

**STATE OF TEXAS
COUNTIES OF KAUFMAN AND HUNT
CITY OF POETRY, TEXAS**

BE IT REMEMBERED THAT ON THIS DAY OF THE 19th of October 2023 at 6:30 pm, the City Council of Poetry, Texas, held a Workshop, and Regular Town Council Meeting at 11214 Fm 1565 Poetry, TX 75160, Faith Temple Baptist Church with the following present:

Mayor Tara Senkevech
Councilmember Tom Anderson
Councilmember Mike Jaffe

Councilmember Simeon White
Councilmember Terry Fowler
Councilmember Jonathan Blake

Mayor Senkevech called the meeting to order at 6:30

Evie Anderson, Clerk confirmed quorum.
All council members were present.

Pledge of Allegiance and Invocation

Councilmember Fowler led the pledge and invocation.

f: Mayor Tara Senkevech gives items of community interest;

- * Thanks to Terry Fowler for getting our Town hall Fire Extinguisher re-certified.
- * Thanks to Kevin Senkevech for spending 9 hours getting the Fire Exit plan drawn up.
- * Thanks to Josh Senkevech for spending 12 hours setting up all the electronics at the Town Hall.
- * Thanks to Sheri Vinson for typing the minutes.
- * The Town hall now has a phone number. It is #469-902-7001. Town Hall is only open to the public Thursdays 1- 5 pm

g) Workshop Agenda

- 1) Listen to four 20-minute presentations by Solid Waste Vendors.[Order chosen randomly]. Three vendors gave presentations: Cards, Blackjack and Titan.
- 2) Council asked questions of vendors after each presentation.

h) Reports

1. Financial—

a) September end 2023

b) Sales & Use Tax Receipts

2. Budget Report –clarification

3. TML Report

4. Town Hall—Occupancy report and Fire Exit Plan

I) Consent Agenda:

1. **Minutes from September 21st. 2023 Meeting.** Motion to accept by **Councilmember Jaffe**, seconded by **Councilmember Blake. Passes 5:0**
2. **Pay August legal bill of \$1487.39.** Motion to approve **Councilmember Fowler**, seconded by **Councilmember White. Passes 5:0**

J) Regular Agenda:

1) Discuss and take action on Solid Waste Vendor Ordinance. Council discusses letters from the town and from the vendors to citizens of any changes. Citizen Christina Wallace is disgruntled with Cards. Citizen Tracie Hibbs asks what constitutes commercial trash, and private roads franchise fees. **Councilmember Jaffe** recommends taking more time to make decisions. **Councilmember Jaffe** makes motion to change wording in proposed addendum to be for all trash pick-up, and to have Legal modify the franchise agreement, seconded by **Councilmember White. Passes 5:0**

2) Discuss and take action on definition of voter in Poetry in light of SB2038. Attorney Berman explains Senate Bill 2038. Citizen Dale Bryant gives his interpretation of the bill. Citizen Patrick Smith clarifies that his voter id is on his petition. Attorney Berman clarifies a few points.

3) Discuss and take action on definition of candidates for office in the Town in light of SB2038. Attorney Berman clarifies that candidates must be voters in the Town. Mayoral candidates must have been a citizen for 12 months.

4) Discuss and take action on the Smith Petition. Council discusses with legal. Citizen Dale Bryant discusses surveys. Citizen Patrick Smith discusses metes and bounds. Motion to deny petition based on inadequate parcel description which includes land within the town made by **Councilmember Anderson**, seconded by **Councilmember White. Passes 3:2**

5) Discuss and take action on the Hibbs Petition. Citizen Tracie Hibbs says that petitions are not an item to be voted on. Citizen Patrick Smith feels the town needs to be legally surveyed. Motion made by **Councilmember White** to disapprove petition based on inadequate parcel description which includes land within the town, seconded by **Councilmember Blake. Passes 3:2**

6) Discuss and take action to approve items at Town Hall: Dead tree removal \$550, dirt & spreading \$800, roofing quote \$4736.45, ADA railing \$1000, Foam spray \$3500, and skirting \$3797. Citizen Tracie Hibbs asks for total so far on Town Hall, and the value of the Town Hall. Citizen Dale Bryant questions ADA compliance, and Town Hall inspection.

Councilmember Fowler makes motion to pay for dirt. Seconded by **Councilmember Blake**. **Passes 5:0** **Councilmember Fowler** makes motion to approve roofing quote, seconded by **Councilmember Blake**. **Passes 5:0** **Councilmember Fowler** makes motion to approve skirting up to \$4000, seconded by **Councilmember Blake**. **Passes 5:0**

7) Discuss and take action on the Community Fall Cleanup for November 11, 2023. **Councilmember Anderson** makes motion to approve, seconded by **Councilmember Jaffe**. **Passes 5:0**

8) Discuss and take action to update the Rules of Procedure & Decorum Resolution as shown. The council discusses various changes. Citizen Tracie Hibbs asks for clarification on volunteer hours, and about the 72 hours notification to the public. Citizen Patrick Smith asks about certain changes. Citizen Haley Dennis says that there should not be a volunteer book. **Councilmember Anderson** makes motion to accept changes discusses, seconded by **Councilmember Blake**. **Passes 4:1**

m) **General Public Comments**

Citizen Tracie Hibbs voices appreciation for Council, then tells Council that they are not relevant. Citizen Shelley Smith accuses Mayor of not replying to emails. Citizen Glenn Strauss expresses his admiration for the Council.

Mayor Senkevech adjourns the meeting at 10:33 pm.

Minutes typed by Sheri Vinson.



Memo from the Town Secretary

To: Town Council November 16, 2023 Meeting

From: Theresa Scholander

CC: Citizens

- Town of Poetry Town Hall had a new roof installed 11/08/2023.

- I am pleased to announce Town of Poetry has a new solid waste vendor, presently for roll-offs only, Blackjack Disposal.

- Community-wide Fall cleaning day is scheduled Saturday, November 11, 2023. Let all pull together to Keep Poetry Beautiful!

- Watch for upcoming holiday posting such as...
Tentative Christmas Tree Lighting Dec 16th
Third Annual Town Christmas Lights Contest
Sign up by email; contact@poetrytexas.org , Dec. 1st-12th
Subject line: Christmas Lights Contest
Please provide your address in the body of the email

Mailing address: 5671 CR 323 Poetry, TX 75160 Phone Number (469) 902-7001
email: secretary@poetrytexas.org

**M365 Business Basic (7) & Exchange Archiving (7) Licenses
Renewal (Yearly) - The Town of Poetry**

Quote #: 006

Prepared For

The Town of Poetry
Josh Senkevech
101 Poetry Rd,
Terrell, TX 75160-9590

This quote has not been approved.
Please review and sign below.

Prepared By

Vinny Oni
Inside Sales Specialist
Direct: (914) 355-5800
vinny@computersolutionseast.com



Vinny

1. Your Proposal

Download and review your PDF document here:



Your Active Quotes

2. Review and Select Your Options

Your Available Options

Annual Subscriptions

Quote Summary	One-Time
Annual Subscriptions Subtotal	\$702.52
Subtotal	\$702.52
Total Amount	\$702.52

Term Options	Payments	Interval	Amount
<input type="radio"/> Annual Subscriptions			
1	One-Time		\$702.52

Update Options

Comments or question

If you have any comments or question
this quote, please feel free to enter i
Your comment will be logged and em
vinny@computersolutionseast.c

3. Payment Information

Payment Method

Pay Now ▼

Billing Address

First Name:
Josh

Last Name:
Senkevech

Address:
101 Poetry Rd,

City: Terrell State: TX Postal Code: 75160-9590

Country:
United States

Submit Question / Comment


Payment Option

Pay using ACH

Pay by credit card

4. Approval

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

 I accept the above conditions

E-Signature

Your Initials:

Your Email Address:

Purchase Order Number:

Sign Here:

X _____

Clear Signature

Please fill out the required fields above and check 'I accept the above conditions'

Accept Order



Mallard Air

Residential & Commercial



(469) 994-3052

You have a new estimate from MALLARD AIR LLC

 **Prepared for:** Tara Senkevech

 **Address:** 5671 County Road 323, Terrell , TX 75160

Option #1

\$9,044.59

APPROVE

DECLINE

Estimate Details

Services	Total
2 TON HORIZOTAL	\$5,978.75
1. Install Equipment 2. Install Emergency Drain Pan 3. Install Emergency Float Switch	
SHOW MORE	
8"-10" PER 25' BAG	\$1,207.44

Services	Total
7" PER 25' BAG	\$815.04
4" PER 25' BAG	\$271.68
6" PER 25' BAG	\$271.68
Copper Line Set (with cover)	\$950.00
10 YEAR WARRANTY On Installed Parts Only	\$0.00
1 YEAR LABOR WARRANTY On Installed Parts Only	\$0.00
Services subtotal	\$9,494.59
Subtotal	\$9,494.59
Discount	- \$450.00
SALES TAX (8.25%)	+ \$0.00
Total	\$9,044.59

Estimate date: Nov 09, 2023

Contact us

MALLARD AIR LLC

 (469) 994-3052

 MALLARDAIR@YAHOO.COM

(EXHIBIT A)

FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL AND RESIDENTIAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE IN THE TOWN OF POETRY, TEXAS

THIS FRANCHISE AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of _____, 2021, by and between NAME OF COLLECTOR, (the “COLLECTOR”), and the Town of Poetry, Texas (the “Town”).

WHEREAS, the Town is empowered under state and local law to provide solid waste collection and disposal services to its residents and commercial businesses and has the authority to enter into solid waste service contracts to acquire, sell, lease or allow for the operation of all or any part of a solid waste management system, including the collection, transportation and disposal of solid waste; and

WHEREAS, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Collector the non-exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste, Residential Solid Waste, and Construction and Demolition Waste (as such terms are defined herein) within the Town's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Collector and the Town hereby agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used herein, will be defined as follows:

BUSINESS DAY: Any day that is not a Sunday or a day listed as a *Holiday* herein.

COLLECTOR: *NAME OF COLLECTOR* a Texas [entity] authorized and registered to do business in the State of Texas, and its successors and assigns.

CONSTRUCTION AND DEMOLITION WASTE: Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.

CONTAINER: Any receptacle, including, but not limited to, dumpsters, roll-offs and carts provided by Collector for collecting Municipal and Residential Solid Waste and Construction and Demolition Waste.

HAZARDOUS WASTE: Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and as subsequently amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

HOLIDAYS: The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

LANDFILL: Any facility or area of land receiving Municipal Solid Waste, Residential Solid Waste, or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

MUNICIPAL SOLID WASTE: Solid Waste resulting from or incidental to, municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

RESIDENTIAL SOLID WASTE: Solid Waste resulting from or incidental to any residence.

SERVICES: the services provided by Collector pursuant to this Agreement.

SOLID WASTE: As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act, Texas Health & Safety Code, §361.003(20), as amended.

TOWN: Means the Town of Poetry, Texas.

SECTION 2. FRANCHISE GRANT

The Town hereby grants to the Collector in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste, and this Agreement, the non-exclusive franchise, license and privilege to collect, haul and dispose of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste over, upon, along and across the Town's present and future streets, alleys, bridges, and rights-of-ways.

SECTION 3. REGISTRATION FEE

Collector shall be required to pay an annual registration fee of \$100, which along with this Franchise

Agreement, entitles them to collect solid waste within the corporate limits of the Town for one year. Such registration shall be on such forms as the Town may determine. It shall be unlawful for any person, firm or corporation to collect Municipal Solid Waste, Residential Solid Waste or Construction and Demolition Waste, or to engage in the business of Municipal Solid Waste, Residential Solid Waste, and Construction and Demolition Waste collection without first having been issued a registration to do so from the Town.

SECTION 4. OPERATIONS.

A. **SCOPE OF OPERATIONS.** It is expressly understood and agreed that the Collector will collect, haul and dispose of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste during Business Days: (i) generated and accumulated by Collector's customers, and (ii) placed within Containers, if required by Collector, by those customers receiving the services of the Collector, all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement (the "Services"). This Agreement does not cover services provided in the Town's extraterritorial jurisdiction.

B. **NATURE OF OPERATIONS.** The Town hereby grants to the Collector, in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste, and this Agreement, the title to all Residential Solid Waste, Municipal Solid Waste or Construction and Demolition Waste collected, hauled and disposed of by the Collector over, upon, along and across the present and future streets, alleys, bridges, and rights-of-ways.. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 5. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, provided by the Collector in connection with the Services, as noted above, shall at all times remain the property of the Collector.

SECTION 6. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, dead animals, auto parts or used tires from any customer; provided, however, that any customer may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of dead animals, auto parts or used tires with the Collector or another reputable third party.

SECTION 7. TERM OF AGREEMENT.

The initial term of this Agreement shall be for the period of one year from the date this Agreement is executed ("Execution Date"). This Agreement may be renewed and extended for one additional period of one year, provided, that Collector and Town mutually agree in writing at least sixty (60)

days prior to the expiration of the initial term to renew the Agreement and Contractor has satisfactorily performed all conditions under this Agreement. The Town may deny the renewal of this Agreement. Upon expiration of this Agreement, Collector shall be responsible for payment to Town for all franchise fees due to Town under Section 10 below

SECTION 8. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Collector without the prior written consent of the Town; provided, however, that the Collector may assign this Agreement to an affiliate of the Collector without the Town's prior written consent.

SECTION 9. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances that will enable the Collector to provide the services set forth herein.

SECTION 10. FRANCHISE FEES.

In addition to the annual registration fee the Collector shall pay to the Town a monthly franchise fee under this Agreement in the amount of:

- A. Each Unique Residential Address - \$6.50/month
- B. Each Dumpster - \$15.00/month
- C. Each Roll-Off Container – \$25.00/month

SECTION 11. FRANCHISE FEE PAYMENT

Franchise fees shall be paid to the Town on or before the tenth (10th) day after the beginning of each quarter for amounts received by the Collector for the performance of Services during the quarter, according to the dates provided below. If this Agreement is entered into or terminated in the middle of a quarter, the applicable quarter will be prorated to exclude the time during the quarter in which no Service was provided. The Town agrees that payments owing from the Collector pursuant to this Agreement shall be based solely on the Services rendered by the Collector. The Collector shall not be held responsible for the collection of "bad debt" billed by and owed to Collector for the Services.

1st quarter: January 10th

2nd quarter: April 10th

3rd quarter: July 10th

4th quarter: October 10th

with the terms hereof. The Town agrees to treat any information disclosed to it by Collector under

normal business hours and on a nondisruptive basis, as reasonably necessary to monitor compliance. Each payment to the Town shall be accompanied with a statement detailing Collector's quantities of each service type, enabling the Town to verify the appropriate payment. The Town may review Collector's books and records that relate to customers within the Town's corporate limits, during this Section as confidential, and to disclose it only to employees, representatives, and agents of the Town that have a need to know, or in order to enforce the provisions hereof, except where required by law to disclose such information.

SECTION 12. SPILLAGE.

It is understood and agreed that the Collector shall not be required, but may, clean up, collect or dispose of any loose or spilled Residential or Municipal Solid Waste not caused by the Collector's rendering of services, or collect and dispose of any excess Residential or Municipal Solid Waste placed outside of the Containers by any customer. The Collector may report the location of such conditions to the Town so that the Town can issue proper notice to the customer instructing the customer to properly contain such Residential or Municipal Solid Waste. Should excess Residential or Municipal Solid Waste continue to be placed outside of the Containers, the Town authorizes the collector to issue an additional container or more frequent pickups of roll-off or dumpster if deemed necessary.

SECTION 13. HOURS OF SERVICE.

For all the services provided hereunder, the Collector's hours of service shall be between 6:00 AM and 8:00 PM, Monday through Saturday. The Collector will not be required to provide service on Sunday or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

SECTION 14. COMPLIANCE WITH APPLICABLE LAWS.

The Collector shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of solid waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town not in conflict with this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Collector in order to ensure compliance with these requirements.

SECTION 15. VEHICLES AND EQUIPMENT.

Vehicles used by the Collector for the collection, hauling and disposal of Residential or Municipal Solid Waste and Construction and Demolition Waste pursuant to this Agreement shall be protected at all times while in transit to prevent the blowing or scattering of waste onto the Town's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked on both sides with the Collector's name in letters and numbers not less than two (2) inches in height. The Town may adopt weight limits and maximum vehicle axle weight limits on vehicles used by Collector as the

Town deems appropriate to minimize disruption and damage to the Town’s streets, alleys and rights-of-way. Trucks operated within the Town of Poetry for residential collection must be single axle (1 steering and 1 rear) and may not exceed 33,000 pounds GVWR. Trucks used for commercial and roll-off services may be tandem axle (1 steering and 2 rear) and may not exceed 60,000 pounds GVWR.

SECTION 16. DUE CARE.

The Collector shall exercise due care and caution in providing the Services so that the Town’s public and private property, including streets and parking areas, will be protected and preserved.

SECTION 17. INSURANCE COVERAGE.

Minimum Limits of Insurance: The Contractor shall procure and maintain the following minimum types of coverages:

Type Coverage	Occurrence Minimum	Aggregate Minimum
Worker's Compensation (or other state-approved program)	As required by law and shall cover all employees including drivers.	As required by law.
Comprehensive & General Public Liability	\$1,000,000	\$1,000,000
Property Damage	\$1,000,000	\$1,000,000
Comprehensive Auto Liability Bodily Injury	\$1,000,000	\$1,000,000
Comprehensive Auto Liability-Property Damage	\$500,000	\$1,000,000

The Town reserves the right to review the insurance requirements of this section during the effective period of the contract and any extension or renewal period and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the Town based upon changes in statutory law or court decisions.

Each insurance policy to be purchased by Contractor shall include the conditions as described below, as well as the following conditions by endorsement to the policy:

1. the General liability insurance policy shall name Town and its officers, employees, and elected representatives as an additional insured without restrictions via blanket-form endorsement.

2. the policy phrase "other insurance" shall not apply to the Town where the Town is an additional insured; the policy shall specify that it is primary and non-contributory with any of the Town's policies and will state that each insured is provided coverage as though a separate policy had been issued to each, except that the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered;
3. each policy, except workers' compensation or other state approved program, shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be sent to Town by email. If the policy is canceled for nonpayment of premium, only 10 days' written notice to Town is required;
4. the term "Town" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Town and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Town;
5. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas;
6. all liability policies required herein shall be written with an "occurrence" basis coverage trigger;
7. prior to the effective date of cancellation of any policy, Contractor shall deliver to the Town a replacement certificate of insurance evidencing coverage;
8. each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-; and
9. the Special Provisions Section shall state that the liability policies have been endorsed via blanket-form endorsement to provide for waivers of subrogation, to provide that those policies are primary and non-contributory as to the Town.

Specific Additional Insurance Requirements:

All insurance policies or other state-approved program proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. General Liability Insurance:

General Liability insurance with combined single limits of not less than \$2,000,000 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

B. Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$1,000,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a blanket-form policy endorsement for:

- any auto, or
- all owned, hired and non-owned autos.

C. Worker's Compensation Coverage or other state-approved program

Contractor agrees to maintain insurance for workers' compensation or self-insured employee coverage meeting the requirements established by the Tex. Worker's Comp. Act, Texas Labor Code in the amounts not less than \$500,000.

SECTION 18. INDEMNITY.

THE COLLECTOR ASSUMES ALL RISKS OF LOSS OR INJURY TO PROPERTY OR PERSONS ARISING FROM ITS PERFORMANCE OF THE SERVICES. THE COLLECTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES, LOSSES OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) INCIDENT TO ITS PERFORMANCE OF THE SERVICES THAT ARISE OUT OF A WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE COLLECTOR, ITS OFFICERS AND EMPLOYEES. HOWEVER, THE COLLECTOR SHALL NOT BE LIABLE FOR ANY LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES AND ATTORNEYS' FEES ARISING FROM THE SOLE NEGLIGENCE OF THE TOWN, ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS. NOTHING CONTAINED WITHIN THIS SECTION OR WITHIN THIS AGREEMENT SHALL BE DEEMED TO WAIVE OR IN ANY WAY ALTER THE TOWN'S SOVEREIGN IMMUNITY

OR THE TOWN'S OFFICIAL, QUALIFIED OR LEGISLATIVE IMMUNITIES. NOTHING CONTAINED WITHIN THIS AGREEMENT SHALL IN ANY WAY BE DEEMED TO CREATE OR GRANT RIGHTS OR BENEFITS TO ANY PERSON NOT A PARTY TO THIS AGREEMENT.

SECTION 19. SEVERABILITY.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 20. TERMINATION.

A. The sufficiency of the grounds for termination as enumerated hereinafter shall be within the sole discretion of the Town Council. It is understood and agreed that this license may be terminated after hearing before the Town Council if:

- 1. The Collector has failed to give prompt and courteous attention to, and correct complaints filed by its customers.**
- 2. The Collector has failed to provide an adequate regular collection service or is in any way in violation of this Agreement, after being given a reasonable time to correct such failure or violation.**
- 3. The failure of the Collector to abide by any of the terms and conditions of this Agreement, applicable ordinances of the Town, or State or Federal regulations.**
- 4. For cause as determined by the Town Council.**
- 5. For convenience, when such convenience is determined by the Town Council to be in the best interest of the public health, safety and welfare.**
- 6. The filing of bankruptcy or receivership proceedings, transfers for the benefit of creditors, or acts evidencing insolvency.**

B. In the event of termination for the reasons set forth in the foregoing paragraphs A (1) through (6) the Town shall notify Collector of the reasons for consideration of termination and Collector shall have a period of thirty (30) days to cure such reason.

C. Collector may terminate this Agreement upon written notice received by the Town not less than 60 days before the date set forth in said notice for termination.

SECTION 21. FORCE MAJEURE.

The performance of this Agreement may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended, and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 22. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the State of Texas. The parties hereby agree that exclusive venue of any action arising under the terms of this Agreement shall be in the state courts of appropriate jurisdiction in Hunt and/or Kaufman County, Texas, depending on the location of the incident giving rise to a cause of action.

SECTION 23. NOTICE.

Any notices required or permitted to be delivered under this Agreement shall be deemed receivable when sent by email to mayor.tara@poetrytexas.org or the United States mail, postage pre-paid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the signature of the party.

SECTION 24. MERGER CLAUSE.

This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Agreement, except as provided in the Agreement documents.

SECTION 25. COUNTERPARTS.

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

SECTION 26. RECITALS.

The recitals to this Agreement are incorporated herein.

SECTION 27. EFFECTIVE DATE.

This Agreement is effective beginning _____, 2021.

Executed in single or multiple originals this _____ day of _____, 2021.

COLLECTOR:

[Address]

By: _____

Name: (Print
please) _____

Title: _____

CITY:

[Address]

By: _____

Name: Tara Senkevech

Title: Mayor

Nichols, Jackson, Dillard, Hager & Smith L.L.P.
 500 N Akard St.
 Suite 1800
 Dallas, TX 75201 USA
 214-965-9900 Tax ID: 75-0861592

TOWN OF POETRY
 TX USA

Date: 10/31/2023
 Ref.: 3089.000
 Bill #: 48502

RE: General Legal Services

Attention: Mayor Tara Senkevech

Date	Init	Description of Service	Hours	Amount
10/11/2023	DMB	Email to mayor re fire marshal, ETJ and voter eligibility.	0.25	48.75
10/16/2023	DMB	Preparation, drafting and transmittal of ordinance re solid waste exclusivity; review of agenda.	1.00	195.00
10/19/2023	DMB	Attendance at council meeting.	5.00	975.00
10/20/2023	DMB	Research, emails to mayor re outdoor burning	0.25	48.75
10/23/2023	DMB	Preparation and transmittal of draft revised Franchise Agreement for solid waste collections.	1.00	195.00
10/26/2023	DMB	Review of materials (email history, statutes, petitions), tc/mayor re cancellation and rescheduling of special meeting	0.25	48.75
10/27/2023	DMB	Emails to councilmembers, mayor re cancellation of meetings; preparation of draft resolution adopting application fee for ETJ release petitions.	1.00	195.00
		Our Fee	8.75	1,706.25

Time Summary

Lawyer Initials	Rate	Hrs	Amount
DMB	195.00	8.75	1,706.25

Disbursements

Mileage - David M. Berman 24.89

Total Disbursements 24.89

Total Fees and Disbursements 1,731.14

TOTAL	1,731.14
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Net Amount Owing on This Bill	1,731.14
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Statement of Account

Prior Balance	2,341.03
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Payments & Adjustments	-2,316.14
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Current Fees	1,706.25
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Current Disbursements	\$24.89
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Amount Due and Owing to Date	\$1,756.03
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Nichols, Jackson, Dillard, Hager & Smith L.L.P.
Attorneys & Counselors at Law
500 N Akard St.
Suite 1800
Dallas, TX 75201 USA
214-965-9900
Fax (214) 965-0010
E-mail NJDHS@NJDHS.com

Oct 31, 2023

Client: 3089

TOWN OF POETRY
TX USA

MATTER STATUS

		Prior Balance	Payments Adjustments	Current Charges	Total
3089.000	General Legal Services	2,341.03	-2,316.14	1,731.14	1,756.03
	Total	2,341.03	-2,316.14	1,731.14	1,756.03

Ross Welding & Construction

ESTIMATE
EST0049

Dyran Ross

DATE

Business Number 469-986-6824

Nov 2, 2023

469-986-6824

TOTAL

USD \$1,000.00



Ross Welding & Construction

<https://www.facebook.com/settings?tab=profile§ion=username>
ross.construction022@gmail.com

TO

Town of Poetry

Tara Senkevech

5671 CR 323 Poetry Tx 75160

☐ 2143178128

mayor.tara@poetrytexas.org

DESCRIPTION	RATE	QTY	AMOUNT
ADA Compliant Handrail Loop Rails This covers materials and labor. Price of materials went up. The U bend pipes are \$100 a piece. (4 needed)	\$1,000.00	1	\$1,000.00

TOTAL

USD \$1,000.00

DATE SIGNED

Nov 2, 2023

If you have any questions please let me know.

Make checks payable to Ross Welding & Construction.

Zoning Ordinance

AN ORDINANCE OF THE TOWN COUNCIL OF POETRY, TEXAS, ADOPTING A PLANNING AND ZONING CODE TO MAINTAIN RURAL INTEGRITY, AND FURTHERING THE OBJECTIVES OF THE COMPREHENSIVE PLAN.

WHEREAS, the Town of Poetry, Texas is a Type A general Law municipality of the State of Texas and is a municipal body politic and corporate, established and existing under the laws of the State of Texas; and

WHEREAS, the Town Council of Poetry is the governing body of the Town and is authorized by the Texas Local Government Code to adopt ordinances and rules that are necessary and proper for governing and maintaining the good government of the Town, the welfare of the municipality and its trade, commerce, and sanitation; and

WHEREAS, the Council is authorized under Chapter 211 of the Texas Local Government Code to regulate the use of land within the municipal boundaries of the Town to promote the health, safety, morals and general welfare and the protection and promotion of areas of historical, cultural, or architectural importance and significance; and

WHEREAS, the Town of Poetry, Texas, cherishes its unique rural spirit and agricultural lifestyle, valuing the tranquil, peaceful life it provides to its residents; and

WHEREAS, in accordance with the Poetry Comprehensive Plan, the Town seeks to protect this lifestyle from encroachment, uphold the rights of its residents, prevent overcrowding and congestion, and regulate development consistent with rural living; and

WHEREAS, the Town intends to uphold the liberties of its citizens, acknowledging the importance of having as few rules as possible and ensuring that any rules instituted are consistent with rural life; and

WHEREAS, the Town intends to preserve its natural landscape, avoiding where possible the destruction of trees and environmental sensitive areas, and promoting the preservation of open space; and

WHEREAS, the Town Council finds and determines that the comprehensive zoning ordinance and regulations adopted herein are intended to accomplish the goals and objectives of the Town Council and that these regulations are in the best interests of the public health, safety, morals and general welfare of the citizens of the Town of Poetry.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. PURPOSE; APPLICABILITY

1.1. This Code shall be known as and may be cited as the Zero Zoning Ordinance, or the comprehensive zoning ordinance, of the Town of Poetry, Texas.

1.2. The provisions of this ordinance are enacted to protect the public health, safety, morals, and general welfare, and to protect, preserve and promote of areas of historical, cultural, or architectural importance and significance. These provisions are specifically intended to:

- 1.2.1. Preserve and protect the Town’s rural atmosphere and lifestyle and encourage a healthful and convenient distribution of population by regulating and limiting the density of development;
- 1.2.2. Lessen congestion in the streets;
- 1.2.3. Secure safety from fire, panic, and other dangers;
- 1.2.4. Prevent the overcrowding of land;
- 1.2.5. Ensure the provision of adequate size of yards, courts, and open space for adequate light, air, and fire safety;
- 1.2.6. Conserve the value of buildings and land;
- 1.2.7. Avoid undue concentration of population ;
- 1.2.8. Facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements;
- 1.2.9. Minimize loss due to destruction by nature or acts of God; and
- 1.2.10. Promote health, safety, morals and the general welfare .

1.3. The provisions of this ordinance shall apply to all land, buildings, structures, and uses thereof located within the Town of Poetry and its extraterritorial jurisdiction, unless an exemption is provided by the terms of this ordinance or as otherwise exempted by state law.

1.4. To the extent allowed by law, the provisions of this Code shall apply to all land, buildings, structures, and uses owned by government agencies, including all municipal, state, and federal lands, within the corporate limits of the Town and its extraterritorial jurisdiction.

1.5. No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with all of the applicable regulations established by this ordinance.

SECTION 2. ZONING DISTRICTS ESTABLISHED

2.1. Zoning Districts Identified

The Town of Poetry, Texas, is hereby divided into zoning districts as listed in the section.

ABBREVIATED DESIGNATION	ZONING DISTRICT NAME
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AR	AR: Agrarian. Farm/cattle land and large residential properties (5+ acres)
SF-E	SF-E: Single Family Estate. Mid-sized residential properties (2.5-5 acres)
SF	SF: Single Family. Small residential properties (1-2.5 acres)
B	B: Business. Light retail and neighborhood services

2.2. Description and Purpose of Zoning Districts

AR- Agrarian Residential District: This district provides for the farming, ranching, residential and gardening activities on land being utilized for these purposes. Density in this district is limited to one residential dwelling unit per 2.5 acres of the mother track.

SF-E - Single-Family Residential - Estate: The SF-E district provides for residential use and development on large lots with a minimum lot size of 108900 square feet (two and a half acres). Density in this district is limited to one residential dwelling unit per 2.5 acres of the mother track.

SF – Single Family Residential: This SF District provides for residential use and development on lots which are less than 108900 square feet (two and a half acres). Density in this district is limited to one residential dwelling unit per lot.

B - Business District - Light Retail, and Neighborhood Services. This district is intended for neighborhood shopping facilities, and retail and/or commercial facilities of a service character. Uses developed under the standards of the B District are designed to provide a compatible relationship between the nonresidential use and development and adjacent residential areas.

SECTION 3. ZONING DISTRICT MAP

3.1. Zoning District Boundaries Delineated on Zoning District Map

The proposed boundaries of the zoning districts set out herein are delineated upon the Zoning District Map of the Town of Poetry, Texas, said map being hereby adopted as part of this ordinance as fully as if the same were set forth herein in detail.

3.2. Regulations for Maintaining Zoning District Map

Upon adoption, two (2) original, official, and identical copies of the Zoning District Map bearing the signature of the Mayor and attestation of the Town Secretary and shall be filed and maintained as follows:

- 3.2.1. One copy shall be filed with the Town Secretary, to be retained and labeled as the “Original Zoning Map” and shall not be changed in any manner.
- 3.2.2. One copy shall be filed with the Town Secretary and shall be maintained up-to-date by posting thereon all changes and subsequent amendments. A written record (logbook) shall be kept by the Town Secretary of all changes made to the Zoning District Map.

- 3.2.3. Reproductions of the official Zoning District Map may be made for information purposes.

SECTION 4. ZONING DISTRICT BOUNDARIES

4.1. Rules for Determining District Boundaries

The district boundary lines of zoning districts shown on the zoning district map are usually along streets and property lines, or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

- 4.1.1. Boundaries indicated as approximately following streets shall be construed to follow the centerline of such street, highway, or alley.
- 4.1.2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lines.
- 4.1.3. Boundaries indicated as approximately following town limits shall be construed as following town limits.
- 4.1.4. Where physical features of the ground are at variance with information shown on the official zoning district map, or if there arises a question as to how a parcel of property is zoned and such question cannot be resolved, or the zoning of property is invalidated by a final judgment of a court of competent jurisdiction, the property shall be considered as AR - Agrarian District, temporarily.

SECTION 5. ZONING OF ANNEXED TERRITORY

5.1. Permanent Zoning Concurrent With Zoning

An area or areas being annexed to the Town of Poetry shall ordinarily be given permanent zoning concurrently with the annexation.

5.2. Temporary Classification

In instances in which the zoning of a newly-annexed territory concurrently with the annexation is not accomplished, the annexed territory shall be temporarily classified as AR – Agrarian District, until permanent zoning is established by the Town Council. The procedure for establishing permanent zoning of annexed territory shall conform to the procedure established by law for changes to zoning district boundaries. The Town Council shall determine a permanent zoning for such area as soon as practicable after annexation.

SECTION 6. COMPLIANCE WITH ZONING REGULATIONS; SIGNAGE

6.1. Exclusions

Nothing herein contained shall require any change in the plans, construction, or designated use of a building under construction or the use of land at the time of the passage of this ordinance.

6.2. One Main Building on a Lot or Tract

In single family residential districts, a lot shall have no more than one main building **per 2.5 acres** of the mother track.

6.3. Signage

No off-premise sign in excess of ten (10) feet in height, measured from the average grade of the

property on which the sign is erected, shall exist, be constructed or be allowed on any lot or tract in the Town or within the Town's extraterritorial jurisdiction, unless authorized by majority vote of the Town Council. The regulations contained within this ordinance pertaining to nonconforming structures shall apply to signs.

SECTION 7. AR – AGRARIAN RESIDENTIAL

7.1. General Purpose and Description

This district provides for the continuance and use of land for residential, farming, ranching, raising, producing, or keeping plants or animals, or cultivation and management of other natural resources or farm products on land being utilized for these purposes. Accessory uses that are incidental to the permitted uses are also allowed, and may include dwellings for proprietors and employees, barns, storage of grain, animal raising, feed preparation, and wholesale sales of products produced on-site. Density in this district will usually be no greater than one (1) residential dwelling unit per **2.5 acres** of the mother track and may include other buildings and structures incidental to agricultural use including barns, stables and loafing sheds.

7.2. Permitted Uses

A building or premise shall be only for the following purposes:

- 7.2.1. Single family residential use;
- 7.2.2. Farming and raising of crops, fruits and vegetables;
- 7.2.3. Ranching and raising of livestock (excluding commercial feed lots);
- 7.2.4. Parks, playgrounds, community buildings, libraries, museums and other public recreational facilities, police and fire stations and similar public uses owned and/or operated by the Town or other public agency; and privately owned and maintained playgrounds and like recreation areas;
- 7.2.5. Churches and public and private schools; and
- 7.2.6. Such other uses as may be permitted with a Specific Use Permit.

7.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 8. SF-E - SINGLE-FAMILY RESIDENTIAL – ESTATE

8.1. General Purpose and Description

The SF-E district provides for residential development and use on large lots with a minimum lot size of **two and a half acres**. Density in this district will usually be no greater than one (1) residential dwelling unit per **2.5 acres** of the mother track. Uses that are incidental to the permitted uses are also allowed.

8.2. Permitted Uses

A building, land or premises in the SF-E District shall be used only for the following purposes:

- 8.2.1. Single family residential use;
- 8.2.2. Parks, playgrounds, community buildings, libraries, museums and other public recreational facilities, police and fire stations and similar public uses owned and/or operated by the Town or other public agency; and privately owned and maintained playgrounds and like recreation areas;

- 8.2.3. Churches and public and private schools; and
- 8.2.4. Such other uses as may be permitted with a Specific Use Permit.

8.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 9 SF – SINGLE FAMILY RESIDENTIAL:

9.1. General Purpose and Description: This SF District provides for residential use and development on lots which are at least one acre but less than **two and a half acres**. Uses that are incidental to the permitted uses are also allowed. Density in this district is limited to one single family dwelling unit per lot.

9.2. Permitted Uses

A building or premise in an SF-E District shall be used only for the following purposes:

- 8.2.1. Single family residential use;
- 8.2.2. Parks, playgrounds, community buildings, libraries, museums and other public recreational facilities, police and fire stations and similar public uses owned and/or operated by the Town or other public agency; and privately owned and maintained playgrounds and like recreation areas;
- 8.2.3. Churches and public and private schools; and
- 8.2.4. Such other uses as may be permitted with a Specific Use Permit.

9.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 10. B - BUSINESS - LIGHT RETAIL, AND NEIGHBORHOOD SERVICES

10.1. General Purpose and Description.

The Business District - B- is intended for neighborhood shopping facilities, and retail and/or commercial facilities of a service character for large lots with a minimum **lot size of two and a half acres**. Density in this district is limited to one business unit per **acre**. The B District is established to accommodate the daily and frequent retail needs of the community as well as those that are incidental to agricultural uses. The following regulations shall be applicable to all uses in the district:

10.2. Permitted Uses

10.2.1. Offices such as:

- 10.2.1.1. Executive and administrative offices;
- 10.2.1.2. Business offices of a public utility, real estate, insurance, commercial or industrial establishment;
- 10.2.1.3. Medical, dental offices and clinics, legal, engineering, architectural and similar professional offices, accounting, auditing and bookkeeping service offices;
- 10.2.1.4. Finance agency offices and banks, including drive through facilities;
- 10.2.1.5. Miscellaneous business services such as credit reporting agencies, stenographic services, business and management consulting services;
- 10.2.1.6. Offices of non-profit organizations;
- 10.2.1.7. Municipal and other governmental offices; and
- 10.2.1.8. Any other office in which goods or merchandise are not commercially created,

displayed, stored, exchanged or sold.

10.2.2. Retail sales and personal service shops and establishments as follows:

10.2.2.1. Feed store;

10.2.2.2. Tack shop;

10.2.2.3. Restaurants serving food and beverages.

10.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 11. USE OF LAND AND BUILDINGS

No land shall hereafter be used and no building or structure shall hereafter be occupied, used, erected, altered, removed, placed, demolished or converted which is contrary to the following table. In addition to the uses specified in each of the zoning districts, the following additional uses are allowed in the designated districts (the letter "A" indicates an allowed use, the letter "S" indicates a use allowed only by Specific Use Permit, and a blank space means that the use is prohibited):

TYPE OF USE	AR	SF-E	SF	B
Accessory building	A	A	A	S
Carport	A	A	A	A
Garage, private	A	A	A	A
Home Occupation	A	A	A	A
Manufactured Housing, HUD-Code	A	A	A	
Manufactured Homes	A	A	A	
Stable, private	A	A	A	S

SECTION 12. CLASSIFICATION OF NEW AND UNLISTED USES

12.1. Procedure For Classifying New/Unlisted Uses

It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in the town. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

12.1.1. The Town Secretary shall refer the question concerning any new or unlisted use to the Town Council as to the zoning classification(s) into which such use should be placed. The referral of the use interpretation question shall be accompanied by a

statement of facts listing the nature of the use and whether it involves dwelling activity, sales, processing, type of product, storage and amount and nature thereof, enclosed or open storage, anticipated employment, transportation requirements, the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated and the general requirements for public utilities such as water and sanitary sewer.

12.1.2. The Town Council shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts, in determining the zoning district or districts within which such use should be permitted.

12.1.3. The Town Council shall approve or make such determination concerning the classification of such use as is determined appropriate, based upon its findings.

SECTION 13. NONCONFORMING USES, STRUCTURES, AND LOTS

13.1. Uses in Existence at Time of Adoption of Ordinance

A nonconforming status shall exist when a use, structure or lot which does not conform to the regulations prescribed in the district in which such use or structure is located was in existence and lawfully operating prior to the adoption of this ordinance.

13.2. Expansion of Nonconformity Prohibited

No nonconforming use, structure or lot may be expanded or increased beyond the lot or tract upon which such nonconforming use is located as of the effective date of this ordinance.

13.3. Repairs/Normal Maintenance on Nonconforming Uses Permitted

Repairs and normal maintenance may be made to a nonconforming building or structure.

13.4. Change of Nonconforming to Conforming Use

Any nonconforming use, structure or lot may be changed to a conforming use, structure or lot and once such change is made, the use, structure or lot shall not thereafter be changed back to a nonconforming use.

13.5. Abandonment/Discontinuation of Nonconformity

Whenever a nonconforming use or structure is abandoned, all nonconforming rights shall cease, and the use of the premises shall thenceforth be in conformity with this ordinance. Abandonment shall involve the intent of the user or owner to discontinue a nonconforming operation and an act of discontinuance. Discontinuance of a nonconforming use or the vacancy of a nonconforming structure for a period of at least six (6) months shall be construed as **prima facie** proof of intent to abandon the nonconforming use or structure. Any nonconforming use occurring within a structure that is moved from the premises shall be considered to have been abandoned. Any nonconforming structure which is damaged or destroyed by fire, flood or other natural causes shall terminate all nonconforming rights in and to the structure if the cost to repair the damage is

at least 50% of the value of the structure.

SECTION 14. PLANNING AND ZONING COMMISSION/Board of Adjustment

14.1. Organization and Appointment of Planning Commission

The Town Council shall serve as the Planning and Zoning Commission until such time as a separate Commission is deemed desirable and is established by the Town Council.

14.2. Organization and Appointment of Board of Adjustment

The Town Council shall serve as the Board of Adjustment until such time as a separate Board is deemed desirable and is established by the Town Council. When presiding as a Board of Adjustment, a quorum shall be at least four (4) members of the Town Council. When presiding as a Board of Adjustment, the Town Council shall have the authority to hear and consider appeals from orders of Town officials in zoning matters, variances based on unnecessary hardship, and special exceptions where the terms of an ordinance delegates the authority to consider special exceptions.

SECTION 15. DEFINITIONS

15.1 General Rules of Construction:

The following rules of construction shall apply to the interpretation of words used in this ordinance:

- 15.1.1: words used in the present tense include the future tense;
- 15.1.2: words used in the singular number include the plural number;
- 15.1.3: words in the plural number include the singular number;
- 15.1.4: the words "building" and "structure" are synonymous;
- 15.1.5: the words "lot", "plot" and "tract" are synonymous; and
- 15.1.6: the word "shall" is mandatory and not discretionary.

15.2 Definitions

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory Use or Building: An accessory building or use is one which: (a) is subordinate to a main building or primary use; and (b) is located on the same lot as the main building or primary use. An accessory building is a structure that is not connected or attached to the main building by a common roof line.

Acre: An area of land consisting of 43,560 square feet. As used in these regulations, acreage is net, not gross; the area comprised by an acre of land does not include areas occupied by streets, alleys and drainage ways.

Building - Any structure built for the support, shelter and enclosure of persons, animals, chattels

or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire, each portion so subdivided may be deemed a separate building.

Building, Main or Primary - A building in which is conducted the principal use of the lot on which it is situated. Detached accessory buildings (not connected and sharing a common roof line) do not comprise the main or primary building.

Building Line - A line parallel or approximately parallel to the street line at a specified distance therefrom constituting the minimum distance from the street line that a building may be erected.

Carport: A structure open on a minimum of three (3) sides designed or used to shelter vehicles, not to exceed thirty-six (36) feet on its longest dimension.

Dwelling Unit - A building or portion thereof designed exclusively for residential occupancy, including dwelling units that may specifically be designated as one-family or dingle-family, and two-family. The phrase "dwelling unit" does not refer to buildings designed and used as hotels, boarding houses, rooming houses, multiple-family dwellings, and motels.

Family - One or more persons related by blood, marriage, or adoption, or a group not to exceed four persons not all related by blood or marriage, adoption or guardianship, occupying a dwelling unit and living as a single housekeeping unit.

Farm, Ranch, or Orchard - An area of five (5) acres or more which is used for growing of usual farms products and/or raising of usual farm products and animals and including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law. Farm, ranch, or orchard use shall not cause a hazard to health by reason of unsanitary conditions.

Garage, Private - A detached accessory building or portion of the main building for the parking or temporary storage of automobiles of the occupants of the premises; if occupied by vehicles of others, it is a storage space.

Home Occupation - A gainful occupation or profession conducted by persons residing on the premises and conducted entirely within the dwelling or its accessory buildings. The use is clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character of the residence or adversely affect the residential character of the neighborhood.

HUD-code manufactured home - means a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, built on a permanent chassis, designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities, transportable in one or more sections, and, in the traveling mode, at least eight body feet in width or at least 40 body feet in length, or, when erected on site, at least 320 square feet, includes the plumbing, heating, air conditioning, and electrical systems of the home, and does not include a recreational vehicle as defined by 24 C.F.R. 3282.8(g).

Lot - An undivided tract or parcel of land under one (1) ownership having frontage upon a public street or officially approved place, either occupied or to be occupied by a building or building group, together with accessory buildings, and used together with such yards and other open

spaces as are required by this ordinance, which parcel of land is designated as a separate and distinct tract and is identified by a tract or lot number or symbol in a duly approved subdivision plat of record or in a survey.

Manufactured housing and manufactured home - mean a HUD-code manufactured home or a mobile home and collectively means and refers to both.

Mobile home - means a structure constructed before June 15, 1976, built on a permanent chassis, designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities, transportable in one or more sections, and, in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet, and includes the plumbing, heating, air conditioning, and electrical systems of the home.

Mother Track - A contiguous expanse of land that is owned and operated as a single, unified tract. This classification allows for a holistic management approach, disregarding traditional divisions such as tax jurisdictions, county boundaries, town limits, and Extraterritorial Jurisdiction (ETJ) limits. It treats multiple plats or parcels of land, even if they straddle different administrative or legal boundaries, as one integrated entity for purposes of development, management, and regulation.

Nonconforming lot - A parcel of land having less area, frontage, or dimensions than required in the district in which it is located, but which existed prior to the adoption of the district regulations.

Nonconforming structure - A structure or building having a dimension or setback than otherwise required by the regulations applicable to the district in which it is situated, but which was constructed prior to the adoption of the district regulations.

Nonconforming use - A use of land lawfully used and occupied prior to the effective date of an ordinance or regulation that does not conform to the use regulations of the district in which it is situated.

Sign - Any device, name, number, identification, description, announcement, declaration, demonstration, flag, banner, pennant, illustration, light, or insignia, and the supporting structure of any of the same, placed upon or affixed directly or indirectly to or upon any building or outdoor structure, or erected or maintained upon a piece of land which directs attention to any object, product, service, place, activity, person, institution, organization, or business, except that holiday lights and decorations shall not be considered signs.

Single family dwelling - A detached building designed exclusively for occupancy by one (1) family, excluding manufactured housing or manufactured homes.

Stable, private - An accessory building set back from adjacent property lines a minimum distance of one hundred (100) feet and used for quartering horses, not to exceed two (2) horses per one acre area of a farm or lot.

Trailer, - Any unpowered vehicle designed to be towed by a powered vehicle, not to be used for living quarters.

SECTION 17. CHANGES AND AMENDMENTS TO ALL ZONING ORDINANCES AND DISTRICTS AND ADMINISTRATIVE PROCEDURES

17.1. Declaration of Policy

The Town declares the enactment of these regulations governing the use and development of land, buildings, and structures to be a measure necessary to the orderly development of the community. Therefore, no change shall be made in these regulations or in the boundaries of the zoning districts except:

- 17.1.1. To correct any error in the regulations or map.
- 17.1.2. To recognize changed or changing conditions or circumstances in a particular locality.
- 17.1.3. To recognize changes in technology, style of living, or manner of doing business.

17.2. Authority to Amend Ordinance

The Town Council may from time to time, after public hearings required by law, amend, supplement, or change the regulations herein provided or the classification or boundaries of the zoning districts. Any amendment, supplement, or change to the text of this ordinance and/or the zoning map and any change in the classification or boundaries of the zoning districts may be initiated by the Town Council, or may be requested by the owner of the affected real property or the authorized representative of an owner of affected real property.

17.3. Changes in Zoning District Boundaries or Classifications

- 17.3.1. Upon filing of an application for an amendment to the classification or boundaries of a zoning district, the Town Council shall hold a public hearing on said application.
- 17.3.2. For zoning changes that seek to modify zoning district classifications or boundaries, written notice of the date, time and location of the public hearing shall be:
 - 17.3.2.1 sent to the owner of the property or his agent and to all owners of real property lying within two hundred (200) feet of the property on which the change in classification is proposed, such notice, mailed first-class postage prepaid, to be given at least thirty (30) days before the date of such hearing; and
 - 17.3.2.2. published in the official newspaper of the Town or another newspaper of general circulation at least sixteen (16) days from the date of such publication; and
 - 17.3.2.3. posted on the Town's website continuously for at least thirty (30) days prior to the public hearing; and
 - 17.3.2.4. posted on the property by the applicant with a sign, plainly visible from the nearest public roadway, which shall state "Zoning Change Requested, for information call Town Hall" and the telephone number shall be listed. The sign shall be at least eighteen (18) by twenty-four (24) inches in size and shall be continuously posted for at least fifteen (15) days before the public hearing. However, failure of owners to receive notice of hearing, or the failure of signage to be posted, shall in no way affect the validity of the action taken.
- 17.3.3. For zoning changes that seek to amend regulations contained within this ordinance,

written notice of the date, time and location of the public hearing shall be published and posted in the manner and within the times set forth in subsections 17.3.2.2 (published in the Town's official newspaper) and 17.3.2.3 (posted on the town's website).

SECTION 18. SPECIFIC USE PERMITS

18.1. Purpose

Specific Use Permits (SUP's) are zoning classifications that may include regulations as a part of the zoning ordinance granting the SUP. The uses that normally fall into the specific use category are uses that have unique characteristics that may, depending on the location of the property, require different conditions and regulations not otherwise listed under the basic zoning districts, or uses that are not considered by this ordinance as an allowed use by right. The Town's consideration of SUP applications is discretionary, not ministerial, and may be granted or denied by the Town Council based on the best interests of the public health, safety, morals and general welfare.

18.2. Process

An application for an SUP may only be filed by the owner of the affected property or his/her duly authorized agent. The town may charge a fee to the applicant in an amount intended to compensate the town for the costs of publication and administrative expenses. The Town Council shall conduct a public hearing on the application after notice of the date, time and location is delivered, published, and posted in accordance with the notice requirements for zoning classification or district boundary changes.

18.3. If granted, the town council may impose reasonable conditions on the use allowed by the SUP, including but not limited to hours of operation, parking requirements, on-site signage, and limitations on the emission of noise, dust and fumes. The specific conditions set forth in the ordinance granted the SUP will supersede the provisions of this ordinance only when in direct conflict; otherwise all zoning regulations under this ordinance will apply. The zoning map shall identify the properties on which an SUP has been granted.

SECTION 19. PENALTY FOR VIOLATIONS

Any person, association or corporation violating any of the provisions of this ordinance shall upon conviction be fined a sum not to exceed two thousand dollars (\$2000.00) per day and each and every day that the provisions of this ordinance are violated shall constitute a separate and distinct offense. The foregoing sanction is not exclusive and the town may pursue any and all other remedies associated with violations of its zoning regulations as may be allowed by law.

SECTION 20. VALIDITY, SEVERANCE AND CONFLICT

If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall be severed from and shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so determined to be invalid or unconstitutional. To the extent any provision of this ordinance conflicts with other ordinances of the Town of Poetry, the terms of this ordinance shall control.

SECTION 21. EFFECTIVE DATE

This ordinance shall be effective upon its adoption by the Town Council and the and the publication of its caption as the law may so require.

**APPENDIX 1
DISTRICT REGULATIONS**

	AG	SF-E	SF	B-1
MAXIMUM HEIGHT (feet)	40	40	40	20
SIDE YARD WIDTH (feet)	35	35	35	35
MINIMUM REAR YARD (feet)	50	50	50	50
MINIMUM FRONT YARD (feet)	105	105	105	105
MINIMUM LOT AREA (square feet)	108,900	108,900	43,560	108,900
MINIMUM LOT WIDTH (feet)	200	200	150	200
MINIMUM LOT DEPTH (feet)	311	311	200	311
MAXIMUM LOT COVERAGE	15%	10%	10%	10%
MINIMUM GREEN SPACE	N/A	N/A	N/A	50%

NOTES TO APPENDIX 1

- a) The minimum residential lot area for the various districts shall be in accordance with the regulations for each district, except that a lot having less area than required which was an official "lot of record" at the time of the adoption of this ordinance (a nonconforming lot) may be used for a one-family dwelling.
- b) No lot existing at the time of passage of this ordinance shall be reduced in area below the minimum requirements set forth in the respective district.
- c) The front yard setback shall be measured from the property line at an existing street to the front face of the building, covered porch, covered terrace, or attached accessory buildings. Eaves and roof extensions or a porch without posts or columns may project into the required front yard for a distance not to exceed four (4) feet and subsurface structures, platforms, or slabs may not project into the front yard to a height greater than thirty (30) inches above the average grade of the yard. On corner lots, the front yard setback shall be observed along the frontage of both intersecting streets (unless shown specifically otherwise on a final plat).
- d) The rear yard setback or depth is defined as the distance from the boundary of a lot which is most distant from or is most nearly parallel to the front lot line, and the front, rear or side of any structure. The side yard setback or depth is the distance between the front, rear or side of any structure and any lot line that is not the front or rear lot line. Eaves and roof extensions or a porch without posts or columns may project into the required rear or side yard for a distance not to exceed four (4) feet and subsurface structures, platforms, or slabs may not project into the yard to a height greater than thirty (30) inches above the average grade of the yard
- e) The height of a building is measured from the average established grade at the street line or from the average natural front yard ground level, whichever is higher, to (1) the highest point of the roof's surface, if a flat surface, (2) to the deck line of mansard roofs, or (3) to the mean height level between eaves and edge for hip and gable roofs and, in any event, excluding chimneys, cooling towers, elevator bulkheads, tanks, water towers, radio towers, ornamental cupolas, domes or spires, and parapet walls not exceeding ten (10) feet. If the street grade is not officially established, the average front yard grade shall be used for a base level.
- f) Where a building line has been established by an ordinance adopted by the Town Council and such line requires a greater or lesser front yard setback than is prescribed by this ordinance for the district in which the building line is located, the required front yard shall comply with the building line so established by such ordinance.
- g) Where the frontage on one side of a street between two (2) intersecting streets is divided by two (2) or more zoning districts, the front yard shall comply with the requirements of the most restrictive district for the entire frontage.

h) Single-family dwellings require building lots of two and a half (2.5) acres or more, except in the SF-Single Family Residential District.

i) All measurements for minimum front yard and other related measures are from the center line of the road and includes both the road and the right of way.

DRAFT



**Town of
Poetry**

**GL Account 6010
Capital Road
Refurbishment &
6100 Pothole
Signage, Road
Repair**

Sales and Use Tax Revenue

Texas Comptroller Allocation

May-23	\$392.28
Jun-23	\$6,432.63
July-23	\$8,529.55
August-23	\$7,633.36
September-23	\$9,172.77
October-23	\$8,169.48
November-23	\$10,285.29

Total Allocation \$50,615.36

PROPOSED CHECKLIST FOR DEAD TREE REMOVAL WITHIN TOWN BORDERS:

After researching this subject a bit more I realize that while many of the property lines go to the center of the road, many end at the Right of way. I talked with two surveyors which confirmed this fact.

Byline Surveying stated that not even the CAD's are correct. To be correct, one must look at the Warranty Deed and accompanying survey.

Therefore, it looks like on the dead tree issue we will need a checklist perhaps:

- 1) Look at Warranty Deed and survey to determine property line.
- 2) If a dead tree is on land within landowners' property line but on the roadway with potential to fall and create a safety concern, then mayor sends letter out saying they must pay for tree removal. If it is not removed within 1 month of property line determination, then a phone call to determine the situation will follow. Any extenuating circumstances will be brought again to the council. If the problem is not remedied within 3 months of property line determination, the town's attorney will write a letter.
- 3) If it is determined that land is NOT within the property owner's boundary, then the Mayor will send out letter saying the town will cover the expense.
- 4) The town will then collect 3 quotes from for tree removal for the council to consider and remedy within 2 months.

IN THE COMMISSIONERS COURT OF
HUNT COUNTY, TEXAS

SEPARATE WRITTEN APPROVAL OF INTERLOCAL
COOPERATION CONTRACT WITH:
TOWN OF POETRY

The Commissioners' Court of HUNT County, Texas, in compliance with §791.015 of the Texas Government Code, otherwise known as the Interlocal Cooperation Act, and before the commencement of any work to construct, improve, or repair the subject matter of an Interlocal Contact with Town of Poetry, hereby authorizes, and approves this separate specific written approval for the proposed project described below. In this regard, the following provisions apply to such proposed Interlocal Cooperation Contract:

1. This approval is separate and distinct from the Interlocal Cooperation Contract itself.
2. The proposed project is for Hunt County R&B Precinct #2 to:

A. Description of Project: _____

Pothole and sides Repair using new Cold Mix Asphalt

B. Exact Project Location:

CR 2458, CR2440, CR2446, CR2448, CR2434, CR 24322, CR2426, CR2326, CR 2400, CR 2450, CR 2430, CR 2454

C. Material, equipment, labor hours, etc. to be used on this project: _____

Labor & Equipment

Approximate Start Date: _____ Approximate Completion Date: _____

Cost of Project: _____.* **quote will be available soon.**

*(to be paid into an escrow account with the County before the start date of the above-described project)

It is mutually understood that no additional projects will be performed for any entities that owe outstanding project costs to Hunt County.

Approved by Commissioners' Court:

Hunt County Commissioner

Date:

Approved by: Town of Poetry

Date:

Authorized Signature for Other Entity

Copy of said agreement will be provided to the County Auditor and an accounts receivable will be recorded for said agreement. The Commissioners Office will report the date of completion to the County Auditor within seven (7) days of completion of above-described project. The fund deposited in the escrow account will then be paid to the County.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS, AMENDING ORDINANCE NO. 2021-10-01 RELATING TO THE COLLECTION OF SOLID WASTE FROM CUSTOMERS WITHIN THE TOWN; ADOPTING EXCLUSIVITY SUCH THAT ONLY ONE VENDOR MAY SERVE RESIDENTIAL CUSTOMERS; REQUIRING A FRANCHISE AGREEMENT FOR THE USE OF THE TOWN STREETS TO CONDUCT SUCH BUSINESS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 16, 2021, the Town Council of the Town of Poetry, Texas, adopted Ordinance No. 2021-10-01, relating to the collection of solid waste and adopting regulations pertaining thereto; and

WHEREAS, the Town Council finds and determines that since the adoption of Ordinance No. 2021-10-01, there are numerous solid waste vendors conducting business in the Town, some of whom do not have the appropriate permit or franchise agreement, have failed to renew permits or agreements, and, based on the number and nature of complaints received by the Town, are performing collection services poorly and inadequately; and

WHEREAS, it is in the public interest to ensure that solid waste collection service is provided efficiently and effectively to the citizens of the Town; and

WHEREAS, the Town Council desires to retain one exclusive vendor to collect solid waste from residential customers within the Town, and that the Council's selection of the most qualified vendor will minimize the number of vendors using Town streets, will enable a more effective and efficient collection of residential municipal solid waste, and will enable the Town to more effectively monitor and regulate the collection of solid waste; and

WHEREAS, the Town Council finds and determines that a public need exists to amend regulations relating to the collection of solid waste in the Town's limits in accordance with the terms of this Ordinance in order to protect the public streets and provide for the general health, safety and welfare of the citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. That the Town Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Town Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. That Ordinance 2021-10-01, adopted by the Town Council of the Town of Poetry,

Texas, on or about November 16, 2021, be and is hereby amended by amending Subsection A of Section 2 (“Permit And Franchise Agreement Required”) to consolidate both Subsection A’s into one, and to amend the existing language to enable exclusivity in solid waste collections, such that Subsection A of Section 2 of Ordinance No. 2023-10-01 shall read in its entirety as follows:

A. Exclusivity; Permit and Franchise Agreement.

- (1) Unless excepted herein, it shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having a valid permit issued by Town and a franchise agreement with the Town.
- (2) Residential and Commercial Collections. The Town Council shall select one Collector based on demonstrated competence to exclusively provide Municipal Solid Waste collections from residential customers within the Town. Upon the Council’s selection, all existing permits and franchise agreements with all persons and entities providing solid waste collection services to residential customers within the Town shall be and are hereby revoked. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection from residential and commercial polycarts and dumpsters 10 yard or under for customers other than the exclusive vendor selected by the Town.
- (3) Rolloff Dumpster Collections larger than 10-yard containers. No Collector, other than the Town’s exclusive residential Collector, shall collect any municipal solid waste within the corporate limits of the Town without first applying for and obtaining a permit to do so from the Mayor or his/her designee. Such permit shall be on such forms as the Town may determine. An annual permit fee in the amount of \$100 is due and payable at the time of application for a permit. The Mayor or his/her designee may provide notice of noncompliance with these regulations and allow ten (10) days for compliance. However, failure of the Town to provide this notice does not preclude the Town from initiating citations and pursuing action pursuant to Chapter 54 of the Texas Local Government Code, as amended, against any collector in violation of the Town’s solid waste regulations.
- (4) In addition to the foregoing permit requirement, any person, firm corporation collecting solid waste within the Town shall first enter into a Franchise Agreement with the Town. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having entered into a Franchise Agreement.

SECTION 3 That Subsection A of Section 2 of Ordinance No. 2023-10-01 be and is hereby amended in accordance with the foregoing, without amendment repeal or change to any other part or provision of Ordinance No. 2021-10-01. All ordinances of the Town of Poetry, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the

Town of Poetry not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of other ordinances of the Town.

SECTION 6. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense.

SECTION 7. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED AND APPROVED by the Town Council of the Town of Poetry, Texas, on this the _____ day of _____, 2023.

APPROVED:

MAYOR

ATTEST:

TOWN SECRETARY

APPROVED AS TO FORM:

TOWN ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS, AMENDING ORDINANCE NO. 2021-10-01 RELATING TO THE COLLECTION OF SOLID WASTE FROM CUSTOMERS WITHIN THE TOWN; ADOPTING EXCLUSIVITY SUCH THAT ONLY ONE VENDOR MAY SERVE RESIDENTIAL CUSTOMERS; REQUIRING A FRANCHISE AGREEMENT FOR THE USE OF THE TOWN STREETS TO CONDUCT SUCH BUSINESS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 16, 2021, the Town Council of the Town of Poetry, Texas, adopted Ordinance No. 2021-10-01, relating to the collection of solid waste and adopting regulations pertaining thereto; and

WHEREAS, the Town Council finds and determines that since the adoption of Ordinance No. 2021-10-01, there are numerous solid waste vendors conducting business in the Town, some of whom do not have the appropriate permit or franchise agreement, have failed to renew permits or agreements, and, based on the number and nature of complaints received by the Town, are performing collection services poorly and inadequately; and

WHEREAS, it is in the public interest to ensure that solid waste collection service is provided efficiently and effectively to the citizens of the Town; and

WHEREAS, the Town Council desires to retain one exclusive vendor to collect solid waste from residential customers within the Town, and that the Council's selection of the most qualified vendor will minimize the number of vendors using Town streets, will enable a more effective and efficient collection of residential municipal solid waste, and will enable the Town to more effectively monitor and regulate the collection of solid waste; and

WHEREAS, the Town Council finds and determines that a public need exists to amend regulations relating to the collection of solid waste in the Town's limits in accordance with the terms of this Ordinance in order to protect the public streets and provide for the general health, safety and welfare of the citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. That the Town Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Town Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. That Ordinance 2021-10-01, adopted by the Town Council of the Town of Poetry,

Texas, on or about November 16, 2021, be and is hereby amended by amending Subsection A of Section 2 (“Permit And Franchise Agreement Required”) to consolidate both Subsection A’s into one, and to amend the existing language to enable exclusivity in solid waste collections, such that Subsection A of Section 2 of Ordinance No. 2023-10-01 shall read in its entirety as follows:

A. Exclusivity; Permit and Franchise Agreement.

- (1) Unless excepted herein, it shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having a valid permit issued by Town and a franchise agreement with the Town.
- (2) Residential and Commercial Collections. The Town Council shall select one Collector based on demonstrated competence to exclusively provide Municipal Solid Waste collections from residential customers within the Town. Upon the Council’s selection, all existing permits and franchise agreements with all persons and entities providing solid waste collection services to residential customers within the Town shall be and are hereby revoked. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection from residential and commercial polycarts and dumpsters 10 yard or under for customers other than the exclusive vendor selected by the Town.
- (3) Rolloff Dumpster Collections larger than 10-yard containers. No Collector, other than the Town’s exclusive residential Collector, shall collect any municipal solid waste within the corporate limits of the Town without first applying for and obtaining a permit to do so from the Mayor or his/her designee. Such permit shall be on such forms as the Town may determine. An annual permit fee in the amount of \$100 is due and payable at the time of application for a permit. The Mayor or his/her designee may provide notice of noncompliance with these regulations and allow ten (10) days for compliance. However, failure of the Town to provide this notice does not preclude the Town from initiating citations and pursuing action pursuant to Chapter 54 of the Texas Local Government Code, as amended, against any collector in violation of the Town’s solid waste regulations.
- (4) In addition to the foregoing permit requirement, any person, firm corporation collecting solid waste within the Town shall first enter into a Franchise Agreement with the Town. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having entered into a Franchise Agreement.

SECTION 3 That Subsection A of Section 2 of Ordinance No. 2023-10-01 be and is hereby amended in accordance with the foregoing, without amendment repeal or change to any other part or provision of Ordinance No. 2021-10-01. All ordinances of the Town of Poetry, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the

Town of Poetry not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of other ordinances of the Town.

SECTION 6. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense.

SECTION 7. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED AND APPROVED by the Town Council of the Town of Poetry, Texas, on this the _____ day of _____, 2023.

APPROVED:

MAYOR

ATTEST:

TOWN SECRETARY

APPROVED AS TO FORM:

TOWN ATTORNEY

Zoning Ordinance

AN ORDINANCE OF THE TOWN COUNCIL OF POETRY, TEXAS, ADOPTING A PLANNING AND ZONING CODE TO MAINTAIN RURAL INTEGRITY, AND FURTHERING THE OBJECTIVES OF THE COMPREHENSIVE PLAN.

WHEREAS, the Town of Poetry, Texas is a Type A general Law municipality of the State of Texas and is a municipal body politic and corporate, established and existing under the laws of the State of Texas; and

WHEREAS, the Town Council of Poetry is the governing body of the Town and is authorized by the Texas Local Government Code to adopt ordinances and rules that are necessary and proper for governing and maintaining the good government of the Town, the welfare of the municipality and its trade, commerce, and sanitation; and

WHEREAS, the Council is authorized under Chapter 211 of the Texas Local Government Code to regulate the use of land within the municipal boundaries of the Town to promote the health, safety, morals and general welfare and the protection and promotion of areas of historical, cultural, or architectural importance and significance; and

WHEREAS, the Town of Poetry, Texas, cherishes its unique rural spirit and agricultural lifestyle, valuing the tranquil, peaceful life it provides to its residents; and

WHEREAS, in accordance with the Poetry Comprehensive Plan, the Town seeks to protect this lifestyle from encroachment, uphold the rights of its residents, prevent overcrowding and congestion, and regulate development consistent with rural living; and

WHEREAS, the Town intends to uphold the liberties of its citizens, acknowledging the importance of having as few rules as possible and ensuring that any rules instituted are consistent with rural life; and

WHEREAS, the Town intends to preserve its natural landscape, avoiding where possible the destruction of trees and environmental sensitive areas, and promoting the preservation of open space; and

WHEREAS, the Town Council finds and determines that the comprehensive zoning ordinance and regulations adopted herein are intended to accomplish the goals and objectives of the Town Council and that these regulations are in the best interests of the public health, safety, morals and general welfare of the citizens of the Town of Poetry.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. PURPOSE; APPLICABILITY

1.1. This Code shall be known as and may be cited as the Zero Zoning Ordinance, or the comprehensive zoning ordinance, of the Town of Poetry, Texas.

1.2. The provisions of this ordinance are enacted to protect the public health, safety, morals, and general welfare, and to protect, preserve and promote of areas of historical, cultural, or architectural importance and significance. These provisions are specifically intended to:

- 1.2.1. Preserve and protect the Town’s rural atmosphere and lifestyle and encourage a healthful and convenient distribution of population by regulating and limiting the density of development;
- 1.2.2. Lessen congestion in the streets;
- 1.2.3. Secure safety from fire, panic, and other dangers;
- 1.2.4. Prevent the overcrowding of land;
- 1.2.5. Ensure the provision of adequate size of yards, courts, and open space for adequate light, air, and fire safety;
- 1.2.6. Conserve the value of buildings and land;
- 1.2.7. Avoid undue concentration of population ;
- 1.2.8. Facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements;
- 1.2.9. Minimize loss due to destruction by nature or acts of God; and
- 1.2.10. Promote health, safety, morals and the general welfare .

1.3. The provisions of this ordinance shall apply to all land, buildings, structures, and uses thereof located within the Town of Poetry and its extraterritorial jurisdiction, unless an exemption is provided by the terms of this ordinance or as otherwise exempted by state law.

1.4. To the extent allowed by law, the provisions of this Code shall apply to all land, buildings, structures, and uses owned by government agencies, including all municipal, state, and federal lands, within the corporate limits of the Town and its extraterritorial jurisdiction.

1.5. No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with all of the applicable regulations established by this ordinance.

SECTION 2. ZONING DISTRICTS ESTABLISHED

2.1. Zoning Districts Identified

The Town of Poetry, Texas, is hereby divided into zoning districts as listed in the section.

ABBREVIATED	ZONING DISTRICT NAME
-------------	----------------------

DESIGNATION	
AR	AR: Agrarian. Farm/cattle land and large residential properties (5+ acres)
SF-E	SF-E: Single Family Estate. Mid-sized residential properties (2.5-5 acres)
SF	SF: Single Family. Small residential properties (1-2.5 acres)
B	B: Business. Light retail and neighborhood services

2.2. Description and Purpose of Zoning Districts

AR- Agrarian Residential District: This district provides for the farming, ranching, residential and gardening activities on land being utilized for these purposes. Density in this district is limited to one residential dwelling unit per 2.5 acres of the mother track.

SF-E - Single-Family Residential - Estate: The SF-E district provides for residential use and development on large lots with a minimum lot size of 108900 square feet (two and a half acres). Density in this district is limited to one residential dwelling unit per 2.5 acres of the mother track.

SF – Single Family Residential: This SF District provides for residential use and development on lots which are less than 108900 square feet (two and a half acres). Density in this district is limited to one residential dwelling unit per lot.

B - Business District - Light Retail, and Neighborhood Services. This district is intended for neighborhood shopping facilities, and retail and/or commercial facilities of a service character. Uses developed under the standards of the B District are designed to provide a compatible relationship between the nonresidential use and development and adjacent residential areas.

SECTION 3. ZONING DISTRICT MAP

3.1. Zoning District Boundaries Delineated on Zoning District Map

The proposed boundaries of the zoning districts set out herein are delineated upon the Zoning District Map of the Town of Poetry, Texas, said map being hereby adopted as part of this ordinance as fully as if the same were set forth herein in detail.

3.2. Regulations for Maintaining Zoning District Map

Upon adoption, two (2) original, official, and identical copies of the Zoning District Map bearing the signature of the Mayor and attestation of the Town Secretary and shall be filed and maintained

as follows:

- 3.2.1. One copy shall be filed with the Town Secretary, to be retained and labeled as the “Original Zoning Map” and shall not be changed in any manner.
- 3.2.2. One copy shall be filed with the Town Secretary and shall be maintained up-to-date by posting thereon all changes and subsequent amendments. A written record (logbook) shall be kept by the Town Secretary of all changes made to the Zoning District Map.
- 3.2.3. Reproductions of the official Zoning District Map may be made for information purposes.

SECTION 4. ZONING DISTRICT BOUNDARIES

4.1. Rules for Determining District Boundaries

The district boundary lines of zoning districts shown on the zoning district map are usually along streets and property lines, or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

- 4.1.1. Boundaries indicated as approximately following streets shall be construed to follow the centerline of such street, highway, or alley.
- 4.1.2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lines.
- 4.1.3. Boundaries indicated as approximately following town limits shall be construed as following town limits.
- 4.1.4. Where physical features of the ground are at variance with information shown on the official zoning district map, or if there arises a question as to how a parcel of property is zoned and such question cannot be resolved, or the zoning of property is invalidated by a final judgment of a court of competent jurisdiction, the property shall be considered as AR - Agrarian District, temporarily.

SECTION 5. ZONING OF ANNEXED TERRITORY

5.1. Permanent Zoning Concurrent With Zoning

An area or areas being annexed to the Town of Poetry shall ordinarily be given permanent zoning concurrently with the annexation.

5.2. Temporary Classification

In instances in which the zoning of a newly-annexed territory concurrently with the annexation is not accomplished, the annexed territory shall be temporarily classified as AR – Agrarian District, until permanent zoning is established by the Town Council. The procedure for establishing permanent zoning of annexed territory shall conform to the procedure established by law for changes to zoning district boundaries. The Town Council shall determine a permanent zoning for such area as soon as practicable after annexation.

SECTION 6. COMPLIANCE WITH ZONING REGULATIONS; SIGNAGE

6.1. Exclusions

Nothing herein contained shall require any change in the plans, construction, or designated use

of a building under construction or the use of land at the time of the passage of this ordinance.

6.2. One Main Building on a Lot or Tract

In single family residential districts, a lot shall have no more than one main building **per 2.5 acres** of the mother track.

6.3. Signage

No off-premise sign in excess of ten (10) feet in height, measured from the average grade of the property on which the sign is erected, shall exist, be constructed or be allowed on any lot or tract in the Town or within the Town's extraterritorial jurisdiction, unless authorized by majority vote of the Town Council. The regulations contained within this ordinance pertaining to nonconforming structures shall apply to signs.

SECTION 7. AR – AGRARIAN RESIDENTIAL

7.1. General Purpose and Description

This district provides for the continuance and use of land for residential, farming, ranching, raising, producing, or keeping plants or animals, or cultivation and management of other natural resources or farm products on land being utilized for these purposes. Accessory uses that are incidental to the permitted uses are also allowed, and may include dwellings for proprietors and employees, barns, storage of grain, animal raising, feed preparation, and wholesale sales of products produced on-site. Density in this district will usually be no greater than one (1) residential dwelling unit per **2.5 acres** of the mother track and may include other buildings and structures incidental to agricultural use including barns, stables and loafing sheds.

7.2. Permitted Uses

A building or premise shall be only for the following purposes:

- 7.2.1. Single family residential use;
- 7.2.2. Farming and raising of crops, fruits and vegetables;
- 7.2.3. Ranching and raising of livestock (excluding commercial feed lots);
- 7.2.4. Parks, playgrounds, community buildings, libraries, museums and other public recreational facilities, police and fire stations and similar public uses owned and/or operated by the Town or other public agency; and privately owned and maintained playgrounds and like recreation areas;
- 7.2.5. Churches and public and private schools; and
- 7.2.6. Such other uses as may be permitted with a Specific Use Permit.

7.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 8. SF-E - SINGLE-FAMILY RESIDENTIAL – ESTATE

8.1. General Purpose and Description

The SF-E district provides for residential development and use on large lots with a minimum lot size of **two and a half acres**. Density in this district will usually be no greater than one (1) residential dwelling unit **per 2.5 acres** of the mother track. Uses that are incidental to the permitted uses are

also allowed.

8.2. Permitted Uses

A building, land or premises in the SF-E District shall be used only for the following purposes:

- 8.2.1. Single family residential use;
- 8.2.2. Parks, playgrounds, community buildings, libraries, museums and other public recreational facilities, police and fire stations and similar public uses owned and/or operated by the Town or other public agency; and privately owned and maintained playgrounds and like recreation areas;
- 8.2.3. Churches and public and private schools; and
- 8.2.4. Such other uses as may be permitted with a Specific Use Permit.

8.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 9 SF – SINGLE FAMILY RESIDENTIAL:

9.1. General Purpose and Description: This SF District provides for residential use and development on lots which are at least one acre but less than **two and a half acres**. Uses that are incidental to the permitted uses are also allowed. Density in this district is limited to one single family dwelling unit per lot.

9.2. Permitted Uses

A building or premise in an SF-E District shall be used only for the following purposes:

- 8.2.1. Single family residential use;
- 8.2.2. Parks, playgrounds, community buildings, libraries, museums and other public recreational facilities, police and fire stations and similar public uses owned and/or operated by the Town or other public agency; and privately owned and maintained playgrounds and like recreation areas;
- 8.2.3. Churches and public and private schools; and
- 8.2.4. Such other uses as may be permitted with a Specific Use Permit.

9.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 10. B - BUSINESS - LIGHT RETAIL, AND NEIGHBORHOOD SERVICES

10.1. General Purpose and Description.

The Business District - B- is intended for neighborhood shopping facilities, and retail and/or commercial facilities of a service character for large lots with a minimum **lot size of two and a half acres**. Density in this district is limited to one business unit per **acre**. The B District is established to accommodate the daily and frequent retail needs of the community as well as those that are incidental to agricultural uses. The following regulations shall be applicable to all uses in the district:

10.2. Permitted Uses

- 10.2.1. Offices such as:
 - 10.2.1.1. Executive and administrative offices;

- 10.2.1.2. Business offices of a public utility, real estate, insurance, commercial or industrial establishment;
- 10.2.1.3. Medical, dental offices and clinics, legal, engineering, architectural and similar professional offices, accounting, auditing and bookkeeping service offices;
- 10.2.1.4. Finance agency offices and banks, including drive through facilities;
- 10.2.1.5. Miscellaneous business services such as credit reporting agencies, stenographic services, business and management consulting services;
- 10.2.1.6. Offices of non-profit organizations;
- 10.2.1.7. Municipal and other governmental offices; and
- 10.2.1.8. Any other office in which goods or merchandise are not commercially created, displayed, stored, exchanged or sold.

10.2.2. Retail sales and personal service shops and establishments as follows:

- 10.2.2.1. Feed store;
- 10.2.2.2. Tack shop;
- 10.2.2.3. Restaurants serving food and beverages.

10.3. Height and Area Regulations

See Appendix 1, Area, Setback, Height, and Coverage Regulations.

SECTION 11. USE OF LAND AND BUILDINGS

No land shall hereafter be used and no building or structure shall hereafter be occupied, used, erected, altered, removed, placed, demolished or converted which is contrary to the following table. In addition to the uses specified in each of the zoning districts, the following additional uses are allowed in the designated districts (the letter “A” indicates an allowed use, the letter “S” indicates a use allowed only by Specific Use Permit, and a blank space means that the use is prohibited):

TYPE OF USE	AR	SF-E	SF	B
Accessory building	A	A	A	S
Carport	A	A	A	A
Garage, private	A	A	A	A
Home Occupation	A	A	A	A
Manufactured Housing, HUD-Code	A	A	A	
Manufactured Homes	A	A	A	
Stable, private	A	A	A	S

SECTION 12. CLASSIFICATION OF NEW AND UNLISTED USES

12.1. Procedure For Classifying New/Unlisted Uses

It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in the town. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

- 12.1.1. The Town Secretary shall refer the question concerning any new or unlisted use to the Town Council as to the zoning classification(s) into which such use should be placed. The referral of the use interpretation question shall be accompanied by a statement of facts listing the nature of the use and whether it involves dwelling activity, sales, processing, type of product, storage and amount and nature thereof, enclosed or open storage, anticipated employment, transportation requirements, the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated and the general requirements for public utilities such as water and sanitary sewer.
- 12.1.2. The Town Council shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts, in determining the zoning district or districts within which such use should be permitted.
- 12.1.3. The Town Council shall approve or make such determination concerning the classification of such use as is determined appropriate, based upon its findings. The Town Council may amend these regulations to identify and classify the use or may consider and adopt a Special Use Permit pursuant to Section 18 to authorize the use on specific property.

SECTION 13. NONCONFORMING USES, STRUCTURES, AND LOTS

13.1. Uses in Existence at Time of Adoption of Ordinance

A nonconforming status shall exist when a use, structure or lot which does not conform to the regulations prescribed in the district in which such use or structure is located was in existence and lawfully operating prior to the adoption of this ordinance.

13.2. Expansion of Nonconformity Prohibited

No nonconforming use, structure or lot may be expanded or increased beyond the lot or tract upon which such nonconforming use is located as of the effective date of this ordinance.

13.3. Repairs/Normal Maintenance on Nonconforming Uses Permitted

Repairs and normal maintenance may be made to a nonconforming building or structure.

13.4. Change of Nonconforming to Conforming Use

Any nonconforming use, structure or lot may be changed to a conforming use, structure or lot and once such change is made, the use, structure or lot shall not thereafter be changed back to a

nonconforming use.

13.5. Abandonment/Discontinuation of Nonconformity

Whenever a nonconforming use or structure is abandoned, all nonconforming rights shall cease, and the use of the premises shall thenceforth be in conformity with this ordinance. Abandonment shall involve the intent of the user or owner to discontinue a nonconforming operation and an act of discontinuance. Discontinuance of a nonconforming use or the vacancy of a nonconforming structure for a period of at least six (6) months shall be construed as **prima facie** proof of intent to abandon the nonconforming use or structure. Any nonconforming use occurring within a structure that is moved from the premises shall be considered to have been abandoned. Any nonconforming structure which is damaged or destroyed by fire, flood or other natural causes shall terminate all nonconforming rights in and to the structure if the cost to repair the damage is at least 50% of the value of the structure.

SECTION 14. PLANNING AND ZONING COMMISSION/Board of Adjustment

14.1. Organization and Appointment of Planning Commission

The Town Council shall serve as the Planning and Zoning Commission until such time as a separate Commission is deemed desirable and is established by the Town Council.

14.2. Organization and Appointment of Board of Adjustment

The Town Council shall serve as the Board of Adjustment until such time as a separate Board is deemed desirable and is established by the Town Council. When presiding as a Board of Adjustment, a quorum shall be at least four (4) members of the Town Council. When presiding as a Board of Adjustment, the Town Council shall have the authority to hear and consider appeals from orders of Town officials in zoning matters, variances based on unnecessary hardship, and special exceptions where the terms of an ordinance delegates the authority to consider special exceptions.

SECTION 15. DEFINITIONS

15.1 General Rules of Construction:

The following rules of construction shall apply to the interpretation of words used in this ordinance:

- 15.1.1: words used in the present tense include the future tense;
- 15.1.2: words used in the singular number include the plural number;
- 15.1.3: words in the plural number include the singular number;
- 15.1.4: the words "building" and "structure" are synonymous;
- 15.1.5: the words "lot", "plot" and "tract" are synonymous; and
- 15.1.6: the word "shall" is mandatory and not discretionary.

15.2 Definitions

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory Use or Building: An accessory building or use is one which: (a) is subordinate to a main building or primary use; and (b) is located on the same lot as the main building or primary use. An accessory building is a structure that is not connected or attached to the main building by a common roof line.

Acre: An area of land consisting of 43,560 square feet. As used in these regulations, acreage is net, not gross; the area comprised by an acre of land does not include areas occupied by streets, alleys and drainage ways.

Building - Any structure built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire, each portion so subdivided may be deemed a separate building.

Building, Main or Primary - A building in which is conducted the principal use of the lot on which it is situated. Detached accessory buildings (not connected and sharing a common roof line) do not comprise the main or primary building.

Building Line - A line parallel or approximately parallel to the street line at a specified distance therefrom constituting the minimum distance from the street line that a building may be erected.

Carport: A structure open on a minimum of three (3) sides designed or used to shelter vehicles, not to exceed thirty-six (36) feet on its longest dimension.

Dwelling Unit - A building or portion thereof designed exclusively for residential occupancy, including dwelling units that may specifically be designated as one-family or dingle-family, and two-family. The phrase “dwelling unit” does not refer to buildings designed and used as hotels, boarding houses, rooming houses, multiple-family dwellings, and motels.

Family - One or more persons related by blood, marriage, or adoption, or a group not to exceed four persons not all related by blood or marriage, adoption or guardianship, occupying a dwelling unit and living as a single housekeeping unit.

Farm, Ranch, or Orchard - An area of five (5) acres or more which is used for growing of usual farms products and/or raising of usual farm products and animals and including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law. Farm, ranch, or orchard use shall not cause a hazard to health by reason of unsanitary conditions.

Garage, Private - A detached accessory building or portion of the main building for the parking or temporary storage of automobiles of the occupants of the premises; if occupied by vehicles of others, it is a storage space.

Home Occupation - A gainful occupation or profession conducted by persons residing on the premises and conducted entirely within the dwelling or its accessory buildings. The use is clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character of the residence or adversely affect the residential character of the

neighborhood. The home occupation shall employ no more than one person who does not permanently reside on the premises, shall cause no change in the external appearance of the existing structures, including outside sales or storage and advertising devices, and shall not cause traffic or parking congestion, noise, vibration, odor, glare, fumes, or electrical or communications interference.

HUD-code manufactured home - means a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, built on a permanent chassis, designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities, transportable in one or more sections, and, in the traveling mode, at least eight body feet in width or at least 40 body feet in length, or, when erected on site, at least 320 square feet, includes the plumbing, heating, air conditioning, and electrical systems of the home, and does not include a recreational vehicle as defined by 24 C.F.R. 3282.8(g).

Lot - An undivided tract or parcel of land under one (1) ownership having frontage upon a public street or officially approved place, either occupied or to be occupied by a building or building group, together with accessory buildings, and used together with such yards and other open spaces as are required by this ordinance, which parcel of land is designated as a separate and distinct tract and is identified by a tract or lot number or symbol in a duly approved subdivision plat of record or in a survey.

Manufactured housing and manufactured home - mean a HUD-code manufactured home or a mobile home and collectively means and refers to both.

Mobile home - means a structure constructed before June 15, 1976, built on a permanent chassis, designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities, transportable in one or more sections, and, in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet, and includes the plumbing, heating, air conditioning, and electrical systems of the home.

Mother Track - A contiguous expanse of land that is owned and operated as a single, unified tract. This classification allows for a holistic management approach, disregarding traditional divisions such as tax jurisdictions, county boundaries, town limits, and Extraterritorial Jurisdiction (ETJ) limits. It treats multiple plats or parcels of land, even if they straddle different administrative or legal boundaries, as one integrated entity for purposes of development, management, and regulation.

Nonconforming lot - A parcel of land having less area, frontage, or dimensions than required in the district in which it is located, but which existed prior to the adoption of the district regulations.

Nonconforming structure - A structure or building having a dimension or setback than otherwise required by the regulations applicable to the district in which it is situated, but which was constructed prior to the adoption of the district regulations.

Nonconforming use - A use of land lawfully used and occupied prior to the effective date of an ordinance or regulation that does not conform to the use regulations of the district in which it is situated.

Sign - Any device, name, number, identification, description, announcement, declaration, demonstration, flag, banner, pennant, illustration, light, or insignia, and the supporting structure of any of the same, placed upon or affixed directly or indirectly to or upon any building or outdoor structure, or erected or maintained upon a piece of land which directs attention to any object, product, service, place, activity, person, institution, organization, or business, except that holiday lights and decorations shall not be considered signs.

Single family dwelling - A detached building designed exclusively for occupancy by one (1) family, excluding manufactured housing or manufactured homes.

Stable, private - An accessory building set back from adjacent property lines a minimum distance of one hundred (100) feet and used for quartering horses, not to exceed two (2) horses per one acre area of a farm or lot.

Trailer - Any unpowered vehicle designed to be towed by a powered vehicle, not to be used for living quarters.

SECTION 17. CHANGES AND AMENDMENTS TO ALL ZONING ORDINANCES AND DISTRICTS AND ADMINISTRATIVE PROCEDURES

17.1. Declaration of Policy

The Town declares the enactment of these regulations governing the use and development of land, buildings, and structures to be a measure necessary to the orderly development of the community. Therefore, no change shall be made in these regulations or in the boundaries of the zoning districts except:

- 17.1.1. To correct any error in the regulations or map.
- 17.1.2. To recognize changed or changing conditions or circumstances in a particular locality.
- 17.1.3. To recognize changes in technology, style of living, or manner of doing business.

17.2. Authority to Amend Ordinance

The Town Council may from time to time, after notice and public hearings required by law, amend, supplement, or change the regulations herein provided or the classification or boundaries of the zoning districts. Any amendment, supplement, or change to the text of this ordinance and/or the zoning map and any change in the classification or boundaries of the zoning districts may be initiated by the Town Council, or may be requested by the owner of the affected real property or the authorized representative of an owner of affected real property.

17.3. Changes in Zoning District Boundaries or Classifications

- 17.3.1. Upon filing of an application for an amendment to the classification or boundaries of a zoning district, the Town Council shall hold a public hearing on said application.
- 17.3.2. For zoning changes that seek to modify zoning district classifications or boundaries, written notice of the date, time and location of the public hearing shall be:

- 17.3.2.1 sent to the owner of the property or his agent and to all owners of real property lying within two hundred (200) feet of the property on which the change in classification is proposed, such notice, mailed first-class postage prepaid, to be given at least thirty (30) days before the date of such hearing; and
 - 17.3.2.2. published in the official newspaper of the Town or another newspaper of general circulation at least sixteen (16) days from the date of such publication; and
 - 17.3.2.3. posted on the Town's website continuously for at least thirty (30) days prior to the public hearing; and
 - 17.3.2.4. posted on the property by the applicant with a sign, plainly visible from the nearest public roadway, which shall state "Zoning Change Requested, for information call Town Hall" and the telephone number shall be listed. The sign shall be at least eighteen (18) by twenty-four (24) inches in size and shall be continuously posted for at least fifteen (15) days before the public hearing. However, failure of owners to receive notice of hearing, or the failure of signage to be posted, shall in no way affect the validity of the action taken.
- 17.3.3. For zoning changes that seek to amend regulations contained within this ordinance, written notice of the date, time and location of the public hearing shall be published and posted in the manner and within the times set forth in subsections 17.3.2.2 (published in the Town's official newspaper) and 17.3.2.3 (posted on the town's website).

SECTION 18. SPECIFIC USE PERMITS

18.1. Purpose

Specific Use Permits (SUP's) are zoning classifications that may include regulations as a part of the zoning ordinance granting the SUP. The uses that normally fall into the specific use category are uses that have unique characteristics that may, depending on the location of the property, require different conditions and regulations not otherwise listed under the basic zoning districts, or uses that are not considered by this ordinance as an allowed use by right. The Town's consideration of SUP applications is discretionary, not ministerial, and may be granted or denied by the Town Council based on the best interests of the public health, safety, morals and general welfare.

18.2. Process

An application for an SUP may only be filed by the owner of the affected property or his/her duly authorized agent. The town may charge a fee to the applicant in an amount intended to compensate the town for the costs of publication and administrative expenses. The Town Council shall conduct a public hearing on the application after notice of the date, time and location is delivered, published, and posted in accordance with the notice requirements for zoning classification or district boundary changes.

18.3. If granted, the town council may impose reasonable conditions on the use allowed by the

SUP, including but not limited to hours of operation, parking requirements, on-site signage, and limitations on the emission of noise, dust and fumes. The specific conditions set forth in the ordinance granted the SUP will supersede the provisions of this ordinance only when in direct conflict; otherwise all zoning regulations under this ordinance will apply. The zoning map shall identify the properties on which an SUP has been granted.

SECTION 19. PENALTY FOR VIOLATIONS

Any person, association or corporation violating any of the provisions of this ordinance shall upon conviction be fined a sum not to exceed two thousand dollars (\$2000.00) per day and each and every day that the provisions of this ordinance are violated shall constitute a separate and distinct offense. The foregoing sanction is not exclusive and the town may pursue any and all other remedies associated with violations of its zoning regulations as may be allowed by law.

SECTION 20. VALIDITY, SEVERANCE AND CONFLICT

If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall be severed from and shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so determined to be invalid or unconstitutional. To the extent any provision of this ordinance conflicts with other ordinances of the Town of Poetry, the terms of this ordinance shall control.

SECTION 21. EFFECTIVE DATE

This ordinance shall be effective upon its adoption by the Town Council and the and the publication of its caption as the law may so require.

APPENDIX 1

DISTRICT REGULATIONS

	AG	SF-E	SF	B-1
MAXIMUM HEIGHT (feet)	30	30	30	20
SIDE YARD WIDTH (feet)	35	35	35	35
MINIMUM REAR YARD (feet)	50	50	50	50
MINIMUM FRONT YARD (feet)	105	105	105	105

MINIMUM LOT AREA (square feet)	10,8900	10,8900	43,560	10,8900
MINIMUM LOT WIDTH (feet)	200	200	150	200
MINIMUM LOT DEPTH (feet)	311	311	200	311
MAXIMUM LOT COVERAGE	15%	10%	10%	10%
MINIMUM GREEN SPACE	N/A	N/A	N/A	50%

NOTES TO APPENDIX 1

- a) The minimum residential lot area for the various districts shall be in accordance with the regulations for each district, except that a lot having less area than required which was an official "lot of record" at the time of the adoption of this ordinance (a nonconforming lot) may be used for a one-family dwelling.
- b) No lot existing at the time of passage of this ordinance shall be reduced in area below the minimum requirements set forth in the respective district.
- c) The front yard setback shall be measured from the property line at an existing street to the front face of the building, covered porch, covered terrace, or attached accessory buildings. Eaves and roof extensions or a porch without posts or columns may project into the required front yard for a distance not to exceed four (4) feet and subsurface structures, platforms, or slabs may not project into the front yard to a height greater than thirty (30) inches above the average grade of the yard. On corner lots, the front yard setback shall be observed along the frontage of both intersecting streets (unless shown specifically otherwise on a final plat).
- d) The rear yard setback or depth is defined as the distance from the boundary of a lot which is most distant from or is most nearly parallel to the front lot line, and the front, rear or side of any structure. The side yard setback or depth is the distance between the front, rear or side of any structure and any lot line that is not the front or rear lot line. Eaves and roof extensions or a porch without posts or columns may project into the required rear or side yard for a distance not to exceed four (4) feet and subsurface structures, platforms, or slabs may not project into the yard to a height greater than thirty (30) inches above the average grade of the yard

- e) The height of a building is measured from the average established grade at the street line or from the average natural front yard ground level, whichever is higher, to (1) the highest point of the roof's surface, if a flat surface, (2) to the deck line of mansard roofs, or (3) to the mean height level between eaves and edge for hip and gable roofs and, in any event, excluding chimneys, cooling towers, elevator bulkheads, tanks, water towers, radio towers, ornamental cupolas, domes or spires, and parapet walls not exceeding ten (10) feet. If the street grade is not officially established, the average front yard grade shall be used for a base level.
- f) Where a building line has been established by an ordinance adopted by the Town Council and such line requires a greater or lesser front yard setback than is prescribed by this ordinance for the district in which the building line is located, the required front yard shall comply with the building line so established by such ordinance.
- g) Where the frontage on one side of a street between two (2) intersecting streets is divided by two (2) or more zoning districts, the front yard shall comply with the requirements of the most restrictive district for the entire frontage.
- h) Single-family dwellings require building lots **of two and a half (2.5)** acres or more, except in the SF-Single Family Residential District.
- i) **All measurements for minimum front yard and other related measures are from the center line of the road and includes both the road and the right of way.**

EXHIBIT A

EXCLUSIVE FOR ALL SOLID WASTE COLLECTIONS

FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE TOWN OF POETRY, TEXAS

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the date set forth hereinbelow and is by and between _____, ("CONTRACTOR"), and the Town of Poetry, Texas (the "Town").

WHEREAS, the Town is empowered under state and local law to provide solid waste collection and disposal services to its residents and commercial businesses and has the authority to enter into solid waste service contracts to acquire, sell, lease or allow for the operation of all or any part of a solid waste management system, including the collection, transportation and disposal of solid waste; and

WHEREAS, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Contractor the franchise, license and privilege to collect, haul and dispose of Solid Waste (as such term is defined herein) within the Town's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Contractor and the Town hereby agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used herein, will be defined as follows:

Bulky Waste: Bulky Waste shall mean solid waste composed of materials not easily contained in a cart such as, but not limited to white goods, furniture, yard trimmings, large electronics, and other oversized solid waste. Any solid waste not placed within a Cart will be removed by the Contractor as Bulky Waste.

Contractor: **NAME OF CONTRACTOR** a Texas [entity] authorized and registered to do business in the State of Texas, and its successors and assigns.

Construction and Demolition Waste: Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.

Container or Poly Cart Container: Poly Cart Container (or Cart) shall mean a 90 or 95-gallon, durable plastic, heavy duty wheeled container. The Contractor shall own the Carts and, following the termination of this Contract by any means, shall be entitled to reclaim and repossess the Carts. Broken or missing Carts at residential locations shall be replaced by Contractor at no charge to the customer, for up to but not more than three Carts per year.

Gross Receipts. The total amounts the Contractor received from all sources within the Town during the quarter, without subtracting any costs or expenses

Hazardous Waste: Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and as subsequently amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays: The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

Landfill: Any facility or area of land receiving Municipal Solid Waste, Residential Solid Waste, or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Solid Waste: Solid Waste shall mean garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
- b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement;
- c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or depressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 et seq.); or
- d) Unacceptable waste.

Solid Waste Services: Solid Waste Services shall mean the collection and disposal of solid waste including bulky waste.

SECTION 2. FRANCHISE GRANT

A. The Contractor is hereby granted the sole and exclusive license, privilege and duty, to the extent allowed by law, within the territorial jurisdiction of the Town, to provide Solid Waste collection, hauling and disposal for residential, commercial and industrial/roll-off customers, construction and demolition waste, and recyclable materials collection and processing in accordance with this Agreement and the Ordinances of the Town and to perform all of the work called for and described in this Agreement. Contractor agrees to furnish all personnel, labor, equipment, trucks, and other items necessary to provide Solid Waste Services to all points within the Town.

B. The Contractor has the sole obligation to exercise and enforce, at its sole expense, the exclusivity provided for herein as against third parties, and may present claims and bring suit for its damages and injunctive relief against third parties for a violation of Contractor's exclusivity herein.

C. The Contractor will provide Town services at no charge to the Town. Town services include solid waste services and recycling services to all current and future Town facilities, the collection of appliances or other bulky debris illegally dumped on Town property such as greenbelts, parks, medians, or rights of way, and solid waste services for any Town-sponsored special event.

SECTION 3. TERM

The term this Agreement shall be for a period of three (3) years, beginning on _____, 2023 and terminating on the third anniversary of said date. This Agreement may be renewed for three (3) additional one (1) year terms unless either party gives written notice of election not to renew the Agreement to the other party, not less than sixty (60) days prior to the expiration of the original or any renewal term.

SECTION 4. FRANCHISE FEES; RATES FOR SERVICE

A. Fee. For the right and privilege of using the Town's public rights-of-way, the Contractor will pay the Town an administrative fee equal to seven percent (7%) of gross receipts resulting from the operation of the solid waste collection service within the Town. The rates shown below do not include the administrative fee. The fee shall not include amounts billed to customers until paid or collected by Contractor.

B. Due Dates. Franchise fees shall be paid to the Town on or before the tenth (10th) day after the beginning of each quarter for amounts received by the Contractor for the performance of Services during the quarter, according to the following dates.

1st quarter: January 10th

2nd quarter: April 10th

3rd quarter: July 10th

4th quarter: October 10th

If this Agreement is entered into or terminated in the middle of a quarter, the applicable quarter will be prorated to exclude the time during the quarter in which no Service was provided. The Town agrees that payments owing from the Contractor pursuant to this Agreement shall be based solely on the Services rendered by the Contractor.

C. Reports; accountability. Each payment to the Town shall be accompanied by a statement detailing Contractor's quantities of each service type and showing sufficient information to enable the Town to verify the accuracy of each quarterly payment. The Town may review Contractor's books and records that relate to customers within the Town's corporate limits, or may conduct an audit of books and records, on reasonable notice any time during the term of this Agreement and for a period of two (2) years thereafter. Any information obtained by Town as a result of a review or audit shall be kept and maintained by the Town as confidential, and may only be disclosed to employees, representatives, and agents of the Town that have a need to know, or in order to enforce the provisions hereof, except where required by law or court order to disclose such information. An audit shall be at Town expense unless the audit discloses an underpayment of more than five percent (5%) of the amount that was otherwise due, in which case the Contractor shall pay or reimburse the Town for all costs.

D. Rates. The rates charged by Contractor to customers within the Town shall be as follows

1. Residential (per home):
 - a. [REDACTED] per month for one Poly Cart Container.
 - b. [REDACTED] per month for each additional Poly Cart Container.
2. Commercial/Industrial:
 - a. (Rates to be negotiated by Contractor and Customer)

E. Rate Changes. Unless otherwise agreed by the parties, the rates may be modified during the term of this contract or any renewal term only in accordance with the provisions of this subparagraph; provided, however, that the rates shall not be revised earlier than the fiscal year commencing October 1, 2024.

1. The Contractor may submit a written request for a rate adjustment, or the Town may notify the Contractor of a rate adjustment, on or before May 1 of any year, which shall be effective of and from October 1st of that year. If either party fails to submit a written request or notice of a rate adjustment on or before May 1st of any year, the then-existing rates shall apply throughout the following fiscal year (October 1 through September 30). No rate adjustment shall exceed five percent (5%) in any year. Rate increases are not mandatory, but the Town shall act fairly and reasonably in its consideration of a requested rate increase.
2. Rate adjustments will be based on the Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services, US City Average, Not Seasonally Adjusted, Base Period December 1997=100 (Series ID CUUR0000SEHG), as published by the United States Bureau of Labor Statistics (CPI). In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.
3. The rate adjustment shall be the same percentage change in the CPI over the two previous calendar years. The most recently available January through December 12-month average of the CPI will be compared to the preceding 12-month period, and the rate adjustment shall be the same percentage change, subject to the 5% maximum adjustment cap.

F. Audit: The Town may, on reasonable notice, at reasonable times, and at the Town's expense, request and conduct an audit of the Contractor's books and records to establish compliance with the rates and fees charged under this Contract. To the extent allowed by law, the Town will maintain the confidentiality of all information received by the Town in such audits.

SECTION 5. OPERATIONS

A. Scope of operations. It is expressly understood and agreed that the Contractor will collect, haul and dispose of Solid Waste during Business Days: (i) generated and accumulated by Contractor's customers, and (ii) placed within Containers, if required by Contractor, by those customers receiving the services of the Contractor, all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement. This Agreement does not cover services provided in the Town's extraterritorial jurisdiction. The frequency of collections shall be:

1. Residential (per home): [redacted] times per week.
2. Bulky Trash (residential): [redacted] times per week.
3. Commercial/Industrial: (as negotiated by Contractor and Customer)

B. Nature of operations. The Town hereby grants to the Contractor, in accordance with this Agreement and the Town's ordinances and regulations governing the collection, hauling and disposal of Solid Waste, the title to all Solid Waste collected, hauled and disposed of by the Contractor over, upon, along and across the present and future streets, alleys, bridges, and rights-of-ways. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

C. Hours/Days of Operation. Collection of Solid Waste shall begin no earlier than 7:00 o'clock a.m. and shall generally not extend beyond 7:00 o'clock p.m. These hours may be extended or altered with the approval of the Town. No regular weekly residential collection shall occur on Saturday, unless needed to accommodate collection schedule shifts due to holidays. No collection shall be made on Sunday.

D. Monthly Reporting. Complete and accurate monthly reports must be submitted to the Town on or before the tenth (10th) day of each month. Monthly reports must contain the following information:

1. Amount of Solid Waste and Program Recyclable Materials Collected – Spreadsheet listing amounts (in tons/pounds) of solid waste and program recyclable materials collected by customer type. The spreadsheet must also include year-to-date totals.
2. Customer List for Roll-off Services – identify each by address and level of service, name, and contact information.
3. Billing and Revenue Documentation – documentation justifying the billings and revenue derived by the successful proposer for services within the Town.
4. Summary of motor vehicle accidents or moving violations involving the successful proposer's vehicles – identify the vehicle, employee, and description of the violation.

SECTION 6. COMPLAINTS; MISSED COLLECTIONS

A. Local Office: The Contractor shall maintain an office or other facilities through which they can be contacted. The office shall be equipped with sufficient telephones having local phone numbers and shall be staffed by at least one responsible and competent person (a customer service representative) available to answer the phone from 7:00 a.m. to 7:00 p.m. on regular collection days. When residential collection is postponed one day for the holiday schedule the Contractor's customer service personnel must be available to answer phones on all days during which collection service is provided. An informative recording answering frequently asked questions and voicemail shall be available at all other hours.

B. Complaint Resolution. The Contractor will be primarily responsible for complaints, which shall be directed to the Contractor, and the Contractor shall give each complaint received prompt and courteous attention. The Contractor shall maintain a log of complaints and shall provide the Town, monthly, with copies of all complaints indicating the date and hour of the complaint, the nature of the complaint, and the manner and timing of its resolution. If a complaint cannot be resolved, it is the Contractor's responsibility to provide adequate documentation to demonstrate that the complaint was handled in a satisfactory manner.

C. Missed Collections. The Contractor shall notify the Town by 4:00 PM, Central Time, when a route may not be completed before 7:00 PM, Central Time. The Contractor shall notify the Town immediately upon discovering a street, portion of a route, or a complete route was not collected as scheduled. When notification of a missed collection is received by the Contractor before 4:00 PM, Central Time, and such allegation cannot be disproved by using Global Positioning System (GPS) equipment to document the fact that the Contractor

attempted to provide services to such customer, the Contractor shall dispatch a truck and provide the collection before 7:00 PM, Central Time on the same day. When notification of a missed collection is received by the Contractor after 4:00 PM, Central Time and such allegation cannot be disproved using GPS, the Contractor shall provide collection within the next 24 hours and inform all residents impacted by such a missed collection of the time the corrective collection will be provided. When notification of a missed collection is received after 4:00 PM, Central Time on the day preceding a holiday and such allegations cannot be disproved, the Contractor shall provide collection within the first three (3) hours of the day after the holiday.

D. Materiality. Compliance with the complaint resolution, customer grievance, and reporting requirements of this Section is and shall be a material term of the contract.

E. Administrative Charges. The Contractor understands that if it does not timely perform its obligations pursuant to the terms of the contract or violates any provision of the contract, Town will suffer damages which are difficult to determine and to adequately specify. The Contractor agrees, in addition to any other remedies available to Town, that Town may withhold payment from Contractor in the amounts specified below as administrative charges for failure of the Contractor to fulfill its obligations, subject to events of force majeure. The following acts or omissions shall be considered a breach of the contract and Town may require payment by the Contractor of the charges set forth for each act.

OMISSION	LIQUIDATED DAMAGES
Commencement of collection prior to 7:00 a.m. except as expressly permitted herein.	\$100 per incident (each truck on each route is a separate incident)
Failure to collect and clean up spillage within one (1) business day.	\$50 per incident
Unsanitary condition of vehicle exterior.	\$100 per incident
Failure to collect missed Garbage, Bulk/Brush Waste or Recyclables, within one business day (including Saturday). Or repeat misses of any required collection services on more than two (2) occasions.	\$25 each incident to a maximum of \$250 per truck per day \$1000 each incident per Detachable Container
Missed collection of whole block. (This excludes collections prevented by weather and holiday rescheduling). A whole block miss is defined as missing 3 or more houses on the same side of the street.	\$200 per whole block
Failure to deliver or replace Poly Carts, or Curbside Recycling Wheeled Containers for any reason within three (3) business days of notification.	\$50 per container per day
Any additional misses, at the same address, within one (1) year after Contractor's receipt of 2 nd notice regarding no collection.	\$200 each incident
Complaint calls received by the Town in excess of twenty (20) per month.	\$30 per call
Failure to make all required collections during a week due to non-weather-related service disruptions.	\$500 per collection route
Failure to provide complete and accurate monthly report by the 15 th of each month.	\$250 per incident

As used herein, "events of force majeure" shall mean an incident, situation, or act of a third party that is

beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods, epidemics/pandemics, embargoes, war, and riots. The Contractor will not be responsible for administrative charges for its temporary failure to perform because of an event of force majeure, provided, however, that the Contractor submits written notice thereof to the Town within three (3) calendar days of the event identifying the specific cause(s) and estimated duration of the delay. The failure to provide timely notice to the Town is a waiver of any claim of delay and shall be conclusively regarded as an admission that any delay or failure to perform was not attributable to a force majeure event.

F. Remittance of Charges: Town may impose administrative charges when the Town determines that performance consistent with the provisions of the contract has not occurred. The Town shall notify the Contractor in writing or electronically of each act or omission under the terms of the contract reported to or discovered by Town or its designee. The Contractor may appeal the Town's assessments of administrative charges to the Town Council in writing, filed within 20 days of its receipt of notice of an assessment. The Council shall hear the appeal and promptly render a determination to uphold, reverse or modify the assessment. The Council's determination shall be final and binding.

G. It shall be the duty of the Contractor to take whatever steps or action may be necessary to remedy the cause of any complaint. The remedy available to Town under this Section are in addition to all other remedies which the Town may have under law, at equity, or pursuant to the terms of the contract. Contractor's obligations to make payments for such charges under this section occurring prior to the expiration or termination of this contract shall survive termination or expiration of this contract.

SECTION 7. INSURANCE; INDEMNIFICATION

A. The Contractor shall exercise due care and caution in providing the Services so that the Town's public and private property, including streets, road signs and fixtures, and parking areas, will be protected and preserved.

B. Minimum Limits of Insurance: The Contractor shall procure and maintain the following minimum types of coverages:

Worker's Compensation or other State-approved program	As set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence. \$2,000,000 Aggregate
City's Protective Liability Insurance	\$600,000 per occurrence \$1,000,000 aggregate
Excess/Umbrella Liability	\$1,000,000 per occurrence w/drop down coverage.
Automobile Liability	\$1,000,000 Combined single limit per occurrence.

C. The Town reserves the right to review the insurance requirements of this section during the effective period of the contract and any extension or renewal period and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the Town based upon changes in statutory law or

court decisions.

D. Each insurance policy to be purchased by Contractor shall include the conditions as described below, as well as the following conditions by endorsement to the policy:

1. the General liability insurance policy shall name Town and its officers, employees, and elected representatives as an additional insured without restrictions via blanket-form endorsement;
2. the policy phrase "other insurance" shall not apply to the Town where the Town is an additional insured; the policy shall specify that it is primary and non-contributory with any of the Town's policies and will state that each insured is provided coverage as though a separate policy had been issued to each, except that the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered;
3. each policy, except workers' compensation or other state approved program, shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be sent to Town by email. If the policy is canceled for nonpayment of premium, only 10 days' written notice to Town is required;
4. the term "Town" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Town and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Town;
5. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas;
6. all liability policies required herein shall be written with an "occurrence" basis coverage trigger;
7. prior to the effective date of cancellation of any policy, Contractor shall deliver to the Town a replacement certificate of insurance evidencing coverage;
8. each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-;
9. the Special Provisions Section shall state that the liability policies have been endorsed via blanket-form endorsement to provide for waivers of subrogation, to provide that those policies are primary and non-contributory as to the Town; and
10. General Liability insurance with combined single limits of not less than \$1,000,000 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

E. Indemnification: THE TOWN SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, INJURY OR LOSS TO ANY PROPERTY, OR ECONOMIC LOSS, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF CONTRACTOR UNDER THIS

CONTRACT, WITHOUT WAIVING THE TOWN'S GOVERNMENTAL, SOVEREIGN OR OTHER IMMUNITIES OR DEFENSES AVAILABLE TO THE Town UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR HEREIN IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT Town FROM THE CONSEQUENCES OF THE CONTRACTOR'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

1. If any action is brought against the Town, or any officer, employee or agent of the Town, in any way arising from the performance of this contract by the Contractor; or for the failure, omission, or neglect of the Contractor to perform any of the covenants, acts, matters, or things under the contract; or for injury or damage or loss caused by the alleged negligence of the Contractor or its subcontractors, officers, employees, or agents; or in connection with any claim based on lawful demands of subcontractors, workmen, material men, or suppliers, the Contractor shall indemnify, defend and hold harmless the Town and its officers and agents, from all losses, damages, costs, expenses (including but not limited to attorney's fees and expenses), judgments, or decrees arising out of such action.
2. The Contractor is solely responsible for and shall defend, indemnify, and hold Town (or any of Town's officials, officers, representatives or employees), free and harmless from and against any and all claims, liabilities, demands, losses, damages, costs or expense to all persons (including but not limited to reasonable attorneys' fees) arising out of resulting from or occurring in connection with the performance of the work that is (i) attributable to any bodily or personal injury, sickness, diseases or death of any person or any damage or injury to or destruction of real or personal property (other than the work itself) including the loss of use thereof, and (ii) caused in whole or in part by any negligent, strict liability or other act or omission of the Contractor, any subcontractor or supplier, their respective agents or employees or any other party for whom any of them may be liable regardless of whether such is caused in part by the negligent, strict liability or other act or omission of a party or parties indemnified hereunder.
3. The foregoing indemnity, defense and hold harmless agreement shall also apply to claims arising from accidents to the Contractor, its agents or employees, whether occasioned by the Contractor or its employees, the owner or his employees, or by any other person or persons. The indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
4. The provisions of the foregoing indemnification clauses are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 8. TITLE TO EQUIPMENT

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, provided by the Contractor in connection with the Services, as noted above, shall at all times remain the property of the Contractor.

SECTION 9. EXCLUSIONS

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, dead animals, auto parts or used tires from any customer;

provided, however, that any customer may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of dead animals, auto parts or used tires with the Contractor or another reputable third party.

SECTION 10. ASSIGNMENT

This Agreement shall not be assignable or otherwise transferable by the Contractor without the prior written consent of the Town; provided, however, that the Contractor may assign this Agreement to an affiliate of the Contractor without the Town's prior written consent.

SECTION 11. ENFORCEMENT

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances that will enable the Contractor to provide the services set forth herein.

SECTION 12. SPILLAGE

It is understood and agreed that the Contractor shall not be required, but may, clean up, collect or dispose of any loose or spilled Residential or Municipal Solid Waste not caused by the Contractor's rendering of services, or collect and dispose of any excess Residential or Municipal Solid Waste placed outside of the Containers by any customer. The Contractor may report the location of such conditions to the Town so that the Town can issue proper notice to the customer instructing the customer to properly contain such Residential or Municipal Solid Waste. Should excess Residential or Municipal Solid Waste continue to be placed outside of the Containers, the Town authorizes the Contractor to issue an additional container or more frequent pickups of roll-off or dumpster if deemed necessary.

SECTION 13. HOURS OF SERVICE

For all the services provided hereunder, the Contractor's hours of service shall be between 6:00 AM and 8:00 PM, Monday through Saturday. The Contractor will not be required to provide service on Sunday or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

SECTION 14. COMPLIANCE WITH APPLICABLE LAWS

The Contractor shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of solid waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town not in conflict with this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Contractor in order to ensure compliance with these requirements.

SECTION 15. VEHICLES AND EQUIPMENT

Vehicles used by the Contractor for the collection, hauling and disposal of Residential or Municipal Solid Waste and Construction and Demolition Waste pursuant to this Agreement shall be protected at all times while in transit to prevent the blowing or scattering of waste onto the Town's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked on both sides with the Contractor's name in letters and numbers not less than two (2) inches in height. The Town may adopt weight limits and maximum vehicle axle

weight limits on vehicles used by Contractor as the Town deems appropriate to minimize disruption and damage to the Town's streets, alleys and rights-of-way. Trucks operated within the Town of Poetry for residential collection must be single axle (1 steering and 1 rear) and may not exceed 33,000 pounds GVWR. Trucks used for commercial and roll-off services may be tandem axle (1 steering and 2 rear) and may not exceed 60,000 pounds GVWR.

SECTION 16. SEVERABILITY

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 17. TERMINATION

A. The sufficiency of the grounds for termination as enumerated hereinafter shall be within the sole discretion of the Town Council. It is understood and agreed that this license may be terminated after hearing before the Town Council if:

1. The Contractor has failed to give prompt and courteous attention to, and correct complaints filed by its customers.
2. The Contractor has failed to provide an adequate regular collection service or is in an any way in violation of this Agreement, after being given a reasonable time to correct such failure or violation.
3. The failure of the Contractor to abide by any of the terms and conditions of this Agreement, applicable ordinances of the Town, or State or Federal regulations.
4. The filing of bankruptcy or receivership proceedings, transfers for the benefit of creditors, or acts evidencing insolvency.
5. For cause as determined by the Town Council.
6. For convenience, when such convenience is determined by the Town Council to be in the best interest of the public health, safety and welfare.

B. In the event of termination for the reasons set forth in the foregoing paragraphs A (1) through (5) the Town shall notify Contractor of the reasons for consideration of termination and Contractor shall have a period of thirty (30) days to cure such reason.

C. Contractor may terminate this Agreement upon written notice received by the Town not less than 60 days before the date set forth in said notice for termination.

SECTION 18. FORCE MAJEURE

The performance of this Agreement may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by an incident, situation, or act of a third party that is beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods,

epidemics/pandemics, embargoes, war, and riots.

SECTION 19. GOVERNING LAW

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the State of Texas. The parties hereby agree that exclusive venue of any action arising under the terms of this Agreement shall be in the state courts of appropriate jurisdiction in Hunt and/or Kaufman County, Texas, depending on the location of the incident giving rise to a cause of action.

SECTION 20. NOTICE

Any notices required or permitted to be delivered under this Agreement shall be deemed receivable when sent by email to mayor.tara@poetrytexas.org or the United States mail, postage pre-paid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the signature of the party.

SECTION 21. MERGER CLAUSE

This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Agreement, except as provided in the Agreement documents.

SECTION 23. COUNTERPARTS

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

SECTION 24. RECITALS

The recitals to this Agreement are incorporated herein.

SECTION 25. EFFECTIVE DATE

The Effective Date of this Agreement, and the date that Solid Waste Services are to commence, is _____ day of _____, 2023.

Executed in single or multiple originals this _____ day of _____, 2023.

[Signatures on following page]

CONTRACTOR

TOWN OF POETRY, TEXAS

By: _____
_____ its _____

By: _____
Tara Senkevetch, Mayor

Addresses:

ATTEST:

By: _____
Town Secretary

EXHIBIT A

EXCLUSIVE FOR RESIDENTIAL SOLID WASTE COLLECTIONS

FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE TOWN OF POETRY, TEXAS

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the date set forth hereinbelow and is by and between _____, ("CONTRACTOR"), and the Town of Poetry, Texas (the "Town").

WHEREAS, the Town is empowered under state and local law to provide solid waste collection and disposal services to its residents and commercial businesses and has the authority to enter into solid waste service contracts to acquire, sell, lease or allow for the operation of all or any part of a solid waste management system, including the collection, transportation and disposal of solid waste; and

WHEREAS, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Contractor the franchise, license and privilege to collect, haul and dispose of Solid Waste (as such term is defined herein) within the Town's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Contractor and the Town hereby agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used herein, will be defined as follows:

Bulky Waste: Bulky Waste shall mean solid waste composed of materials not easily contained in a cart such as, but not limited to white goods, furniture, yard trimmings, large electronics, and other oversized solid waste. Any solid waste not placed within a Cart will be removed by the Contractor as Bulky Waste.

Contractor: **NAME OF CONTRACTOR** a Texas [entity] authorized and registered to do business in the State of Texas, and its successors and assigns.

Construction and Demolition Waste: Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.

Container or Poly Cart Container: Poly Cart Container (or Cart) shall mean a 90 or 95-gallon, durable plastic, heavy duty wheeled container. The Contractor shall own the Carts and, following the termination of this Contract by any means, shall be entitled to reclaim and repossess the Carts. Broken or missing Carts at residential locations shall be replaced by Contractor at no charge to the customer, for up to but not more than three Carts per year.

Gross Receipts. The total amounts the Contractor received from all sources within the Town during the quarter, without subtracting any costs or expenses

Hazardous Waste: Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and as subsequently amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays: The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

Landfill: Any facility or area of land receiving Municipal Solid Waste, Residential Solid Waste, or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Solid Waste: Solid Waste shall mean garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
- b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement;
- c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or depressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 et seq.); or
- d) Unacceptable waste.

Solid Waste Services: Solid Waste Services shall mean the collection and disposal of solid waste including bulky waste.

SECTION 2. FRANCHISE GRANT

A. The Contractor is hereby granted the sole and exclusive license, privilege and duty, to the extent allowed by law, within the territorial jurisdiction of the Town, to provide Solid Waste collection, hauling and disposal for all residential customers, and the nonexclusive license, privilege and duty for commercial and industrial/roll-off customers, construction and demolition waste, and recyclable materials collection and processing in accordance with this Agreement and the Ordinances of the Town and to perform all of the work called for and described in this Agreement. Contractor agrees to furnish all personnel, labor, equipment, trucks, and other items necessary to provide Solid Waste Services to all points within the Town.

B. The Contractor has the sole obligation to exercise and enforce, at its sole expense, the residential collections exclusivity provided for herein as against third parties, and may present claims and bring suit for its damages and injunctive relief against third parties for a violation of Contractor's exclusivity herein.

C. The Contractor will provide Town services at no charge to the Town. Town services include solid waste services and recycling services to all current and future Town facilities, the collection of appliances or other bulky debris illegally dumped on Town property such as greenbelts, parks, medians, or rights of way, and solid waste services for any Town-sponsored special event.

SECTION 3. TERM

The term this Agreement shall be for a period of three (3) years, beginning on _____, 2023 and terminating on the third anniversary of said date. This Agreement may be renewed for three (3) additional one (1) year terms unless either party gives written notice of election not to renew the Agreement to the other party, not less than sixty (60) days prior to the expiration of the original or any renewal term.

SECTION 4. FRANCHISE FEES; RATES FOR SERVICE

A. Fee. For the right and privilege of using the Town's public rights-of-way, the Contractor will pay the Town an administrative fee equal to seven percent (7%) of gross receipts resulting from the operation of the solid waste collection service within the Town. The rates shown below do not include the administrative fee. The fee shall not include amounts billed to customers until paid or collected by Contractor.

B. Due Dates. Franchise fees shall be paid to the Town on or before the tenth (10th) day after the beginning of each quarter for amounts received by the Contractor for the performance of Services during the quarter, according to the following dates.

1st quarter: January 10th
2nd quarter: April 10th
3rd quarter: July 10th
4th quarter: October 10th

If this Agreement is entered into or terminated in the middle of a quarter, the applicable quarter will be prorated to exclude the time during the quarter in which no Service was provided. The Town agrees that payments owing from the Contractor pursuant to this Agreement shall be based solely on the Services rendered by the Contractor.

C. Reports; accountability. Each payment to the Town shall be accompanied by a statement detailing Contractor's quantities of each service type and showing sufficient information to enable the Town to verify the accuracy of each quarterly payment. The Town may review Contractor's books and records that relate to customers within the Town's corporate limits, or may conduct an audit of books and records, on reasonable notice any time during the term of this Agreement and for a period of two (2) years thereafter. Any information obtained by Town as a result of a review or audit shall be kept and maintained by the Town as confidential, and may only be disclosed to employees, representatives, and agents of the Town that have a need to know, or in order to enforce the provisions hereof, except where required by law or court order to disclose such information. An audit shall be at Town expense unless the audit discloses an underpayment of more than five percent (5%) of the amount that was otherwise due, in which case the Contractor shall pay or reimburse the Town for all costs.

D. Rates. The rates charged by Contractor to customers within the Town shall be as follows

1. Residential (per home):
 - a. [REDACTED] per month for one Poly Cart Container.
 - b. [REDACTED] per month for each additional Poly Cart Container.
2. Commercial/Industrial:
 - a. (Rates to be negotiated by Contractor and Customer)

E. Rate Changes. Unless otherwise agreed by the parties, the rates may be modified during the term of this contract or any renewal term only in accordance with the provisions of this subparagraph; provided, however, that the rates shall not be revised earlier than the fiscal year commencing October 1, 2024.

1. The Contractor may submit a written request for a rate adjustment, or the Town may notify the Contractor of a rate adjustment, on or before May 1 of any year, which shall be effective of and from October 1st of that year. If either party fails to submit a written request or notice of a rate adjustment on or before May 1st of any year, the then-existing rates shall apply throughout the following fiscal year (October 1 through September 30). No rate adjustment shall exceed five percent (5%) in any year. Rate increases are not mandatory, but the Town shall act fairly and reasonably in its consideration of a requested rate increase.
2. Rate adjustments will be based on the Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services, US City Average, Not Seasonally Adjusted, Base Period December 1997=100 (Series ID CUUR0000SEHG), as published by the United States Bureau of Labor Statistics (CPI). In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.
3. The rate adjustment shall be the same percentage change in the CPI over the two previous calendar years. The most recently available January through December 12-month average of the CPI will be compared to the preceding 12-month period, and the rate adjustment shall be the same percentage change, subject to the 5% maximum adjustment cap.

F. Audit: The Town may, on reasonable notice, at reasonable times, and at the Town's expense, request and conduct an audit of the Contractor's books and records to establish compliance with the rates and fees charged under this Contract. To the extent allowed by law, the Town will maintain the confidentiality of all information received by the Town in such audits.

SECTION 5. OPERATIONS

A. Scope of operations. It is expressly understood and agreed that the Contractor will collect, haul and dispose of Solid Waste during Business Days: (i) generated and accumulated by Contractor's customers, and (ii) placed within Containers, if required by Contractor, by those customers receiving the services of the Contractor, all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement. This Agreement does not cover services provided in the Town's extraterritorial jurisdiction. The frequency of collections shall be:

1. Residential (per home): _____ times per week.
2. Bulky Trash (residential): _____ times per week.
3. Commercial/Industrial: (as negotiated by Contractor and Customer)

B. Nature of operations. The Town hereby grants to the Contractor, in accordance with this Agreement and the Town's ordinances and regulations governing the collection, hauling and disposal of Solid Waste, the title to all Solid Waste collected, hauled and disposed of by the Contractor over, upon, along and across the present and future streets, alleys, bridges, and rights-of-ways. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

C. Hours/Days of Operation. Collection of Solid Waste shall begin no earlier than 7:00 o'clock a.m. and shall generally not extend beyond 7:00 o'clock p.m. These hours may be extended or altered with the approval of the Town. No regular weekly residential collection shall occur on Saturday, unless needed to accommodate collection schedule shifts due to holidays. No collection shall be made on Sunday.

D. Monthly Reporting. Complete and accurate monthly reports must be submitted to the Town on or before the tenth (10th) day of each month. Monthly reports must contain the following information:

1. Amount of Solid Waste and Program Recyclable Materials Collected – Spreadsheet listing amounts (in tons/pounds) of solid waste and program recyclable materials collected by customer type. The spreadsheet must also include year-to-date totals.
2. Customer List for Roll-off Services – identify each by address and level of service, name, and contact information.
3. Billing and Revenue Documentation – documentation justifying the billings and revenue derived by the successful proposer for services within the Town.
4. Summary of motor vehicle accidents or moving violations involving the successful proposer's vehicles – identify the vehicle, employee, and description of the violation.

SECTION 6. COMPLAINTS; MISSED COLLECTIONS

A. Local Office: The Contractor shall maintain an office or other facilities through which they can be contacted. The office shall be equipped with sufficient telephones having local phone numbers and shall be staffed by at least one responsible and competent person (a customer service representative) available to answer the phone from 7:00 a.m. to 7:00 p.m. on regular collection days. When residential collection is postponed one day for the holiday schedule the Contractor's customer service personnel must be available to answer phones on all days during which collection service is provided. An informative recording answering frequently asked questions and voicemail shall be available at all other hours.

B. Complaint Resolution. The Contractor will be primarily responsible for complaints, which shall be directed to the Contractor, and the Contractor shall give each complaint received prompt and courteous attention. The Contractor shall maintain a log of complaints and shall provide the Town, monthly, with copies of all complaints indicating the date and hour of the complaint, the nature of the complaint, and the manner and timing of its resolution. If a complaint cannot be resolved, it is the Contractor's responsibility to provide adequate documentation to demonstrate that the complaint was handled in a satisfactory manner.

C. Missed Collections. The Contractor shall notify the Town by 4:00 PM, Central Time, when a route may not be completed before 7:00 PM, Central Time. The Contractor shall notify the Town immediately upon discovering a street, portion of a route, or a complete route was not collected as scheduled. When notification of a missed collection is received by the Contractor before 4:00 PM, Central Time, and such allegation cannot be disproved by using Global Positioning System (GPS) equipment to document the fact that the Contractor

attempted to provide services to such customer, the Contractor shall dispatch a truck and provide the collection before 7:00 PM, Central Time on the same day. When notification of a missed collection is received by the Contractor after 4:00 PM, Central Time and such allegation cannot be disproved using GPS, the Contractor shall provide collection within the next 24 hours and inform all residents impacted by such a missed collection of the time the corrective collection will be provided. When notification of a missed collection is received after 4:00 PM, Central Time on the day preceding a holiday and such allegations cannot be disproved, the Contractor shall provide collection within the first three (3) hours of the day after the holiday.

D. Materiality. Compliance with the complaint resolution, customer grievance, and reporting requirements of this Section is and shall be a material term of the contract.

E. Administrative Charges. The Contractor understands that if it does not timely perform its obligations pursuant to the terms of the contract or violates any provision of the contract, Town will suffer damages which are difficult to determine and to adequately specify. The Contractor agrees, in addition to any other remedies available to Town, that Town may withhold payment from Contractor in the amounts specified below as administrative charges for failure of the Contractor to fulfill its obligations, subject to events of force majeure. The following acts or omissions shall be considered a breach of the contract and Town may require payment by the Contractor of the charges set forth for each act.

OMISSION	LIQUIDATED DAMAGES
Commencement of collection prior to 7:00 a.m. except as expressly permitted herein.	\$100 per incident (each truck on each route is a separate incident)
Failure to collect and clean up spillage within one (1) business day.	\$50 per incident
Unsanitary condition of vehicle exterior.	\$100 per incident
Failure to collect missed Garbage, Bulk/Brush Waste or Recyclables, within one business day (including Saturday). Or repeat misses of any required collection services on more than two (2) occasions.	\$25 each incident to a maximum of \$250 per truck per day \$1000 each incident per Detachable Container
Missed collection of whole block. (This excludes collections prevented by weather and holiday rescheduling). A whole block miss is defined as missing 3 or more houses on the same side of the street.	\$200 per whole block
Failure to deliver or replace Poly Carts, or Curbside Recycling Wheeled Containers for any reason within three (3) business days of notification.	\$50 per container per day
Any additional misses, at the same address, within one (1) year after Contractor's receipt of 2 nd notice regarding no collection.	\$200 each incident
Complaint calls received by the Town in excess of twenty (20) per month.	\$30 per call
Failure to make all required collections during a week due to non-weather-related service disruptions.	\$500 per collection route
Failure to provide complete and accurate monthly report by the 15 th of each month.	\$250 per incident

As used herein, "events of force majeure" shall mean an incident, situation, or act of a third party that is

beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods, epidemics/pandemics, embargoes, war, and riots. The Contractor will not be responsible for administrative charges for its temporary failure to perform because of an event of force majeure, provided, however, that the Contractor submits written notice thereof to the Town within three (3) calendar days of the event identifying the specific cause(s) and estimated duration of the delay. The failure to provide timely notice to the Town is a waiver of any claim of delay and shall be conclusively regarded as an admission that any delay or failure to perform was not attributable to a force majeure event.

F. Remittance of Charges: Town may impose administrative charges when the Town determines that performance consistent with the provisions of the contract has not occurred. The Town shall notify the Contractor in writing or electronically of each act or omission under the terms of the contract reported to or discovered by Town or its designee. The Contractor may appeal the Town's assessments of administrative charges to the Town Council in writing, filed within 20 days of its receipt of notice of an assessment. The Council shall hear the appeal and promptly render a determination to uphold, reverse or modify the assessment. The Council's determination shall be final and binding.

G. It shall be the duty of the Contractor to take whatever steps or action may be necessary to remedy the cause of any complaint. The remedy available to Town under this Section are in addition to all other remedies which the Town may have under law, at equity, or pursuant to the terms of the contract. Contractor's obligations to make payments for such charges under this section occurring prior to the expiration or termination of this contract shall survive termination or expiration of this contract.

SECTION 7. INSURANCE; INDEMNIFICATION

A. The Contractor shall exercise due care and caution in providing the Services so that the Town's public and private property, including streets, road signs and fixtures, and parking areas, will be protected and preserved.

B. Minimum Limits of Insurance: The Contractor shall procure and maintain the following minimum types of coverages:

Worker's Compensation or other State-approved program	As set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence. \$2,000,000 Aggregate
City's Protective Liability Insurance	\$600,000 per occurrence \$1,000,000 aggregate
Excess/Umbrella Liability	\$1,000,000 per occurrence w/drop down coverage.
Automobile Liability	\$1,000,000 Combined single limit per occurrence.

C. The Town reserves the right to review the insurance requirements of this section during the effective period of the contract and any extension or renewal period and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the Town based upon changes in statutory law or

court decisions.

D. Each insurance policy to be purchased by Contractor shall include the conditions as described below, as well as the following conditions by endorsement to the policy:

1. the General liability insurance policy shall name Town and its officers, employees, and elected representatives as an additional insured without restrictions via blanket-form endorsement;
2. the policy phrase "other insurance" shall not apply to the Town where the Town is an additional insured; the policy shall specify that it is primary and non-contributory with any of the Town's policies and will state that each insured is provided coverage as though a separate policy had been issued to each, except that the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered;
3. each policy, except workers' compensation or other state approved program, shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be sent to Town by email. If the policy is canceled for nonpayment of premium, only 10 days' written notice to Town is required;
4. the term "Town" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Town and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Town;
5. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas;
6. all liability policies required herein shall be written with an "occurrence" basis coverage trigger;
7. prior to the effective date of cancellation of any policy, Contractor shall deliver to the Town a replacement certificate of insurance evidencing coverage;
8. each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-;
9. the Special Provisions Section shall state that the liability policies have been endorsed via blanket-form endorsement to provide for waivers of subrogation, to provide that those policies are primary and non-contributory as to the Town; and
10. General Liability insurance with combined single limits of not less than \$1,000,000 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

E. Indemnification: THE TOWN SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, INJURY OR LOSS TO ANY PROPERTY, OR ECONOMIC LOSS, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF CONTRACTOR UNDER THIS

CONTRACT, WITHOUT WAIVING THE TOWN'S GOVERNMENTAL, SOVEREIGN OR OTHER IMMUNITIES OR DEFENSES AVAILABLE TO THE Town UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR HEREIN IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT Town FROM THE CONSEQUENCES OF THE CONTRACTOR'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

1. If any action is brought against the Town, or any officer, employee or agent of the Town, in any way arising from the performance of this contract by the Contractor; or for the failure, omission, or neglect of the Contractor to perform any of the covenants, acts, matters, or things under the contract; or for injury or damage or loss caused by the alleged negligence of the Contractor or its subcontractors, officers, employees, or agents; or in connection with any claim based on lawful demands of subcontractors, workmen, material men, or suppliers, the Contractor shall indemnify, defend and hold harmless the Town and its officers and agents, from all losses, damages, costs, expenses (including but not limited to attorney's fees and expenses), judgments, or decrees arising out of such action.

2. The Contractor is solely responsible for and shall defend, indemnify, and hold Town (or any of Town's officials, officers, representatives or employees), free and harmless from and against any and all claims, liabilities, demands, losses, damages, costs or expense to all persons (including but not limited to reasonable attorneys' fees) arising out of resulting from or occurring in connection with the performance of the work that is (i) attributable to any bodily or personal injury, sickness, diseases or death of any person or any damage or injury to or destruction of real or personal property (other than the work itself) including the loss of use thereof, and (ii) caused in whole or in part by any negligent, strict liability or other act or omission of the Contractor, any subcontractor or supplier, their respective agents or employees or any other party for whom any of them may be liable regardless of whether such is caused in part by the negligent, strict liability or other act or omission of a party or parties indemnified hereunder.

3. The foregoing indemnity, defense and hold harmless agreement shall also apply to claims arising from accidents to the Contractor, its agents or employees, whether occasioned by the Contractor or its employees, the owner or his employees, or by any other person or persons. The indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4. The provisions of the foregoing indemnification clauses are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 8. TITLE TO EQUIPMENT

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, provided by the Contractor in connection with the Services, as noted above, shall at all times remain the property of the Contractor.

SECTION 9. EXCLUSIONS

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, dead animals, auto parts or used tires from any customer;

provided, however, that any customer may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of dead animals, auto parts or used tires with the Contractor or another reputable third party.

SECTION 10. ASSIGNMENT

This Agreement shall not be assignable or otherwise transferable by the Contractor without the prior written consent of the Town; provided, however, that the Contractor may assign this Agreement to an affiliate of the Contractor without the Town's prior written consent.

SECTION 11. ENFORCEMENT

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances that will enable the Contractor to provide the services set forth herein.

SECTION 12. SPILLAGE

It is understood and agreed that the Contractor shall not be required, but may, clean up, collect or dispose of any loose or spilled Residential or Municipal Solid Waste not caused by the Contractor's rendering of services, or collect and dispose of any excess Residential or Municipal Solid Waste placed outside of the Containers by any customer. The Contractor may report the location of such conditions to the Town so that the Town can issue proper notice to the customer instructing the customer to properly contain such Residential or Municipal Solid Waste. Should excess Residential or Municipal Solid Waste continue to be placed outside of the Containers, the Town authorizes the Contractor to issue an additional container or more frequent pickups of roll-off or dumpster if deemed necessary.

SECTION 13. HOURS OF SERVICE

For all the services provided hereunder, the Contractor's hours of service shall be between 6:00 AM and 8:00 PM, Monday through Saturday. The Contractor will not be required to provide service on Sunday or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

SECTION 14. COMPLIANCE WITH APPLICABLE LAWS

The Contractor shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of solid waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town not in conflict with this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Contractor in order to ensure compliance with these requirements.

SECTION 15. VEHICLES AND EQUIPMENT

Vehicles used by the Contractor for the collection, hauling and disposal of Residential or Municipal Solid Waste and Construction and Demolition Waste pursuant to this Agreement shall be protected at all times while in transit to prevent the blowing or scattering of waste onto the Town's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked on both sides with the Contractor's name in letters and numbers not less than two (2) inches in height. The Town may adopt weight limits and maximum vehicle axle

weight limits on vehicles used by Contractor as the Town deems appropriate to minimize disruption and damage to the Town's streets, alleys and rights-of-way. Trucks operated within the Town of Poetry for residential collection must be single axle (1 steering and 1 rear) and may not exceed 33,000 pounds GVWR. Trucks used for commercial and roll-off services may be tandem axle (1 steering and 2 rear) and may not exceed 60,000 pounds GVWR.

SECTION 16. SEVERABILITY

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 17. TERMINATION

A. The sufficiency of the grounds for termination as enumerated hereinafter shall be within the sole discretion of the Town Council. It is understood and agreed that this license may be terminated after hearing before the Town Council if:

1. The Contractor has failed to give prompt and courteous attention to, and correct complaints filed by its customers.
2. The Contractor has failed to provide an adequate regular collection service or is in an any way in violation of this Agreement, after being given a reasonable time to correct such failure or violation.
3. The failure of the Contractor to abide by any of the terms and conditions of this Agreement, applicable ordinances of the Town, or State or Federal regulations.
4. The filing of bankruptcy or receivership proceedings, transfers for the benefit of creditors, or acts evidencing insolvency.
5. For cause as determined by the Town Council.
6. For convenience, when such convenience is determined by the Town Council to be in the best interest of the public health, safety and welfare.

B. In the event of termination for the reasons set forth in the foregoing paragraphs A (1) through (5) the Town shall notify Contractor of the reasons for consideration of termination and Contractor shall have a period of thirty (30) days to cure such reason.

C. Contractor may terminate this Agreement upon written notice received by the Town not less than 60 days before the date set forth in said notice for termination.

SECTION 18. FORCE MAJEURE

The performance of this Agreement may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by an incident, situation, or act of a third party that is beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods,

epidemics/pandemics, embargoes, war, and riots.

SECTION 19. GOVERNING LAW

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the State of Texas. The parties hereby agree that exclusive venue of any action arising under the terms of this Agreement shall be in the state courts of appropriate jurisdiction in Hunt and/or Kaufman County, Texas, depending on the location of the incident giving rise to a cause of action.

SECTION 20. NOTICE

Any notices required or permitted to be delivered under this Agreement shall be deemed receivable when sent by email to mayor.tara@poetrytexas.org or the United States mail, postage pre-paid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the signature of the party.

SECTION 21. MERGER CLAUSE

This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Agreement, except as provided in the Agreement documents.

SECTION 23. COUNTERPARTS

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

SECTION 24. RECITALS

The recitals to this Agreement are incorporated herein.

SECTION 25. EFFECTIVE DATE

The Effective Date of this Agreement, and the date that Solid Waste Services are to commence, is _____ day of _____, 2023.

Executed in single or multiple originals this _____ day of _____, 2023.

[Signatures on following page]

CONTRACTOR

TOWN OF POETRY, TEXAS

By: _____
_____ its _____

By: _____
Tara Senkevetch, Mayor

Addresses:

ATTEST:

By: _____
Town Secretary

EXHIBIT A

NONEXCLUSIVE FOR ROLL-OFF COLLECTIONS

FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE TOWN OF POETRY, TEXAS

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the date set forth hereinbelow and is by and between _____, ("CONTRACTOR"), and the Town of Poetry, Texas (the "Town").

WHEREAS, the Town is empowered under state and local law to provide solid waste collection and disposal services to its residents and commercial businesses and has the authority to enter into solid waste service contracts to acquire, sell, lease or allow for the operation of all or any part of a solid waste management system, including the collection, transportation and disposal of solid waste; and

WHEREAS, the Town has engaged in agreements with other vendors for exclusive solid waste collections from residential customers and, by this Agreement, desires to provide for the nonexclusive collection of solid waste from nonresidential customers; and

WHEREAS, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Contractor the franchise, license and privilege to collect, haul and dispose of Solid Waste (as such term is defined herein) within the Town's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Contractor and the Town hereby agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used herein, will be defined as follows:

Bulky Waste: Bulky Waste shall mean solid waste composed of materials not easily contained in a cart such as, but not limited to white goods, furniture, yard trimmings, large electronics, and other oversized solid waste. Any solid waste not placed within a Cart will be removed by the Contractor as Bulky Waste.

Contractor: **NAME OF CONTRACTOR** a Texas [entity] authorized and registered to do business in the State of Texas, and its successors and assigns.

Construction and Demolition Waste: Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.

Container or Poly Cart Container: Poly Cart Container (or Cart) shall mean a 90 or 95-gallon, durable plastic, heavy duty wheeled container. The Contractor shall own the Carts and, following the termination of this Contract by any means, shall be entitled to reclaim and repossess the Carts. Broken or missing Carts at residential locations

shall be replaced by Contractor at no charge to the customer, for up to but not more than three Carts per year.

Gross Receipts. The total amounts the Contractor received from all sources within the Town during the quarter, without subtracting any costs or expenses

Hazardous Waste: Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and as subsequently amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays: The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

Landfill: Any facility or area of land receiving Municipal Solid Waste, Residential Solid Waste, or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Solid Waste: Solid Waste shall mean garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
- b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement;
- c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or depressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 et seq.); or
- d) Unacceptable waste.

Solid Waste Services: Solid Waste Services shall mean the collection and disposal of solid waste including bulky waste.

SECTION 2. FRANCHISE GRANT

The Contractor is hereby granted the nonexclusive license, privilege and duty, to the extent allowed by law, within the territorial jurisdiction of the Town, to provide Solid Waste collection, hauling and disposal for commercial and industrial/roll-off customers, construction and demolition waste, and recyclable materials collection and processing in accordance with this Agreement and the Ordinances of the Town and to perform

all of the work called for and described in this Agreement. Contractor agrees to furnish all personnel, labor, equipment, trucks, and other items necessary to provide Solid Waste Services to its customers within the Town.

SECTION 3. TERM

The term this Agreement shall be for a period of three (3) years, beginning on _____, 2023 and terminating on the third anniversary of said date. This Agreement may be renewed for three (3) additional one (1) year terms unless either party gives written notice of election not to renew the Agreement to the other party, not less than sixty (60) days prior to the expiration of the original or any renewal term.

SECTION 4. FRANCHISE FEES; RATES FOR SERVICE

A. Fee. For the right and privilege of using the Town's public rights-of-way, the Contractor will pay the Town an administrative fee equal to seven percent (7%) of gross receipts resulting from the operation of the solid waste collection service within the Town. The rates shown below do not include the administrative fee. The fee shall not include amounts billed to customers until paid or collected by Contractor.

B. Due Dates. Franchise fees shall be paid to the Town on or before the tenth (10th) day after the beginning of each quarter for amounts received by the Contractor for the performance of Services during the quarter, according to the following dates.

1st quarter: January 10th

2nd quarter: April 10th

3rd quarter: July 10th

4th quarter: October 10th

If this Agreement is entered into or terminated in the middle of a quarter, the applicable quarter will be prorated to exclude the time during the quarter in which no Service was provided. The Town agrees that payments owing from the Contractor pursuant to this Agreement shall be based solely on the Services rendered by the Contractor.

C. Reports; accountability. Each payment to the Town shall be accompanied by a statement detailing Contractor's quantities of each service type and showing sufficient information to enable the Town to verify the accuracy of each quarterly payment. The Town may review Contractor's books and records that relate to customers within the Town's corporate limits, or may conduct an audit of books and records, on reasonable notice any time during the term of this Agreement and for a period of two (2) years thereafter. Any information obtained by Town as a result of a review or audit shall be kept and maintained by the Town as confidential, and may only be disclosed to employees, representatives, and agents of the Town that have a need to know, or in order to enforce the provisions hereof, except where required by law or court order to disclose such information. An audit shall be at Town expense unless the audit discloses an underpayment of more than five percent (5%) of the amount that was otherwise due, in which case the Contractor shall pay or reimburse the Town for all costs.

D. Rates. The rates charged by Contractor to customers within the Town shall be as may be negotiated between the Contractor and its customer.

E. Audit: The Town may, on reasonable notice, at reasonable times, and at the Town's expense, request and

conduct an audit of the Contractor's books and records to establish compliance with the rates and fees charged under this Contract. To the extent allowed by law, the Town will maintain the confidentiality of all information received by the Town in such audits.

SECTION 5. OPERATIONS

A. Scope of operations. It is expressly understood and agreed that the Contractor will collect, haul and dispose of Solid Waste during Business Days: (i) generated and accumulated by Contractor's customers, and (ii) placed within Containers, if required by Contractor, by those customers receiving the services of the Contractor, all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement. This Agreement does not cover services provided in the Town's extraterritorial jurisdiction. The frequency of collections shall be as negotiated between the Contractor and the customer.

B. Nature of operations. The Town hereby grants to the Contractor, in accordance with this Agreement and the Town's ordinances and regulations governing the collection, hauling and disposal of Solid Waste, the title to all Solid Waste collected, hauled and disposed of by the Contractor over, upon, along and across the present and future streets, alleys, bridges, and rights-of-ways. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

C. Hours/Days of Operation. Collection of Solid Waste shall begin no earlier than 7:00 o'clock a.m. and shall generally not extend beyond 7:00 o'clock p.m. These hours may be extended or altered with the approval of the Town. No regular weekly residential collection shall occur on Saturday, unless needed to accommodate collection schedule shifts due to holidays. No collection shall be made on Sunday.

D. Monthly Reporting. Complete and accurate monthly reports must be submitted to the Town on or before the tenth (10th) day of each month. Monthly reports must contain the following information:

1. Amount of Solid Waste and Program Recyclable Materials Collected – Spreadsheet listing amounts (in tons/pounds) of solid waste and program recyclable materials collected by customer type. The spreadsheet must also include year-to-date totals.
2. Customer List for Roll-off Services – identify each by address and level of service, name, and contact information.
3. Billing and Revenue Documentation – documentation justifying the billings and revenue derived by the successful proposer for services within the Town.
4. Summary of motor vehicle accidents or moving violations involving the successful proposer's vehicles – identify the vehicle, employee, and description of the violation.

SECTION 6. COMPLAINTS; MISSED COLLECTIONS

A. Local Office: The Contractor shall maintain an office or other facilities through which they can be contacted. The office shall be equipped with sufficient telephones having local phone numbers and shall be staffed by at least one responsible and competent person (a customer service representative) available to answer the phone from 7:00 a.m. to 7:00 p.m. on regular collection days. When residential collection is postponed one day for the holiday schedule the Contractor's customer service personnel must be available to answer phones on all days during which collection service is provided. An informative recording answering frequently asked questions and voicemail shall be available at all other hours.

B. Complaint Resolution. The Contractor will be primarily responsible for complaints, which shall be directed to the Contractor, and the Contractor shall give each complaint received prompt and courteous attention. The Contractor shall maintain a log of complaints and shall provide the Town, monthly, with copies

of all complaints indicating the date and hour of the complaint, the nature of the complaint, and the manner and timing of its resolution. If a complaint cannot be resolved, it is the Contractor's responsibility to provide adequate documentation to demonstrate that the complaint was handled in a satisfactory manner.

C. Missed Collections. The Contractor shall notify the Town by 4:00 PM, Central Time, when a route may not be completed before 7:00 PM, Central Time. The Contractor shall notify the Town immediately upon discovering a street, portion of a route, or a complete route was not collected as scheduled. When notification of a missed collection is received by the Contractor before 4:00 PM, Central Time, and such allegation cannot be disproved by using Global Positioning System (GPS) equipment to document the fact that the Contractor attempted to provide services to such customer, the Contractor shall dispatch a truck and provide the collection before 7:00 PM, Central Time on the same day. When notification of a missed collection is received by the Contractor after 4:00 PM, Central Time and such allegation cannot be disproved using GPS, the Contractor shall provide collection within the next 24 hours and inform all residents impacted by such a missed collection of the time the corrective collection will be provided. When notification of a missed collection is received after 4:00 PM, Central Time on the day preceding a holiday and such allegations cannot be disproved, the Contractor shall provide collection within the first three (3) hours of the day after the holiday.

D. Materiality. Compliance with the complaint resolution, customer grievance, and reporting requirements of this Section is and shall be a material term of the contract.

E. Administrative Charges. The Contractor understands that if it does not timely perform its obligations pursuant to the terms of the contract or violates any provision of the contract, Town will suffer damages which are difficult to determine and to adequately specify. The Contractor agrees, in addition to any other remedies available to Town, that Town may withhold payment from Contractor in the amounts specified below as administrative charges for failure of the Contractor to fulfill its obligations, subject to events of force majeure. The following acts or omissions shall be considered a breach of the contract and Town may require payment by the Contractor of the charges set forth for each act.

OMISSION	LIQUIDATED DAMAGES
Commencement of collection prior to 7:00 a.m. except as expressly permitted herein.	\$100 per incident (each truck on each route is a separate incident)
Failure to collect and clean up spillage within one (1) business day.	\$50 per incident
Unsanitary condition of vehicle exterior.	\$100 per incident
Failure to collect missed Garbage, Bulk/Brush Waste or Recyclables, within one business day (including Saturday). Or repeat misses of any required collection services on more than two (2) occasions.	\$25 each incident to a maximum of \$250 per truck per day \$1000 each incident per Detachable Container
Missed collection of whole block. (This excludes collections prevented by weather and holiday rescheduling). A whole block miss is defined as missing 3 or more houses on the same side of the street.	\$200 per whole block
Failure to deliver or replace Poly Carts, or Curbside Recycling Wheeled Containers for any reason within three (3) business days of notification.	\$50 per container per day
Any additional misses, at the same address, within one (1) year after Contractor's receipt of 2 nd notice regarding no collection.	\$200 each incident

Complaint calls received by the Town in excess of twenty (20) per month.	\$30 per call
Failure to make all required collections during a week due to non-weather-related service disruptions.	\$500 per collection route
Failure to provide complete and accurate monthly report by the 15 th of each month.	\$250 per incident

As used herein, “events of force majeure” shall mean an incident, situation, or act of a third party that is beyond a party’s reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party’s own labor force), hurricanes, earthquakes, fires, floods, epidemics/pandemics, embargoes, war, and riots. The Contractor will not be responsible for administrative charges for its temporary failure to perform because of an event of force majeure, provided, however, that the Contractor submits written notice thereof to the Town within three (3) calendar days of the event identifying the specific cause(s) and estimated duration of the delay. The failure to provide timely notice to the Town is a waiver of any claim of delay and shall be conclusively regarded as an admission that any delay or failure to perform was not attributable to a force majeure event.

F. Remittance of Charges: Town may impose administrative charges when the Town determines that performance consistent with the provisions of the contract has not occurred. The Town shall notify the Contractor in writing or electronically of each act or omission under the terms of the contract reported to or discovered by Town or its designee. The Contractor may appeal the Town’s assessments of administrative charges to the Town Council in writing, filed within 20 days of its receipt of notice of an assessment. The Council shall hear the appeal and promptly render a determination to uphold, reverse or modify the assessment. The Council’s determination shall be final and binding.

G. It shall be the duty of the Contractor to take whatever steps or action may be necessary to remedy the cause of any complaint. The remedy available to Town under this Section are in addition to all other remedies which the Town may have under law, at equity, or pursuant to the terms of the contract. Contractor’s obligations to make payments for such charges under this section occurring prior to the expiration or termination of this contract shall survive termination or expiration of this contract.

SECTION 7. INSURANCE; INDEMNIFICATION

A. The Contractor shall exercise due care and caution in providing the Services so that the Town’s public and private property, including streets, road signs and fixtures, and parking areas, will be protected and preserved.

B. Minimum Limits of Insurance: The Contractor shall procure and maintain the following minimum types of coverages:

Worker's Compensation or other State-approved program	As set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence. \$2,000,000 Aggregate
City’s Protective Liability Insurance	\$600,000 per occurrence \$1,000,000 aggregate
Excess/Umbrella Liability	\$1,000,000 per occurrence

w/drop down coverage.

Automobile Liability

\$1,000,000 Combined
single limit per occurrence.

C. The Town reserves the right to review the insurance requirements of this section during the effective period of the contract and any extension or renewal period and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the Town based upon changes in statutory law or court decisions.

D. Each insurance policy to be purchased by Contractor shall include the conditions as described below, as well as the following conditions by endorsement to the policy:

1. the General liability insurance policy shall name Town and its officers, employees, and elected representatives as an additional insured without restrictions via blanket-form endorsement;
2. the policy phrase "other insurance" shall not apply to the Town where the Town is an additional insured; the policy shall specify that it is primary and non-contributory with any of the Town's policies and will state that each insured is provided coverage as though a separate policy had been issued to each, except that the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered;
3. each policy, except workers' compensation or other state approved program, shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be sent to Town by email. If the policy is canceled for nonpayment of premium, only 10 days' written notice to Town is required;
4. the term "Town" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Town and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Town;
5. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas;
6. all liability policies required herein shall be written with an "occurrence" basis coverage trigger;
7. prior to the effective date of cancellation of any policy, Contractor shall deliver to the Town a replacement certificate of insurance evidencing coverage;
8. each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-;
9. the Special Provisions Section shall state that the liability policies have been endorsed via blanket-form endorsement to provide for waivers of subrogation, to provide that those policies are primary and non-contributory as to the Town; and
10. General Liability insurance with combined single limits of not less than \$1,000,000 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

E. Indemnification: THE TOWN SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, INJURY OR LOSS TO ANY PROPERTY, OR ECONOMIC LOSS, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, WITHOUT WAIVING THE TOWN'S GOVERNMENTAL, SOVEREIGN OR OTHER IMMUNITIES OR DEFENSES AVAILABLE TO THE TOWN UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR HEREIN IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT TOWN FROM THE CONSEQUENCES OF THE CONTRACTOR'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

1. If any action is brought against the Town, or any officer, employee or agent of the Town, in any way arising from the performance of this contract by the Contractor; or for the failure, omission, or neglect of the Contractor to perform any of the covenants, acts, matters, or things under the contract; or for injury or damage or loss caused by the alleged negligence of the Contractor or its subcontractors, officers, employees, or agents; or in connection with any claim based on lawful demands of subcontractors, workmen, material men, or suppliers, the Contractor shall indemnify, defend and hold harmless the Town and its officers and agents, from all losses, damages, costs, expenses (including but not limited to attorney's fees and expenses), judgments, or decrees arising out of such action.

2. The Contractor is solely responsible for and shall defend, indemnify, and hold Town (or any of Town's officials, officers, representatives or employees), free and harmless from and against any and all claims, liabilities, demands, losses, damages, costs or expense to all persons (including but not limited to reasonable attorneys' fees) arising out of resulting from or occurring in connection with the performance of the work that is (i) attributable to any bodily or personal injury, sickness, diseases or death of any person or any damage or injury to or destruction of real or personal property (other than the work itself) including the loss of use thereof, and (ii) caused in whole or in part by any negligent, strict liability or other act or omission of the Contractor, any subcontractor or supplier, their respective agents or employees or any other party for whom any of them may be liable regardless of whether such is caused in part by the negligent, strict liability or other act or omission of a party or parties indemnified hereunder.

3. The foregoing indemnity, defense and hold harmless agreement shall also apply to claims arising from accidents to the Contractor, its agents or employees, whether occasioned by the Contractor or its employees, the owner or his employees, or by any other person or persons. The indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

1. The provisions of the foregoing indemnification clauses are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 8. TITLE TO EQUIPMENT

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, provided by the Contractor in connection with the Services, as noted above, shall at all times remain the property of the Contractor.

SECTION 9. EXCLUSIONS

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, dead animals, auto parts or used tires from any customer; provided, however, that any customer may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of dead animals, auto parts or used tires with the Contractor or another reputable third party.

SECTION 10. ASSIGNMENT

This Agreement shall not be assignable or otherwise transferable by the Contractor without the prior written consent of the Town; provided, however, that the Contractor may assign this Agreement to an affiliate of the Contractor without the Town's prior written consent.

SECTION 11. ENFORCEMENT

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances that will enable the Contractor to provide the services set forth herein.

SECTION 12. SPILLAGE

It is understood and agreed that the Contractor shall not be required, but may, clean up, collect or dispose of any loose or spilled Residential or Municipal Solid Waste not caused by the Contractor's rendering of services, or collect and dispose of any excess Residential or Municipal Solid Waste placed outside of the Containers by any customer. The Contractor may report the location of such conditions to the Town so that the Town can issue proper notice to the customer instructing the customer to properly contain such Residential or Municipal Solid Waste. Should excess Residential or Municipal Solid Waste continue to be placed outside of the Containers, the Town authorizes the Contractor to issue an additional container or more frequent pickups of roll-off or dumpster if deemed necessary.

SECTION 13. HOURS OF SERVICE

For all the services provided hereunder, the Contractor's hours of service shall be between 6:00 AM and 8:00 PM, Monday through Saturday. The Contractor will not be required to provide service on Sunday or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

SECTION 14. COMPLIANCE WITH APPLICABLE LAWS

The Contractor shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of solid waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town not in conflict with this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Contractor in order to ensure compliance with these requirements.

SECTION 15. VEHICLES AND EQUIPMENT

Vehicles used by the Contractor for the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste pursuant to this Agreement shall be protected at all times while in transit to prevent the blowing or scattering of waste onto the Town's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked on both sides with the Contractor's name in letters and numbers not less than two (2) inches in height. The Town may adopt weight limits and maximum vehicle axle weight limits on vehicles used by Contractor as the Town deems appropriate to minimize disruption and damage to the Town's streets, alleys and rights-of-way. Trucks operated within the Town of Poetry for residential collection must be single axle (1 steering and 1 rear) and may not exceed 33,000 pounds GVWR. Trucks used for commercial and roll-off services may be tandem axle (1 steering and 2 rear) and may not exceed 60,000 pounds GVWR.

SECTION 16. SEVERABILITY

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 17. TERMINATION

A. The sufficiency of the grounds for termination as enumerated hereinafter shall be within the sole discretion of the Town Council. It is understood and agreed that this license may be terminated after hearing before the Town Council if:

1. The Contractor has failed to give prompt and courteous attention to, and correct complaints filed by its customers.
2. The Contractor has failed to provide an adequate regular collection service or is in an any way in violation of this Agreement, after being given a reasonable time to correct such failure or violation.
3. The failure of the Contractor to abide by any of the terms and conditions of this Agreement, applicable ordinances of the Town, or State or Federal regulations.
4. The filing of bankruptcy or receivership proceedings, transfers for the benefit of creditors, or acts evidencing insolvency.
5. For cause as determined by the Town Council.
6. For convenience, when such convenience is determined by the Town Council to be in the best interest of the public health, safety and welfare.

B. In the event of termination for the reasons set forth in the foregoing paragraphs A (1) through (5) the Town shall notify Contractor of the reasons for consideration of termination and Contractor shall have a period of thirty (30) days to cure such reason.

C. Contractor may terminate this Agreement upon written notice received by the Town not less than 60

days before the date set forth in said notice for termination.

SECTION 18. FORCE MAJEURE

The performance of this Agreement may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by an incident, situation, or act of a third party that is beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods, epidemics/pandemics, embargoes, war, and riots.

SECTION 19. GOVERNING LAW

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the State of Texas. The parties hereby agree that exclusive venue of any action arising under the terms of this Agreement shall be in the state courts of appropriate jurisdiction in Hunt and/or Kaufman County, Texas, depending on the location of the incident giving rise to a cause of action.

SECTION 20. NOTICE

Any notices required or permitted to be delivered under this Agreement shall be deemed receivable when sent by email to mayor.tara@poetrytexas.org or the United States mail, postage pre-paid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the signature of the party.

SECTION 21. MERGER CLAUSE

This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Agreement, except as provided in the Agreement documents.

SECTION 23. COUNTERPARTS

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

SECTION 24. RECITALS

The recitals to this Agreement are incorporated herein.

SECTION 25. EFFECTIVE DATE

The Effective Date of this Agreement, and the date that Solid Waste Services are to commence, is _____ day of _____, 2023.

Executed in single or multiple originals this _____ day of _____, 2023.

[Signatures on following page]

CONTRACTOR

TOWN OF POETRY, TEXAS

By: _____
_____ its _____

By: _____
Tara Senkevetch, Mayor

Addresses:

ATTEST:

By: _____
Town Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS, AMENDING ORDINANCE NO. 2021-10-01 RELATING TO THE COLLECTION OF SOLID WASTE FROM CUSTOMERS WITHIN THE TOWN; ADOPTING EXCLUSIVITY SUCH THAT ONLY ONE VENDOR MAY SERVE RESIDENTIAL CUSTOMERS; REQUIRING A FRANCHISE AGREEMENT FOR THE USE OF THE TOWN STREETS TO CONDUCT SUCH BUSINESS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 16, 2021, the Town Council of the Town of Poetry, Texas, adopted Ordinance No. 2021-10-01, relating to the collection of solid waste and adopting regulations pertaining thereto; and

WHEREAS, the Town Council finds and determines that since the adoption of Ordinance No. 2021-10-01, there are numerous solid waste vendors conducting business in the Town, some of whom do not have the appropriate permit or franchise agreement, have failed to renew permits or agreements, and, based on the number and nature of complaints received by the Town, are performing collection services poorly and inadequately; and

WHEREAS, it is in the public interest to ensure that solid waste collection service is provided efficiently and effectively to the citizens of the Town; and

WHEREAS, the Town Council desires to retain one exclusive vendor to collect solid waste from residential customers within the Town, and that the Council's selection of the most qualified vendor will minimize the number of vendors using Town streets, will enable a more effective and efficient collection of residential municipal solid waste, and will enable the Town to more effectively monitor and regulate the collection of solid waste; and

WHEREAS, the Town Council finds and determines that a public need exists to amend regulations relating to the collection of solid waste in the Town's limits in accordance with the terms of this Ordinance in order to protect the public streets and provide for the general health, safety and welfare of the citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. That the Town Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Town Council hereby

incorporates such recitals as part of this Ordinance.

SECTION 2. That Ordinance 2021-10-01, adopted by the Town Council of the Town of Poetry, Texas, on or about November 16, 2021, be and is hereby amended by amending Subsection A of Section 2 (“Permit And Franchise Agreement Required”) to consolidate both Subsection A’s into one, and to amend the existing language to enable exclusivity in solid waste collections, such that Subsection A of Section 2 of Ordinance No. 2023-10-01 shall read in its entirety as follows:

A. Exclusivity; Permit and Franchise Agreement.

- (1) Unless excepted herein, it shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having a valid permit issued by Town and a franchise agreement with the Town.
- (2) Residential Collections. The Town Council shall select one Collector based on demonstrated competence to exclusively provide Municipal Solid Waste collections from residential customers within the Town. Upon the Council’s selection, all existing permits and franchise agreements with all persons and entities providing solid waste collection services to residential customers within the Town shall be and are hereby revoked. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection from residential customers other than the exclusive vendor selected by the Town.
- (3) Commercial/Nonresidential Collections. No Collector, other than the Town’s exclusive residential Collector, shall collect any municipal solid waste within the corporate limits of the Town without first applying for and obtaining a permit to do so from the Mayor or his/her designee. Such permit shall be on such forms as the Town may determine. An annual permit fee in the amount of \$100 is due and payable at the time of application for a permit. The Mayor or his/her designee may provide notice of noncompliance with these regulations and allow ten (10) days for compliance. However, failure of the Town to provide this notice does not preclude the Town from initiating citations and pursuing action pursuant to Chapter 54 of the Texas Local Government Code, as amended, against any collector in violation of the Town’s solid waste regulations.
- (4) In addition to the foregoing permit requirement, any person, firm or corporation collecting solid waste within the Town shall first enter into a Franchise Agreement with the Town. It shall be unlawful for any person, firm or

corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having entered into a Franchise Agreement.

SECTION 3 That Subsection A of Section 2 of Ordinance No. 2023-10-01 be and is hereby amended in accordance with the foregoing, without amendment repeal or change to any other part or provision of Ordinance No. 2021-10-01. All ordinances of the Town of Poetry, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the Town of Poetry not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of other ordinances of the Town.

SECTION 6. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense.

SECTION 7. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED AND APPROVED by the Town Council of the Town of Poetry,

Texas, on this the _____ day of _____, 2023.

APPROVED:

MAYOR

ATTEST:

TOWN SECRETARY

APPROVED AS TO FORM:

TOWN ATTORNEY



**Town of
Poetry**

**OCTOBER END
2023**

Beginning Bank Balance c	10/02/23			\$70,429.84
Deposits	10/12/2023	DEPOSIT Titan	3rd Qtr Franchise	\$1,330.00
	10/13/2023	DEPOSIT Tx Comptroller	sales and use tax	\$8,169.48
	10/27/2023	DEPOSIT Card Partial Pmt and Texas Contracto	3rd Qtr Franchise	\$1,214.67
			Total	\$10,714.15
Withdrawals and debits	10/2/2023	Amazon	Dell Omniplex Supplies	\$13.72
	10/2/2023	Amazon	Ace Monitor for PC	\$275.98
	10/2/2023	Amazon	PC Equipment	\$110.62
	10/2/2023	Amazon	Asurion 3 year Prot	\$5.99
	10/2/2023	Amazon	Scan Snap 1600	\$419.99
	10/2/2023	Amazon	Flag Pole Light	\$31.49
	10/2/2023	Amazon	Security Cam	\$109.99
	10/2/2023	Amazon	32" TV for Mtgs	\$84.99
	10/3/2023	Texas Municipal Education		\$250.00
	10/10/2023	Parkplace Dallas	Parking Education Conf.	\$25.00
	10/10/2023	Reliant Energy	Electric	\$115.26
	10/11/2023	Costco	Office Supplies	\$89.98
	10/11/2023	Office Max	Office Supplies	\$168.22
	10/11/2023	Walmart	Office Supplies	\$51.72
	10/12/2023	USPS	Stamps	\$66.00
	10/13/2023	Wix	Internet	\$19.48
	10/13/2023	Amazon	Security Cam	\$109.92
	10/16/2023	Amazon	Solar Lamps x3 Park Lot	\$313.47
	10/16/2023	Amazon	Solar Lights Outdoor	\$20.22
	10/16/2023	Amazon	Flammable Storage	\$170.00
	10/24/2023	Staples	Office Equipment	\$275.38
	10/24/2023	Home Depot	Concrete Pad Block	\$19.74
	10/26/2023	Poetry Tack	Janitorial/ Maint Supplies	\$58.38
	10/30/2023	Amazon	Security Cam	\$59.77
			Total	\$2,865.31
Checks Paid	10/3	Nichols, Jackson, Dillard	Legal Aug	\$828.75
	10/3	Rae Hirogoyen	Cng Service/Contract Labor	\$34.00
	10/5	Reliant Energy	Electric	\$251.98
	10/5	Theresa Scholander	Sept. Invoice Deputy Sectry	\$403.27
	10/10	Spectrum Charter	Internet/Phone	\$100.29
	10/11	IRS	Q3 941	\$207.56
	10/12	Waldo Enriquez	Grounds maintenance	\$160.00
	10/13	PWSC	Water utilites	\$134.11
	10/19	Print Tyme	Newsletters	\$49.99
	10/20	Ross Welding Construction	Fence repairs	\$150.00
	10/27	Texas Contractor RollOff	Landscaping Mix and Spread	\$800.00
	10/31	Nichols, Jackson, Dillard	Legal September	\$1,487.39
			Total	\$4,607.34
Ending Balance 10/31/2023				<u>\$73,671.34</u>

11 FEC checks outstanding **\$ 591.47**