, 2020

**Workshop Date:** N/A (emergency item)

**Regular Meeting Date** October 5, 2020

#### Discussion:

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As you know, we have had more failed crossing attempts at Bowden Street and SR 42; two headed eastbound from Bill Gardner and the last a westbound move towards Bill Gardner at I-75. All are believed to be related to GPS guidance which neither we, nor NS Corp are able to properly remedy other than closure (which would immediately show up on their system).

Attached are two (2) items related to the closure of the Norfolk Southern Corporation (NS Corp) crossing, including the Resolution to cause said closing along with a Memorandum of Understanding (MOU) between NS Corp and the City regarding working together on future crossing locations that will be (preferably) underpass-type or at the minimum grade-separated. We are working on the final touches of the RFQ on this study to release in the coming month.

#### Recommendation:

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**Recommend approval of each for the safety of the citizens of Locust Grove and Henry County and authorize us to immediately begin the work on Grade Separation Crossings Study.**

# CROSSING CLOSURE AGREEMENT

Effective date: \_\_\_\_\_

**Re:** Closing Certain Crossing in the City and NS Corp.'s Support for Future Grade Separation Projects

**Participants:** City of Locust Grove, Georgia ("City") & Norfolk Southern Corporation ("NS Corp.")

- (1) In consideration for the City's immediate assistance and consent to NS Corp.'s closure of two (2) existing public road crossings at Bowden Street (DOT#718 423M, RR Milepost 187.81H) and Pine Grove Road (DOT#718 419X, RR Milepost 186.00H) ("Closures") (the actual costs of closure and dismantling of the crossings shall be at NS Corp.'s sole expense) and to avoid an appeal to Georgia Department of Transportation ("DOT") regarding the Closures, NS Corp. shall pay the City, within 30 days of the effective date of this Agreement, a total of One Hundred Thousand Dollars (\$100,000.00) along with any and all associated federal and state DOT matching funds for the Closures. Also, in consideration for the City's consent to the Closures and in recognition of the public safety and welfare concerns otherwise generally known and expressed in this Agreement, NS Corp. agrees to grant to the City permission and rights of access to provide perpetual public rights-of-way for two (2) vehicular and pedestrian railroad grade-separation overpasses or underpasses, as may be determined by the City, at the following two likely locations along NS Corp.'s railroad in the City: Bill Gardner Parkway's intersection with State Route 23/42 and Market Place Boulevard's intersection with State Route 23/42 ("Future Grade Separation Projects").
- (2) Because the NS Corp railroad bisects the City, the parties acknowledge the long-term public safety and transportation benefits of the Closures and the Future Grade Separation Projects, which include, but are not limited to, preventing train and vehicular collisions and associated personal injury, loss of life, and property damage; preventing shut-downs of railroad and vehicular traffic; and ensuring means by which first responders may cross the railroad while trains are passing through the City and thereby respond to calls for the preservation of life, liberty and property on either side of the railroad tracks.
- (3) NS Corp. agrees to cooperate with the City in the construction of the Future Grade Separation Projects and agrees to not unreasonably withhold its review and approvals for Future Grade Separations Projects. The City agrees that construction of the Future Grade Separation Projects must be consistent with the NS Corp.'s Public Improvements Manual; provided however, NS Corp. acknowledges that this construction requirement is not intended to and will not be administered in a manner to preclude the Future Grade Separation Projects if there are safe engineering solutions that the City is willing to implement to address NS Corp.'s reasonable safety and engineering concerns. Should either or both of said Future Grade Separation Projects become impracticable, NS Corp. shall work in good faith with the City to implement alternative crossing designs and locations in order to address first-responder, public safety and transportation needs for the citizens of the City. The City, not NS Corp., shall be responsible for all costs associated with the Future Grade Separation Projects contemplated in this Agreement.

- (4) Furthermore, in recognition of the need to improve vehicular traffic flow through the City's downtown district while ensuring safe railroad crossings, the City and NS Corp. agree to cooperate in a timely fashion with each other on possible reconfigurations and relocations of existing crossings north and south of and within the City's downtown district.
- (5) Therefore, it is understood by the City that so long as the aforementioned requirements are followed, it will have the full support from NS Corp. for such projects. Should NS Corp. breach this Agreement, it agrees to re-open, at no cost to the City, the two public crossings closed contemplated by this Agreement. Should the City attempt to reopen the two public crossings closed pursuant to this Agreement, the City shall refund the dollar amount paid by NS Corp. to the City for said Closures.
- (6) By this Agreement NS Corp. seeks to minimize its risk and liability of any type. Likewise, this Agreement shall not be construed to create any benefit or cause of action for any third party. Nor shall this Agreement be construed to waive in any way whatsoever any legal immunities or defenses held by the City or its officers or employees.
- (7) The parties hereto represent and warrant that each has the authority to enter into this Agreement and that the undersigned signatories have the power to bind their respective parties. This Agreement shall be binding on the parties' subsidiaries and successors in interest and shall remain in effect until the construction of the Future Grade Separation Projects are completed or alternative grade separation crossings are approved by the City Council and construction thereof completed.

Accepted and approved this \_\_\_\_\_  
day of \_\_\_\_\_, 2020

Norfolk Southern Corporation

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Accepted and approved this \_\_\_\_\_  
day of \_\_\_\_\_, 2020

City of Locust Grove, GA

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION PROVIDING FOR THE ELIMINATION OF A GRADE CROSSING;  
REPEALING ALL PRIOR ORDINANCES IN CONFLICT HEREWITH; AND FOR  
OTHER PURPOSES**

**WHEREAS**, it is within the authority of the City of Locust Grove, GA to voluntarily eliminate grade crossings within the municipal street system; and

**WHEREAS**, it has been determined reasonably necessary in the interest of public safety to eliminate highway grade crossing, Bowden St. - DOT# 718 423M, RR Milepost 187.81 H; and

**WHEREAS**, it has been determined that the enhancement of public safety resulting from such elimination of the grade crossing will outweigh any inconvenience to the reasonable passage of public traffic, specifically including without limitation emergency vehicle traffic, caused by rerouting such traffic; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Locust Grove, and it is hereby ordained by authority of the same, as follows:

**Section 1.** The City hereby directs the elimination of the highway grade Crossing, Bowden St. - DOT# 718 423M, RR Milepost 187.81 H

**Section 2.** A copy of this resolution shall be served on Norfolk Southern Corporation.

**Section 3.** Norfolk Southern Corporation shall at its expense physically remove the crossing from the tracks and beyond the ends of the crossties on each side and erect an approved barricade on both sides of the tracks.

**Section 4.** Upon receipt of a signed resolution, Norfolk Southern Corporation will provide a one-time payment to the City of Locust Grove in the amount of \$65,000 and work with GDOT to provide a matching \$7,500 payment to the City through available Federal Funds.

**Section 5.** All ordinances or parts of ordinances in conflict herewith are repealed.

SO RESOLVED, this \_\_\_ day of \_\_\_\_\_.

City of \_\_\_\_\_

(Seal)

By: \_\_\_\_\_

Attest: \_\_\_\_\_