

TERMS AND CONDITIONS OF SERVICE AGREEMENT

(1) **TERM:** The term of this Agreement will be for Twenty-Four (24) months from the effective date of service and will be automatically renewed for Twelve (12) months thereafter unless Customer gives written notice of termination, by Certified Mail, Return Receipt Requested, at least Sixty (60) days, but not more than One Hundred Twenty (120) days, prior to the termination of the initial term or any renewal term. Provided however, that SOUTHERN SANITATION, ("SS"), may terminate this Agreement at any time, for any reason or no reason, in its sole unlimited discretion.

2. **SERVICES RENDERED:** Customer grants SS the exclusive right to collect and dispose of all of Customer's Non-Hazardous Waste Materials, and agrees to timely make the payments as provided herein.

3. **CHARGES AND PAYMENT:** Customer will pay SS on a timely basis for the collection and disposal services provided by SS, (including all charges for equipment maintenance), in accordance with the schedule of charges shown on this Agreement, SS reserves the right to adjust these charges from time to time in its sole discretion, provided however, that Customer may elect to terminate this Agreement if it does not wish to accept such adjustment. Such notice must be given in writing, Certified Mail, Return Receipt Requested, within Thirty (30) days of the date notice of adjustment is given. If Customer does not timely terminate this Agreement, such adjustment will be deemed accepted by Customer.

Payment will be made by Customer within Ten (10) days after receipt of an invoice from SS. SS may impose and Customer agrees to pay, a late fee and interest on all past due amounts. Such interest not to exceed to maximum rate allowed by law for this Customer. In the event that any payment is not made when due, SS may, terminate this Agreement, recover its equipment from Customer's premises and recover all past due payments and liquidated damages as provided by this Agreement.

4. **WASTE MATERIAL:** Customer warrants and represents that only "waste material" as defined herein, will be placed in the container. The term "waste material" as used herein will mean solid waste generated by Customer and shall exclude construction debris, radioactive, volatile, flammable, explosive, biomedical, infectious, toxic or hazardous material. The term "hazardous material" will include but not limited to, any material or waste listed or characterized by hazardous by any City or State ordinance or by the United States Environmental Protection Agency or the Resource Conservation and Recovery Act of 1976 as amended or any similar State or Federal statute. SS will acquire title to the waste material when it is loaded on SS trucks. Title to, and liability for, any waste excluded above, will remain with Customer and Customer agrees to defend, indemnify and hold SS, its officers, directors and employees harmless from and against any and all damages, fines, penalties and liabilities resulting from or arising out of the excluded waste.

5. **DRIVEWAYS AND PARKING AREAS:** Customer warrants and represents that any right of way provided by Customer for SS's equipment location is sufficient to bear the weight of all of SS's equipment and vehicles required to perform the service herein contracted for. SS will not be responsible for damage to any property or pavement of Customer on or along any route necessary for SS to perform the services contracted for and Customer assumes full responsibility and liability for all damages to such as property or pavement.

6. EQUIPMENT:

(a). **Responsibility:** The equipment furnished by SS will, at all times, remain the property of SS. Customer, however, agrees and acknowledges that Customer has care, custody and control of the equipment while it is at Customer's location and Customer accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or for loss or damage resulting from SS's handling of the equipment), and for the contents. Customer agrees not to overload the equipment (by weight or volume) or move or alter the equipment and will use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless SS against all claims, damages, suits, penalties, fines and liabilities for injury or death to persons or loss or damage to property arising out of Customer's use, operation or possession the equipment.

(b). **Access:** Customer agrees to provide unobstructed access to the equipment at all times. If the equipment is unaccessible so that regular pickup cannot be made, pickup will not be made until the next scheduled pickup date. If Customer requires pickup before the next scheduled pickup date, SS reserves the right to charge an additional fee for any unscheduled pickup required by Customer's failure to provide adequate access.

(c). **Definitions:** The word "equipment" as used herein will mean all containers used for the storage of waste material and any other equipment provided by SS to Customer under this Agreement.

7. **LIQUIDATED DAMAGES:** If Customer defaults or cancels SS's services under this Agreement prior to the end of the term, Customer agrees that SS's actual damages would be difficult, if not impossible to ascertain. Therefore, Customer agrees that in such event, Customer will pay any past due sums and in addition, will pay, as liquidated damages and not as penalty, an amount equal to Fifty (50%) percent of the monthly charge at the time of default or cancellation multiplied by the number of months remaining under the current term of the Agreement plus any attorney's fees incurred by SS to enforce its rights for the cancellation of this Agreement.

8. **ATTORNEY'S FEES:** In the event of a breach of this Agreement by either party, the breaching party shall pay all reasonable attorney's fees of the other party to enforce this Agreement. In the event Customer fails to pay SS all amounts which are due under this Agreement or fails to perform its obligations hereunder and SS refers such matters to an attorney, Customer agrees to pay, in addition to any amount due, any and all costs incurred by SS as a result of such action, including by not limited to, reasonable attorney's fees.

9. **ASSIGNMENT AND BENEFIT:** Customer may not, without written consent of SS, assign this Agreement. This Agreement will be binding upon the parties hereto and their successors and assigns.

10. **EXCLUDED PERFORMANCE:** Neither party hereto will be liable for failure to perform or delay in performance hereunder due to contingencies beyond its control, including, but not limited to, strikes, riots, fires, acts of God, or changes in laws or governmental orders and any such failure will not constitute a default under this Agreement. Additionally, SS will not be required to perform under this Agreement on any designated City Holiday.

11. **ARBITRATION:** In the event Customer has any dispute with or claim against SS under this Agreement or otherwise, Customer agrees that any such claim or dispute will be submitted to binding arbitration, before a sole arbitrator selected by a State District Court Judge in Webb County, Texas. The claim or dispute will be resolved in accordance with the laws of the State of Texas. The resolution of the arbitrator will be final and binding on the parties.