

**CITY OF CRETE, NEBRASKA  
SOLID WASTE COLLECTION AGREEMENT  
CONTRACT NO. 20-01-\_\_\_\_\_**

This agreement is entered into between the City of Crete, Nebraska, a Nebraska municipal corporation, ("City") and Waste Connections of Nebraska, Inc. (d/b/a The Garbage Company), a Delaware corporation, ("Waste Connections") upon the date of signature by both parties.

**RECITALS:**

**A.** The City contracts with private entities to provide solid waste collection services to the residents and businesses in Crete, Nebraska. The contract for solid waste collection services is usually an exclusive contract with one company to provide monopolistic collection services to all residents and businesses.

**B.** Waste Connections has been the provider of solid waste collection services for the City of Crete since at least 2003. The most recent agreement between the City and Waste Connections was entered into on October 1, 2003. This agreement was amended five times: by an addendum dated December 4, 2007; by an addendum dated October 7, 2008; by an addendum dated March 31, 2009; by an addendum dated April 1, 2014; and, most recently, by an addendum dated April 1, 2015.

**C.** The City and Waste Connections have discussed terms and conditions regarding a new exclusive contract between the parties, and this agreement is intended to memorialize the entire agreement between the City and Waste Connections for municipal solid waste collection services.

**AGREEMENT:**

Premised on the Recitals above and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

**PART I: GENERAL TERMS AND CONDITIONS.**

**§1.01 Definitions.**

Unless otherwise expressly defined in a section, the following terms and all forms of such terms shall have the meanings set forth below:

- (1) "Excluded waste" shall mean any material which is or contains or which Waste Connections reasonably believes to be or contain radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic, or hazardous material as defined by any applicable federal, state, or local laws or regulations.
- (2) "Landfill" shall mean the landfill owned and operated by G. & P. Development, Inc., a Nebraska corporation, that is located approximately one and one-half (1.5) miles south of Milford, Nebraska, generally known as the Cottonwood Landfill, or such other landfill as designated by the City.
- (3) "Multi-unit complex" shall mean a dwelling unit that is constructed to accommodate three (3) or more residential households, that has one area for depositing garbage, refuse, and rubbish in common containers, and that has one billing account for all collection services to such dwelling unit.

- (4) “Occasional overages” shall mean solid waste, yard waste, or recyclable materials that do not fit within the containers provided by Waste Connections at a frequency of no more than four pickups during any four month period.
- (5) “Recyclable materials” shall mean those materials or substances that are commonly recycled including, but not limited to, aluminum, cardboard, glass, mixed paper, plastics numbered 1-7, tin, and any other materials that may be added by mutual agreement of the parties from time to time.
- (6) “Solid waste” shall mean all materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection including, but not limited to: garbage; trash; rubbish; refuse; industrial, commercial, and agricultural waste; sludge from air or water pollution control facilities or water supply treatment facilities; ashes and incinerator residue; and, demolition and construction debris.
- (7) “Yard waste” shall mean accumulations of grass or shrubbery cuttings, leaves, vines, and other organic materials collected as a result of the care of lawns, gardens, and shrubbery. The City may make a distinction between privately generated yard waste and yard waste collected by commercial enterprises.

#### **§1.02 Contract Term.**

The term of this contract will be five (5) years from April 1, 2020 (“Contract Term”); therefore, the termination date of this contract will be March 31, 2025 (“Termination Date”).

#### **§1.03 Services and Equipment Provided by Waste Collections; Operation of Transfer Station; Excluded Waste.**

Waste Connections shall collect all of the solid waste and recyclable materials at specified rates from all single family residential units, two family residential units, and multi-unit complexes within the corporate limits of the City as mandatory, city-wide solid waste collection and from all other business, commercial, institutional, and industrial establishments that shall employ its service. Waste Connections shall collect such solid waste, recyclable materials, and tree trimmings, excepting grass and leaves and with allowances for occasional overages, from containers provided by Waste Connections. Waste Connections shall collect yard waste separately from all other solid waste and recyclable materials and shall deposit the yard waste at such locations as directed by the City and not in the landfill.

Waste Connections shall perform its collection services at each residential unit and multi-unit complex at least once per week on a regularly scheduled day of the week under the rate schedule set forth herein. Any changes to the regularly scheduled collection day shall be submitted to the City and shall not go into effect until Waste Connections publishes notice of such change and the change is approved by the City. Such published notice shall be given at least thirty (30) days prior to any proposed change. If any scheduled collection day for a residential unit or multi-unit complex occurs on a holiday designated by the City, then the regularly scheduled collection day shall be delayed to the following non-holiday day. Waste Collections may refuse service to any property when the property owner has failed to pay for billed services for at least sixty (60) days.

Waste Connections shall acquire, maintain, and employ such equipment and vehicles as are reasonably necessary to effectuate the objectives of this contract and to collect and remove solid waste, recyclable materials, and yard waste in a good, workmanlike manner. Waste Connections shall keep all equipment used for collection services covered by canvas or otherwise so that nothing may fall out and onto the streets of the City or neighboring property during such time that the equipment is removing or transporting collected materials to their ultimate destination.

All vehicles used by Waste Connections for the collection and hauling of solid waste, recyclable materials, and yard waste shall be well-maintained, in good repair, and in safe operating conditions at all times. Each vehicle shall be equipped with a closed body that is water-tight and that incorporates a hydraulically-operated device for compacting solid waste, recyclable materials, or yard waste. All vehicles shall be cleaned and disinfected once each week, and the City may inspect such vehicles at any time to determine if they are water-tight, clean, well-painted, and in good repair. Any vehicles that are not in such condition shall not be used to perform collection services until re-inspected by the City.

Waste Connections shall furnish and maintain, at no cost to the City and as part of the regular rate for each customer, a sixty-five (65) gallon or ninety-six (96) gallon container for solid waste and a thirty (30) gallon, sixty-five (65) gallon, or ninety-six (96) gallon container for recyclable materials for all residential units and containers of such size and type as approved by the City for all multi-unit complex, business, commercial, institutional, and industrial customers. Waste Connections shall inspect all containers on a monthly basis and shall repair or replace any containers, as needed.

Waste Connections shall set up, operate, and maintain a central collection point for solid waste and recyclable materials at the previous city landfill located approximately one-half (1/2) mile northeast of the City of Crete (“Transfer Station”). The Transfer Station shall be open to the public on such days and times as further agreed in writing by the parties. At the Transfer Station, Waste Connections shall operate a compactor truck or roll-off container and shall accept solid waste and recyclable material deposits from any person or organization, public or private, that resides or has its principal place of business within the corporate limits of the city. Any roll-off or other open air containers used by Waste Connections at the Transfer Station must be covered with a waterproof cover overnight or when otherwise not in use. Waste Connections shall follow all applicable federal, state, and local laws or regulations relating to the operation of the Transfer Station.

Waste Connections shall have no obligation to collect any excluded waste, and, if any discarded excluded waste or what reasonably appears to be discarded excluded waste is discovered, Waste Connections shall promptly notify the City and the producer of the excluded waste, if readily identifiable. Under no circumstances shall Waste Connections have, take, or assume title to or liability for any excluded waste even if Waste Connections inadvertently collects, transports, or disposes of such excluded waste.

#### **§1.04 Rights and Services Provided by the City.**

The City hereby grants Waste Connections the limited exclusive privilege, authority, and right to collect and haul solid waste and recyclable materials accumulated within the corporate limits of Crete, Nebraska to the landfill designated by the City. The City agrees that no other person, firm, or corporation shall be licensed or granted the authority or privilege to collect, haul, or remove solid waste or recyclable materials accumulated within the corporate limits of the city; however, the City reserves the right to contract with another solid waste collection provider if Waste Connections is unable to substantially perform its obligations under this contract.

The City shall cooperate with Waste Connections in the enforcement of the ordinances and City Code sections that require the use of Waste Connections as the exclusive provider of waste collection services and that impose a penalty to persons and businesses in violation thereof. The City shall administer the collection of rates and fees from the residents and businesses that receive waste collection services and shall include the statements and bills for such services with the monthly city utility bill.

### **§1.05 Payment for Services Provided; Franchise Fee.**

In exchange for providing collection services, Waste Connections shall be entitled to receive the rates set forth in the Rate Schedules found in Part III. Such rates shall not be increased without the written consent of the City upon a showing of reasonable necessity by Waste Connections.

Waste Connections shall pay the City a monthly franchise fee based on the number of customers at a rate of Two Dollars (\$2.00) per customer. This fee shall be paid by the fifteenth (15th) of each month for the preceding month and may be automatically deducted by the City from the rates and fees collected from customers prior to the collections being forwarded to Waste Connections.

### **§1.06 Incorporation of RECITALS.**

All paragraphs of the RECITALS above are hereby incorporated as agreed provisions of this contract.

## **PART II: SPECIAL CONDITIONS.**

### **§2.01 Right of Self Collection; City Account Collection.**

This agreement shall not be construed so as to prevent any person, firm, or corporation other than Waste Connections from removing accumulations of yard waste or building or construction materials if the creation thereof is an incidental result of a business operation or use of property and not the primary occupation or business of the person, firm, or corporation. Industrial establishments shall have the limited right to haul their own solid waste, recyclable materials, and yard waste but shall not have the right to hire another outside refuse hauler other than Waste Connections.

Waste Connections shall provide collection services to the city municipal buildings and accounts and shall provide additional refuse services to the City on special occasions or city events. These additional services may be required on weekends and will be made available at no additional cost.

### **§2.02 Required Landfill and Recycling Center; Waste Stream Reduction.**

The City is part of the Seward/Saline County Solid Waste Management Agency (“Agency”), and as such, Waste Connections is required to use the solid waste disposal area approximately one and one-half (1.5) miles south of Milford, Nebraska and generally known as the Cottonwood Landfill. The Solid Waste Disposal Agreement entered into by the Agency shall be incorporated herein by reference, and Waste Connections shall be the City’s “Hauler” under the terms and conditions of said agreement and shall perform all of the duties and obligations contained therein.

In the event the City receives notice from the landfill operator that Waste Connections can no longer operate as a hauler under the Solid Waste Disposal Agreement, this agreement shall immediately terminate without further notice to Waste Connections. The City may designate a different landfill to be used by giving Waste Connections thirty (30) days written notice of such change.

All recyclable materials shall be properly deposited at a location that has the necessary licenses and permits to handle such recyclable materials. Waste Connections shall provide the City with the name and location of the recycling center where the recyclable materials are deposited. Any solid waste separated during the recycling process shall be deposited in the landfill.

Waste Connections shall assist and cooperate with the City in meeting mandatory waste stream reduction goals set forth by federal, state, or local laws, regulations, or policies.

**§2.03 Refuse Collection Procedures; Rules and Regulations.**

The City and Waste Connections shall agree, in writing, on processes and procedures for the collection of solid waste, recyclable materials, and yard waste. Any process or procedure documents shall be attached to this agreement, incorporated herein by reference, and subject to all terms and conditions of this agreement.

Waste Connections shall have the responsibility to acquaint customers with all rules and regulations established by the City for the collection of solid waste, recyclable materials, and yard waste. The rules and regulations shall be in the form of printed material, printed and distributed at Waste Connection’s expense, and provided to customers on an annual basis and at the time of annexation.

**§2.04 Customer Access; Complaint Procedure.**

Waste Connections shall keep and maintain throughout the Contract Term a local telephone number or toll-free number to receive questions or complaints from customers and to handle any other business related to its solid waste collections service.

Waste Connections shall respond to and act on all complaints concerning collection services received from the City or customers within twenty-four (24) hours and shall keep an up-to-date list of all complaints and how they were handled. On or before the fifteenth (15th) day of each month, Waste Connections shall provide the City with a list of all complaints received during the prior month, which shall include for each complaint: the day and hour of the complaint, the day and hour action was taken on the complaint, what action was taken, whether and how the complaint was resolved, and the name, address, and telephone number of the complainant.

**§2.05 Performance Bond.**

Waste Connections shall provide a performance bond in the amount of Five Thousand Dollars (\$5,000) to insure that it will abide by all terms and conditions of this agreement. The bond shall be filed with the City Clerk and shall be subject to approval, as to adequacy and protection, by the City. The bond shall contain a clause requiring a thirty (30) day notice to the City of a proposed cancellation.

**PART III: RATE SCHEDULES.**

**§3.01 Residential Rates.**

For the collection of solid waste and recyclable materials placed in approved containers, with occasional overages, from residential households, the following rate schedule shall apply:

<b>Residential Rate Schedule</b>		
<b>Contract Year</b>	<b>\$/month - 1 Cart</b>	<b>\$/month - 2 Carts</b>
Year 1	\$19.95/month	\$24.70/month
Year 2	\$20.35/month	\$25.19/month

Year 3	\$20.76/month	\$25.70/month
Year 4	\$21.17/month	\$26.21/month
Year 5	\$21.59/month	\$26.74/month

Yard waste shall be collected one day each week from April 1 through November 30 of each year at an additional rate of \$12.00/month. Residential customers must elect to receive yard waste service.

**§3.02 Commercial Rates.**

For the collection of solid waste and recyclable materials placed in approved carts or toters, with occasional overages, from commercial customers, the following rate schedule shall apply:

<b>Commercial Rate Schedule – Carts/Toters</b>		
<b>Pickup Frequency (per week)</b>	<b>\$/month - 1 Cart/Toter</b>	<b>\$/month - 2 Carts/Toters</b>
1 time	\$19.85/month	\$32.05/month
2 times	\$33.25/month	\$44.88/month
3 times	\$45.53/month	\$57.44/month
4 times	\$59.48/month	\$70.62/month
5 times	\$72.39/month	\$84.31/month
6 times	\$84.89/month	\$96.83/month

For the collection of solid waste and recyclable materials placed in approved dumpsters, with occasional overages, from commercial customers, the following rate schedule shall apply:

<b>Commercial Rate Schedule – Dumpsters</b>					
<b>Pickup Frequency (per week)</b>	<b>\$/month per Dumpster Size (yards)</b>				
	<b>2 yards</b>	<b>3 yards</b>	<b>4 yards</b>	<b>6 yards</b>	<b>8 yards</b>
1 time	\$55.56/month	\$72.71/month	\$97.02/month	\$145.54/month	\$194.06/month
2 times	\$84.28/month	\$108.46/month	\$193.88/month	\$291.09/month	\$388.12/month
3 times	\$112.00/month	\$145.42/month	\$291.09/month	\$436.64/month	\$581.89/month
4 times	\$157.33/month	\$182.37/month	\$388.12/month	\$582.19/month	\$776.25/month
5 times	\$201.39/month	\$219.32/month	\$485.16/month	\$727.74/month	\$970.32/month
6 times	\$241.66/month	\$256.27/month	\$582.19/month	\$873.30/month	\$1,164.39/month

The commercial rates set forth in the rate schedules above shall be increased at a rate of two percent (2%) each year of the Contract Term.

**§3.03 Transfer Station Rates.**

For the deposit of solid waste and recyclable materials at the Transfer Station, the following rate schedule shall apply:

<b>Transfer Station Rate Schedule – Household Trash</b>	
<b>Amount/Type</b>	<b>Rate</b>
Trash bag (13 gal.)	\$1.00 per bag
Trash can/Toter	\$5.00 per can/toter
Car trunk load	\$11.00 per trunk load
Small Pickup load	\$16.00 per pickup load
Large Pickup load	\$27.00 per pickup load
Trailer load	\$44.00 per trailer load
Miscellaneous large items ( <i>i.e.</i> sofas, mattresses, etc.)	\$11.00 per miscellaneous large item

<b>Transfer Station Rate Schedule – Construction Materials (Roofing, Shingles, Plaster, Wood)</b>	
<b>Amount/Type</b>	<b>Rate</b>
Trash can/Toter	\$11.00 per can/toter
Small Pickup load	\$44.00 per pickup load
Large Pickup load	\$60.00 per pickup load
Trailer load	\$88.00 per trailer load

<b>Transfer Station Rate Schedule – Recycling Materials</b>	
<b>Amount/Type</b>	<b>Rate</b>
Recyclable Materials*	\$0.20 per pound (minimum of \$1.00)

\*Recyclable materials includes: cardboard, aluminum, tin, mixed paper, empty aerosol cans, and plastics numbered 1-7.

**§3.04 Rate Adjustments and Review.**

Waste Connections may request a rate review hearing upon written notification to the City. The City shall perform a comprehensive rate analysis, which shall include factors such as, but not limited to, the consumer price index number for Region VII as designated by the United States Department of Labor, Bureau of Statistics Review C.P.I. for Urban Wage Earners and Clerical Workers (Kansas City, KS), local labor costs, local fuel costs, or reductions in the quantities and types of solid waste or recyclable materials.

The City may waive any or all of the requirements for a review hearing and comprehensive rate analysis upon a written application and showing of unusual or emergency circumstances by Waste Connections.

## **PART IV: BREACHES AND TERMINATION.**

### **§4.01 Termination by Mutual Agreement.**

This contract may be terminated, in whole or in part, prior to the completion of the contract term if and when both parties agree that continuation is not feasible or would not produce beneficial results to a party. In the event of mutual termination, the parties must agree on the termination conditions, including the effective date of termination, the portion (if in part) to be terminated, and any allocation of payments under the contract.

### **§4.02 Termination for Non-performance; Liquidated Damages.**

If Waste Connections shall fail, neglect, or refuse to perform the services required of it for a period of seven (7) consecutive days, the City may immediately terminate this agreement and take whatever steps are necessary to have all solid waste, recyclable materials, and yard waste collected and removed.

Waste Connections shall forfeit and pay to the City as liquidated damages the sum of Five Hundred Dollars (\$500.00) per day for damages done to or incurred by the residents of the City due to non-collection. Such liquidated damages shall continue until Waste Connections resumes solid waste collection services or the City enters into an agreement with a new solid waste collection service.

### **§4.03 Default and Material Breach.**

The following shall constitute events of default or material breach:

- (1) A failure to perform any of the terms, conditions, or obligations provided in this agreement;
- (2) The commencement of a bankruptcy, winding up, dissolution, or similar proceeding under the laws of any jurisdiction; and,
- (3) Being or becoming insolvent or bankrupt, ceasing to pay debts as they mature, making an arrangement for the benefit of creditors, or consenting to the appointment of a receiver for any substantial amount of property.

### **§4.04 Suspension or Termination for Material Breach.**

In the event of a material breach of the terms of this contract, the non-breaching party may suspend the contract pending corrective action by the breaching party or terminate the contract, in whole or in part, after providing the breaching party a reasonable amount of time to cure the breach.

The party alleging a material breach must notify the other party in writing of the alleged breach and any possible remedies within fifteen (15) days after discovering the alleged breach and must allow the other party at least thirty (30) days to cure said breach. Allowing time to cure a breach does not waive the non-breaching party's right to terminate the contract for the same or different breach which may occur at a different time. Any attempt to cure a breach must be performed to the reasonable satisfaction of the non-breaching party.

### **§4.05 Force Majeure.**

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this agreement due to a natural disaster or other similar event outside the control of and not attributable to the fault or negligence of the party ("Force Majeure Event"). A Force Majeure Event shall not constitute a violation or breach of this agreement.

The party so affected shall immediately give notice to the other party of the Force Majeure Event, and relief from the performance of all or part of this agreement may be granted if the party is prevented from performance by the Force Majeure Event. The burden of proof for the need of such relief shall rest with the requesting party. To obtain release based on a Force Majeure Event, the requesting party must file a written request for such relief with the other party. Labor disputes with a party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under this agreement.

**§4.06 Non-Waiver/Waiver in Writing.**

A failure by either party to insist upon the strict performance of any provision of this agreement or to exercise any right based upon a breach or default will not constitute a waiver of any rights under this agreement or of any subsequent breach or default. No conditions or provisions of this agreement can be waived unless expressly approved in writing.

**PART V: SUPPLEMENTAL TERMS AND CONDITIONS.**

**§5.01 Designation of Officials to Execute Agreement and Amendments.**

The Mayor of the City or their designee is the official authorized to execute this agreement and any amendments to this agreement on behalf of the City. The President/CEO of Waste Connections or an officer duly authorized to sign on behalf of Waste Connections is the official authorized to execute this agreement and any amendments to this agreement on behalf of Waste Connections.

Either party may request amendments to this contract; however, amendments will not take effect until mutually agreed to, in writing, by both parties.

**§5.02 Assignment or Transfer; Binding Effect.**

Neither party may assign or transfer any interest, rights, or obligations in this agreement, in whole or in part, without the prior, written consent of the other party.

This agreement shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of the parties.

**§5.03 Notice.**

Except as otherwise expressly provided, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed by U.S. Mail, certified or registered mail with return receipt requested, to the parties at their respective addresses as may be specified in writing. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

**§5.04 Independent Contractor.**

Waste Connections agrees it is, and will conduct itself as, an independent contractor in performing the services required of it under this contract. Nothing in this contract should be construed in any manner as creating or establishing the relationship of partners between the parties, and neither party nor anyone employed by them to fulfill the terms of this contract will be considered employees of the other party.

Any and all claims on behalf of any person arising out of employment or alleged employment (including, but not limited to, claims of discrimination) against a party, its officers, or its agents will in no way be the responsibility of the other party.

#### **§5.05 Applicability to Subcontractors.**

All provisions of this contract will be made binding on any subcontractor used by Waste Connections, and Waste Connections will, nonetheless, remain fully obligated under all provisions of this contract.

Any such subcontractor must be authorized to transact business in the State of Nebraska. All subcontractors are expected to comply with all Nebraska Secretary of State and Department of Revenue registration requirements, including any registration requirements pertaining to types of business entities (e.g. sole proprietorship, partnership, foreign/domestic limited liability company, association, or foreign/domestic corporation).

#### **§5.06 Permits, Licenses, and Taxes; Insurance; Notice of Coverage.**

Each party shall procure and pay for all federal, state, and local permits, licenses, and approvals necessary for the performance of their obligations under this contract. Waste Connections shall be solely responsible for any and all taxes due relating to its operations and shall pay all taxes due before they become delinquent.

Waste Connections shall secure and maintain such insurance policies as will protect itself, its subcontractors, and the City from any and all claims for property damage, bodily injury, or death that may arise from the actions or operations, directly or indirectly, of itself and its officers, employees, agents, or subcontractors. Each policy obtained shall contain a clause or endorsement stating any waiver or subrogation contained in this agreement shall not affect the right of an insured to recover under such policy. Waste Connections shall obtain Worker's Compensation insurance in an amount at least equal to that required by law and shall obtain, maintain, and cover the City as an additional insured on the following insurance coverage:

- (1) comprehensive general liability insurance in the minimum amount of \$1,000,000, combined single limit, that covers all claims for property damage, bodily injury, and death and that includes a contractual liability endorsement; and,
- (2) comprehensive automobile liability insurance in the minimum amount of \$1,000,000 per occurrence.

Waste Connections shall provide the City with certificates evidencing such insurance coverage upon request and shall provide not less than thirty (30) days' prior written notice of any reduction or cancellation in such insurance coverage.

#### **§5.07 Non-Liability/Hold Harmless.**

Each party shall protect, indemnify, and hold harmless the other party and their officers, employees, and agents from any and all liabilities, claims, or demands made by any person for property damage, injury to or death of persons, or a violation of federal or state regulations or regulatory agency requirements caused by the negligent or willful acts or omissions of the indemnifying party or its officers, employees, agents, or subcontractors. Neither party shall have the right to indemnification or contribution from the other party for any other judgments rendered against it unless required by law.

#### **§5.08 Compliance with Law.**

The parties agree to comply with all federal, state, and local laws, regulations, and policies applicable to this contract including, but not limited to: all licensure, accreditation, and other certification standards; laws and regulations relating to wages and fair labor standards; and laws and regulations governing the privacy and security of customer information.

#### **§5.09 Civil Rights and Equal Opportunity Employment/Nondiscrimination Laws.**

Waste Connections shall comply with all applicable federal, state, and local laws and regulations regarding civil rights and equal opportunity employment. Waste Connections recognizes it is bound by and covenants it will abide by the provisions of the Nebraska Fair Employment Practice Act, which mandates it may not discriminate against any employee or applicant for employment with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment because of the employee's or applicant's race, color, religion, sex, disability, or national origin.

#### **§5.10 Debarment, Suspension, or Ineligibility.**

Waste Connections hereby represents and warrants that neither it nor any personnel providing services on its behalf under this agreement are currently or at any time have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise prohibited from participation in any federal procurement or non-procurement program. Waste Connections agrees to immediately notify the City in writing of any such threatened, proposed, or actual debarment, suspension, or ineligibility.

#### **§5.11 Reports; Recordkeeping; Access to Records and Annual Audit.**

Waste Connections shall provide any and all reports reasonably requested by the City, which may include, but are not limited to, reports on the number of residential or commercial customers collected each month, reports on the amount of tonnage of solid waste and recyclable materials collected each month, and reports on customer complaints.

All records pertinent to the work undertaken as part of this contract must be retained by Waste Connections until completion of the contract and for a following period of at least five (5) years.

The City, its agents, and any other duly authorized official of the State of Nebraska must have full access to and the right to examine, audit, excerpt, or transcribe any of Waste Connection's records pertaining to this contract. The City shall perform or contract for the performance of an annual audit of all books and records related to this contract. If the annual audit is performed by a third-party auditor, it shall be done by an independent certified public accounting firm, and an original copy of such audit shall be submitted to the City within thirty (30) days after completion. Waste Connections shall pay all costs related to any annual audit performed.

#### **§5.12 Confidentiality of Information Received.**

As an independent contractor, Waste Connections owes a normal professional and fiduciary duty of loyalty to the City with respect to matters arising under this agreement. Consequently, any information of which it or its employees become aware, either directly or indirectly, which touches and concerns substantial matters (meaning matters of importance, not trivial matters) to the City, must be treated as confidential.

Such confidential information may not be disclosed to any party not associated with the City without the express, written permission of the City, nor will such confidential information be used by Waste Connections or its employees, agents, or subcontractors for corporate or personal benefit. This prohibition on disclosure and use will be in effect during the Contract Term and will survive the Termination Date for a period of two (2) years thereafter.

**§5.13 Governing Law; Attorney Fees.**

This agreement shall be governed by, construed according to the laws and regulations of, and subject to the jurisdiction of the State of Nebraska.

In the event of any litigation, appeal, or other legal action regarding this agreement, both parties agree to pay all expenses of such action as permitted by law or so ordered by a court of competent jurisdiction, including attorney's fees and costs, if the other party is the prevailing party.

**§5.14 Entire Agreement; Severability; Counterparts.**

This instrument and any documents incorporated herein by reference constitute the entire agreement of the parties, and any representations or promises not contained herein shall not be binding upon either party.

If any term or condition of this agreement or the application thereof to any person or circumstance is held invalid, void, or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the other portions of this agreement that can be given effect without the invalid term or condition.

This agreement or any amendment to this agreement may be signed in any number of counterparts; each of which will be considered an original, and all of which taken together will constitute one agreement or amendment, as the case may be.

**ACCEPTANCE PROVISIONS.**

The parties acknowledge they have read and understand this contract, they agree to its provisions, and that it will be effective on the date when both parties have signed.

<b>CITY OF CRETE, NEBRASKA</b>	<b>WASTE CONNECTIONS OF NEBRASKA, INC. (d/b/a THE GARBAGE COMPANY)</b>
By: _____ (Authorized Official)	By: _____ (Authorized Official)
_____ (Typed or Printed Name/Title)	_____ (Typed or Printed Name/Title)
_____ (Date)	_____ (Date)