

FILED this 17th day of Sep. 20, 15
3:25 P.M.
CAROL HOLCOMB
COUNTY CLERK, CALDWELL COUNTY, TEXAS
By Katrina Rojma Deputy

Notice of Meeting

Commissioners Court of Caldwell County, Texas

Notice is hereby given that an open meeting of the Caldwell County Commissioners Court will be held on the 21st day of September, 2015 at 9:00 A.M. in the 2nd Floor Courtroom, Caldwell County Courthouse located at 110 S. Main Street, Lockhart, Texas at which time the following subjects will be discussed, considered, passed or adopted, to wit:

Note: Commissioners Court Meeting packets are prepared several days prior to each meeting. This information is reviewed and studied by the Court members, eliminating lengthy discussions to gain a basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the part of the Court.

Start times for regular agenda items are tentative; some items may be held earlier or later than the scheduled time.

Agenda

Call Meeting to Order.

- 2015.09.21.01** **Invocation.** Lockhart Ministerial Alliance.
- 2015.09.21.02** **Pledge of Allegiance to the Flags.** (Texas Pledge: Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible).
- 2015.09.21.03** **Announcements.** Items or comments from Court Members or Staff.
- 2015.09.21.04** **Citizens' Comments.** At this time any person may speak to Commissioners Court if they have filled out a Caldwell County Commissioners Court Participation Form. Comments will be limited to four (4) minutes per person. No action will be taken on these items and no discussion will be had between the speaker(s) and members of the Court. The Court does retain the right to correct factual inaccuracies made by the speakers. (If longer than 30 minutes, then the balance of comments will continue as the last agenda item of the day).
- 2015.09.21.05** **Consent Agenda.** (The following consent items may be acted upon in one motion. Any member of the Court may request that an item within the Consent Agenda be pulled for separate discussion and/or action).
- A.** To accept continuing education hours from Commissioner Munoz.
- B.** To accept Budget Amendment #2014-21 as approved by Commissioners

Court, November 17, 2014.

C. To accept Budget Amendment #2014-22 to move monies between two budget line items in the District Attorney's Office. No additional cost to the County.

2015.09.21.06 **Special Presentation** – Explanation of 130 Environmental Park's Host Agreement. Presented by Marisa Perales on behalf of EPICC.

(ALL OTHER AGENDA ITEMS)

2015.09.21.07 **Discussion/Action** regarding the burn ban for Caldwell County. **Cost: None. Speakers: Judge Schawe/Martin Ritchey. Backup: None.**

2015.09.21.08 **Discussion/Action** to approve the 2015-2016 Caldwell County Proposed Budget as required by Section 111.008(a) of the Local Government Code. Pursuant to Section 111.008(b), the Commissioners Court may make any changes in the proposed budget that it considers warranted by the law and required by the interest of the taxpayers. **Cost: None. Speaker: Judge Schawe. Backup 0.**
NOTE: The vote to adopt the budget must be a roll call vote.

2015.09.21.09 **Discussion/Action** to consider adopting an order setting the tax rate of \$0.7175 per \$100.00 of assessed valuation for the fiscal year 2015-2016. **Cost: None. Speaker: Judge Schawe. Backup: 1.**

2015.09.21.10 **Discussion/Action** to accept bids for aggregate, asphalt materials, flexible base, fuel (regular unleaded and #2 diesel), oil and lubricants for the budget year 2015-2016. **Cost: TBD. Speakers: Judge Schawe/Dwight Jeffrey. Backup: 1.**

2015.09.21.11 **Discussion/Action** authorizing County Judge with Commissioner Precinct 3 to use budgeted funds to assign a paid temporary full time Chief Deputy Constable to assist in Precinct 3. **Cost: TBD. Speakers: Judge Schawe/Commissioner Madrigal. Backup: None.**

2015.09.21.12 **Discussion/Action** to consider procedures and nominations for the Caldwell County Appraisal District directors. **Cost: None. Speakers: Judge Schawe/Mary LaPoint. Backup: 1.**

2015.09.21.13 **Discussion/Action** to consider USFon Inc. for the County's fiber system. **Cost: TBD. Speaker: Judge Schawe. Backup: 1.**

2015.09.21.14 **Discussion/Action** to consider Caldwell County joining the Lone Star Rail District (LSRD), authorize the County Auditor to submit the annual

membership fee, and appoint a member of the Commissioners Court as a LSRD Board member. **Cost: \$4,950.00. Speaker: Commissioner Munoz. Backup: 1.**

2015.09.21.15 **Discussion/Action** authorizing the County Judge to execute an Interlocal Agreement with the City of Austin regarding development in the City's extraterritorial jurisdiction (ETJ). **Cost: None. Speaker: Judge Schawe/Jordan Powel. Backup: 1.**

2015.09.21.16 **Host Agreement Workshop:** Relating to the proposed host agreement submitted by 130 Environmental Park, LLC. **Speaker: Commissioner Munoz.**

2015.09.21.17 **Discussion/Action** concerning proposed host agreement between Caldwell County and 130 Environmental Park, LLC. **Cost: None Speaker: Commissioner Munoz. Backup: 1.**

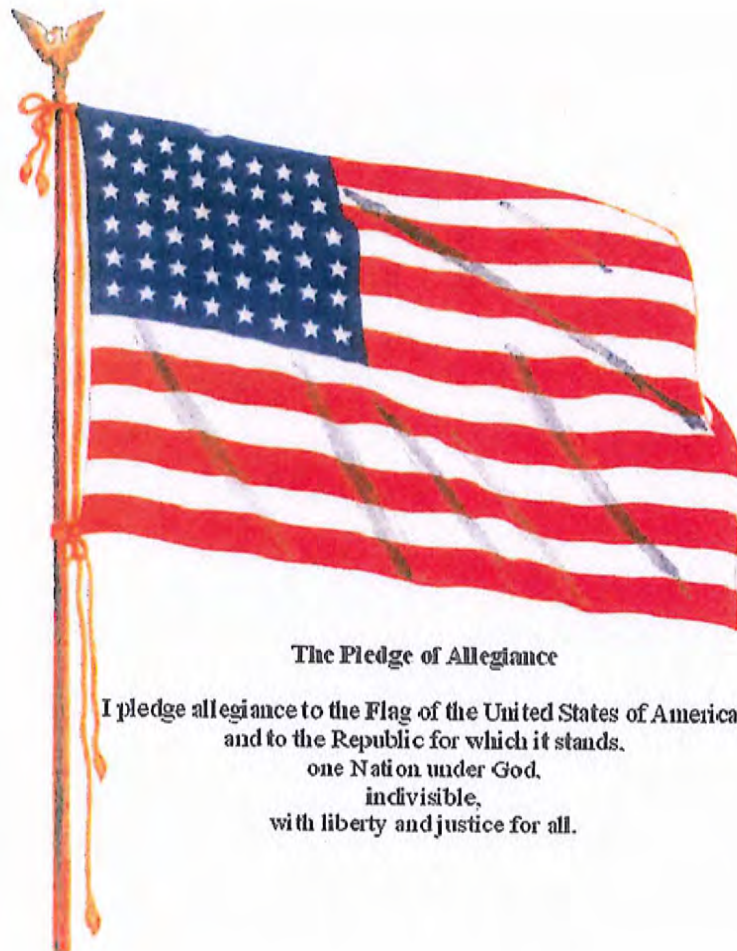
2015.09.21.18 **Adjournment.**

As authorized by Chapter 551 of the Texas Government Code, the Commissioners Court of Caldwell County, Texas reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed above. The Court may adjourn for matters that may relate to Texas Government Code Section 551.071(1) (Consultation with Attorney about pending or contemplated litigation or settlement offers); Texas Government Code Section 551.071(2) (Consultation with Attorney when the Attorney's obligations under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Texas Government Code); Texas Government Code Section 551.072 (Deliberations about Real Property); Texas Government Code Section 551.073 (Deliberations about Gifts and Donations); Texas Government Code Section 551.074 (Personnel Matters); Texas Government Code Section 551.0745 (Deliberations about a County Advisory Body); Texas Government Code Section 551.076 (Deliberations about Security Devices); and Texas Government Code Section 551.087 (Economic Development Negotiations). In the event that the Court adjourns into Executive Session, the Court will announce under what section of the Texas Government Code the Commissioners Court is using as its authority to enter into an Executive Session. The meeting facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the County Judge's office at 512-398-1808 for further information.

www.co.caldwell.tx.us

Invocation – Lockhart Ministry Alliance

Pledge of Allegiance to the Flag.



The Pledge of Allegiance

I pledge allegiance to the Flag of the United States of America,
and to the Republic for which it stands,
one Nation under God,
indivisible,
with liberty and justice for all.

**(Texas Pledge: Honor the Texas flag;
I pledge allegiance to thee, Texas, one
state under God, one and indivisible).**

Pledge to the Texas Flag



Honor the Texas
Flag; I pledge
allegiance to thee,
Texas, one state
under God, one and
indivisible

Announcements:

**Items or comments from Court
Members or Staff.**

Citizens' Comments:

At this time any person may speak to Commissioners Court if they have filled out a Caldwell County Commissioners Court Participation Form. Comments will be limited to four (4) minutes per person. No action will be taken on these items and no discussion will be had between the speaker(s) and members of the Court. The Court does retain the right to correct factual inaccuracies made by the speakers. (If longer than 30 minutes, then the balance of comment will continue as the last agenda item of the day).

2015.09.21.05 Consent Agenda.

(The following consent items may be acted upon in one motion. Any member of the Court may request that an item within the Consent Agenda be pulled for separate discussion and/or action).

A. To accept continuing education hours from Commissioner Munoz.

B. To accept Budget Amendment #2014-21 as approved by Commissioners Court, November 17, 2014.

C. To accept Budget Amendment #2014-22 to move monies between two budget line items in the District Attorney's Office. No additional cost to the County.

COUNTY JUDGES AND COMMISSIONERS
ASSOCIATION OF TEXAS

County Commissioner Continuing Education Transcript
Reporting Period: 1/1/ 2015- 12/31/2015

Hon. Alfredo Munoz
Caldwell County Commissioner, Pct. 1
110 S Main Street
Lockhart, TX 78644-2701

Term:
1/1/2013 - 12/31/2016

Phone: (512) 398-1808
Fax: (512) 398-1828

Last 4 digits of SSN

01/01/2015	Excess hours carried from prior period	5.00
07/23/2015	South Texas Conference	12.00

Total Hours Earned: 17.00

You have met your 2015 Commissioner Statutory Continuing Education requirement.

You will carry forward 1.00 hours to the next reporting period.

See Statute: Section 81.0025 Continuing Education, Local Government Code

Because continuing education sponsors are not required by law to report attendance to the Association, this transcript may not be a complete list of continuing education hours earned by the commissioner for this calendar year.

CALDWELL COUNTY, TEXAS
 BUDGET AMENDMENT #2014-21
 FISCAL YEAR 2014-2015

DESCRIPTION	ACCOUNT #	INCREASE	DECREASE
Fire Departments	001-6510-4153	\$ 50,000.00	
		<u>\$ 50,000.00</u>	<u>\$ -</u>

At the November 17, 2014 meeting, the Commissioners Court approved "the applicatiion for the FEMA Assistance to Firefighters Grant Program (AFG) to purchase necessary P25 compliant radio equipment and provide the matching funds for the Caldwell County Fire Departments participation, not to exceed \$50,000."

COMMISSIONERS COURT MINUTES
Regular Meeting on November 17, 2014

- 2014.11.17.10 **Discussion/Action** to approve smoke detector system to be installed and monitored by Taylor Security Systems, Inc., at 505 Fannin Street, Luling, Texas. Motion made by Commissioner Roland, second by Commissioner Buchholtz to approve smoke detector system to be installed and monitored by Taylor Security Systems, Inc., at 505 Fannin Street, Luling, Texas at a cost of \$6,640 and \$35 per month to maintain with quarterly billing. All Voting "Aye"
- 2014.11.17.11 **Discussion/Action** to apply for the FEMA Assistance to Firefighters Grant Program (AFG) to purchase necessary P25 compliant radio equipment and provide the matching funds for the Caldwell County Fire Departments participation. Matching funds not to exceed \$50,000. Motion made by Commissioner Muñoz, second by Commissioner Madrigal to approve the application for the FEMA Assistance to Firefighters Grant Program (AFG) to purchase necessary P25 compliant radio equipment and provide the matching funds for the Caldwell County Fire Departments participation, not to exceed \$50,000. All Voting "Aye"
- 2014.11.17.12 **Discussion/Action** regarding Burn Ban for Caldwell County. Motion made by Commissioner Roland, second by Commissioner Muñoz to leave the burn ban off. All Voting "Aye"
- 2014.11.17.13 **Discussion/Action** to canvass the November 4th, 2014 general constitutional and special election results.
Judge Bonn read the November 4th, 2014 general constitutional and special election results and recognized those present that had been elected and re-elected. Motion made by Commissioner Muñoz, second by Commissioner Madrigal to approve canvass of the November 4th, 2014 general constitutional and special election results. All Voting "Aye"
- 2014.11.17.14 **Discussion/Action** to approve the 2015 Caldwell County Employee Holiday calendar. Motion made by Judge Bonn, second by Commissioner Roland to approve the 2015 Caldwell County Employee Holiday calendar. That will total 13 ½ days. All Voting "Aye"
- 2014.11.17.15 **Discussion/Action** to approve the Caldwell County Employee Manual. Motion made by Commissioner Roland, second by Commissioner Buchholtz to table this item until December 8th, 2014. That meeting will be held in the Courthouse second floor Courtroom. All Voting "Aye"
- 2014.11.17.16 **Adjournment**
Motion made by Commissioner Muñoz, second by Commissioner Buchholtz to Adjourn. All Voting "Aye"

_____ TOM D. BONN, County Judge

CALDWELL COUNTY, TEXAS
BUDGET AMENDMENT #2014-22
FISCAL YEAR 2014-2015

<u>DESCRIPTION</u>	<u>ACCOUNT #</u>	<u>INCREASE</u>	<u>DECREASE</u>
District Attorney: Office Supplies	001-3200-3110	\$ 2,000.00	
District Attorney: Training	001-3200-4810		2,000.00
		<u>\$ 2,000.00</u>	<u>\$ 2,000.00</u>

A request by District Attorney's office to move moneys between two budget line items. There is no additional cost to the County.

CALDWELL COUNTY, TEXAS

BUDGET AMENDMENT #2014-23

FISCAL YEAR 2014-2015

DESCRIPTION	ACCOUNT #	INCREASE	DECREASE
County Clerk: Clerical & Assistance	001-2150-1040		\$ 81.82
County Clerk: Social Security & Medicare Tax	001-2150-2010		6.26
County Clerk: Retirement	001-2150-2030		3.28
Records Preservation Fund: Office & Labor	003-3000-1090	\$ 81.82	
Records Preservation Fund: Social Security & Medicare Tax	003-3000-2010	\$ 6.26	
Records Preservation Fund: Retirement	003-3000-2030	\$ 3.28	
		<u>\$ 91.36</u>	<u>\$ 91.36</u>

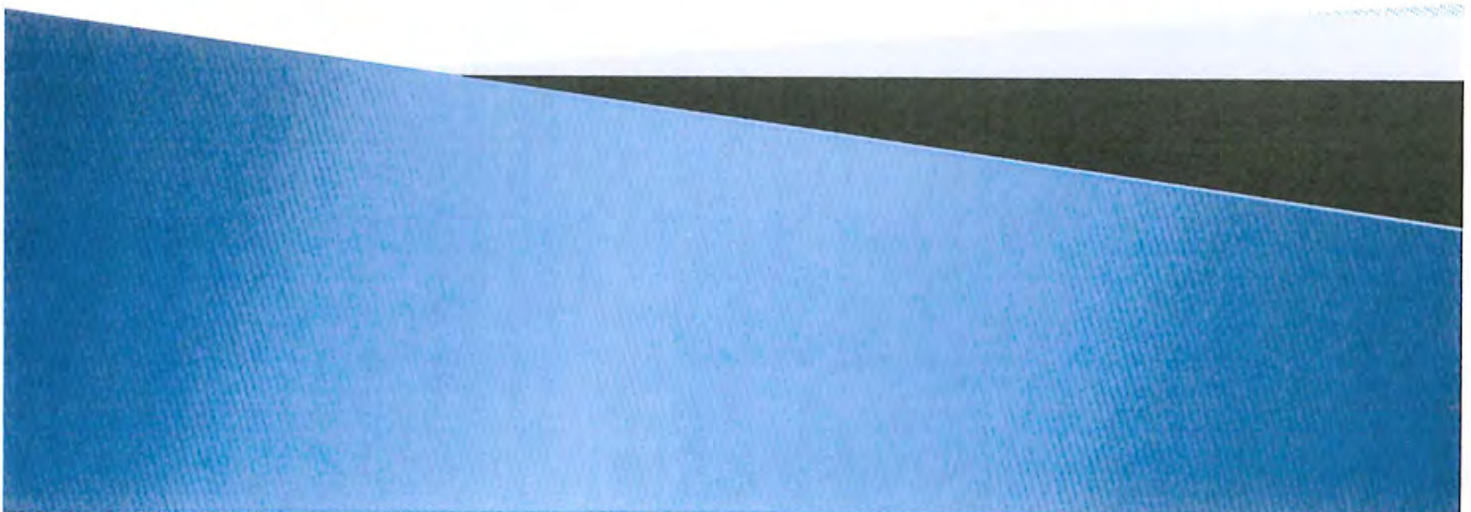
At the September 14, 2015 meeting, the Commissioners Court approved moving moneys from the County Clerk's budget to the Records Preservation Budget for one specific employee as requested by the County Clerk. The above amendment reflects the necessary salary and the related benefits adjustments. There is no additional costs to the County.

2015.09.21.06 Special Presentation –
Explanation of 130 Environmental Park's
Host Agreement. Presented by Marisa
Perales on behalf of EPICC.

Explanation of 130 Environmental Park's Proposed Host Agreement

By Marisa Perales
On behalf of EPICC

September 21, 2015



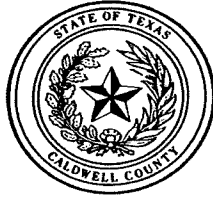
(ALL OTHER AGENDA ITEMS)

2015.09.21.07 Discussion/Action
regarding the burn ban for Caldwell
County. **Cost: None. Speakers: Judge**
Schawe/Martin Ritchey. Backup:
None.

2015.09.21.08 Discussion/Action to approve the 2015-2016 Caldwell County Proposed Budget as required by Section 111.008(a) of the Local Government Code. Pursuant to Section 111.008(b), the Commissioners Court may make any changes in the proposed budget that it considers warranted by the law and required by the interest of the taxpayers. **Cost: None. Speaker: Judge Schawe. Backup 0.**

NOTE: The vote to adopt the budget must be a roll call vote.

2015.09.21.09 Discussion/Action to consider adopting an order setting the tax rate of \$0.7175 per \$100.00 of assessed valuation for the fiscal year 2015-2016. **Cost: None. Speaker: Judge Schawe. Backup: 1.**



**ORDER OF CALDWELL COUNTY COMMISSIONERS COURT
ADOPTING TAX RATE FOR FISCAL YEAR 2015-2016**

The Caldwell County Commissioners Court by passage of this Order hereby adopts a tax rate of \$0.7175 per \$100.00 of valuation for the fiscal year 2015-2016.

It is hereby ordered by the Commissioners Court of the County of Caldwell, the State of Texas, that the 2015-2016 Caldwell County Ad Valorem Tax rate is as follows:

- \$0.6494 for the purpose of maintenance and operations
- \$0.0001 for the purpose of farm to market road fund
- \$0.0680 for the purpose of principal and interest on the debt of Caldwell County
- \$0.7175 Total Tax Rate**

THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.

THE TAX RATE WILL EFFECTIVELY BE RAISED BY 2.212129% AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$26.90.

The foregoing Order was adopted this 21st day of September, 2015 by a vote of _____ Ayes and _____ Nays. This vote was taken as a record vote.

Ken Schawe, County Judge Vote

Alfredo Munoz, Commissioner Precinct 1 Vote

Eddie Moses, Commissioner Precinct 2 Vote

Neto Madrigal, Commissioner Precinct 3 Vote

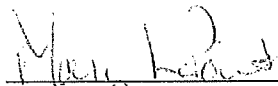
Joe Roland, Commissioner Precinct 4 Vote

2015 EFFECTIVE AND ROLLBACK TAX RATE INFORMATION

CALDWELL COUNTY

	GCA	FTM	TOTAL
2014 TAX RATE	0.6905/\$100	0.0001/\$100	0.6906/\$100
2015 EFFECTIVE TAX RATE	0.7175/\$100	0.00001/\$100	0.7176/\$100
2015 NOTICE & HEARING LIMIT			0.7177/\$100
2015 ROLLBACK RATE			0.7827/\$100
2015 PUBLISHED DEBT RATE	0.0732/\$100		0.0732/\$100

SUBMITTED TO CALDWELL COUNTY THE 29TH DAY OF JULY 2015.



MARY LAPOINT
CHIEF APPRAISER
CALDWELL COUNTY APPRAISAL DISTRICT

2015.09.21.10 Discussion/Action to accept bids for aggregate, asphalt materials, flexible base, fuel (regular unleaded and #2 diesel), oil and lubricants for the budget year 2015-2016. **Cost: TBD. Speakers: Judge Schawe/Dwight Jeffrey. Backup: 1.**

Caldwell County
Unit Road Bid Summary
Bid Opening - 09/14/2015

Flexible Base	Industrial Asphalt & Aggregates	Centex Materials LLC	Cemex	Brauntex Materials Inc.	RECOMMENDED BIDDER
<i>Type A Black Base (per ton)</i>	\$ 60.00	no bid	no bid	\$ 60.00	Industrial Asphalt & Aggregates
<i>Type B Cold Mix</i>	60.00	no bid	no bid	60.00	Industrial Asphalt & Aggregates
<i>Type D Cold Mix</i>	62.00	no bid	no bid	60.00	Industrial Asphalt & Aggregates
<i>3/4" Base</i>					
<i>At Plant (pick up)</i>	9.00	no bid	\$ 5.00	no bid	Cemex
<i>Delivered to Seawillow Road</i>	19.25	no bid	14.72	no bid	Cemex
<i>1 - 1/2" Commercial Base</i>					
<i>At Plant (pick up)</i>	8.00	\$ 9.00	4.85	no bid	Cemex
<i>Delivered to Seawillow Road</i>	18.25	no bid	14.57	no bid	Cemex

Caldwell County
Unit Road Bid Summary
Bid Opening - 09/14/2015

Aggregate	Industrial Asphalt & Aggregates	Centex Materials LLC	Brauntex Materials Inc.	<i>RECOMMENDED BIDDER</i>
<i>Aggregate - Grade 3 - Cover Stone</i>	no bid	no bid	no bid	NONE
<i>Aggregate - Grade 4 - Cover Stone</i>	no bid	\$ 19.50	no bid	NONE
<i>Aggregate - Grade 5 - Cover Stone</i>	no bid	no bid	no bid	NONE

Caldwell County
 Unit Road Bid Summary
 Bid Opening - 09/14/2015

Asphalt Materials	Ergon Asphalt & Emulsions, Inc.	Western Emulsions	<i>RECOMMENDED BIDDER</i>
SS1 Slow Set Emulsion			
<i>At Plant (pick up)</i>	\$ 1.4000	\$ 1.3000	Ergon Asphalt & Emulsions, Inc.
<i>Delivered to Seawillow Road</i>	1.5222	1.4400	Ergon Asphalt & Emulsions, Inc.
HFRS2 Rapid Set Emulsion			
<i>At Plant (pick up)</i>	1.4000	1.3000	Ergon Asphalt & Emulsions, Inc.
<i>Delivered to Seawillow Road</i>	1.5222	1.4400	Ergon Asphalt & Emulsions, Inc.
HFRS2P Rapid Set Emulsion			
<i>At Plant (pick up)</i>	1.6800	1.4400	Ergon Asphalt & Emulsions, Inc.
<i>Delivered to Seawillow Road</i>	1.8022	1.5800	Ergon Asphalt & Emulsions, Inc.

Caldwell County
Unit Road Bid Summary
Bid Opening - 09/14/2015

Fuel & Diesel	Mansfield Oil Company of Gainesville, Inc.	Portis Petroleum	Sun Coast Resources Inc.	Schmidt & Sons, Inc.	Johnson Oil Corporation	Petroleum Traders Corporation	<i>RECOMMENDED BIDDER</i>
<i>Profit Margin for Supplier</i>							
<i>Regular Unleaded (per gallon)</i>	\$ 0.1491	\$ 0.1701	\$ 0.1349	\$ 0.1700	\$ 0.0425	\$ 0.0430	Johnson Oil Corporation
<i>Profit Margin for Supplier</i>							
<i>No. 2 Diesel (Low Sulfur) (per gallon)</i>	0.1281	0.1701	0.1349	0.1500	0.0325	0.0412	Johnson Oil Corporation

NOTE: During the term of this contract, fuel prices may increase or decrease based on the weekly average OPIS prices from the Austin, TX rack. The amount designated as the supplier's profit margin per gallon will remain constant for the term of the contract.

Caldwell County
 Unit Road Bid Summary
 Bid Opening - 09/14/2015

Oil & Lubricants	Sun Coast Resources Inc.	Schmidt & Sons, Inc.	Johnson Oil Corporation	Arnold Oil Company	RECOMMENDED BIDDER
<i>Motor Oil SAE 15W-40 In Bulk (per gallon)</i>	\$ 7.2300	\$ 7.1900	\$ 7.2000	\$ 7.5000	Schmidt & Sons, Inc.
<i>Hydraulic Fluid In Bulk (per gallon)</i>	6.3900	7.9800	6.3500	6.8000	Schmidt & Sons, Inc.
<i>Chassis Grease</i>					
Per Cartridge	2.5000	2.2900	2.5900	2.8100	Schmidt & Sons, Inc.
Per 5 Gallon Can	96.2500	72.9000	81.8300	102.9000	Schmidt & Sons, Inc.
<i>Anti-Freeze</i>					
Per 55 Gallon Drum	427.9000	378.0000	489.0600	462.0000	Schmidt & Sons, Inc.
Per 1 Gallon	8.4400	7.5000	9.1320	8.9400	Schmidt & Sons, Inc.
<i>Multi-Purpose Automatic Transmission Fluid In Bulk (per</i>	15.1500	8.9000	8.9100	12.6500	Schmidt & Sons, Inc.

2015.09.21.11 Discussion/Action

authorizing County Judge with
Commissioner Precinct 3 to use
budgeted funds to assign a paid
temporary full time Chief Deputy
Constable to assist in Precinct 3. **Cost:**
TBD. Speakers: Judge
Schawe/Commissioner Madrigal.
Backup: None.

2015.09.21.12 Discussion/Action to consider procedures and nominations for the Caldwell County Appraisal District directors. **Cost: None. Speakers: Judge Schawe/Mary LaPoint. Backup: 1.**

CALDWELL COUNTY APPRAISAL DISTRICT

DATE: August 18, 2015
TO: Taxing Unit Presiding Officers
FROM: Mary LaPoint, Chief Appraiser
RE: Nomination of Appraisal District Directors

Dear Members:

Nominations for directors of the Caldwell County Appraisal District for the 2016-2017 term are to be submitted to the chief appraiser on or before October 15, 2015. Each taxing unit may nominate one candidate for each position to be filled. All five positions are available for selection, therefore, each unit may nominate up to five candidates.

A director must reside in the appraisal district for at least two years immediately preceding the date he or she takes office, and must not have delinquent property taxes. An employee of a taxing unit is not eligible to serve as a director unless the employee is also an elected official.

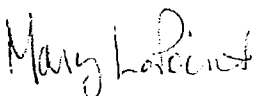
The presiding officer of the taxing unit submits the names and addresses of the nominees by written resolution to the chief appraiser by October 15, 2015. Names submitted after this date will not be listed on the ballot. The resolution must be adopted by majority vote of your taxing unit's governing body. Each unit will then receive a ballot before October 30, 2015.

Enclosed you will find the voting entitlement for each of the voting taxing units. Please submit nominees only at this time.

I have enclosed a document outlining the steps in the selection process and a copy of the Property Tax Code regarding eligibility

Please call on me if you have any questions about the selection process.

Sincerely,



Mary LaPoint
Chief Appraiser

Encl; Vote allocation
Process letter
Tax Code §6.03 & §6.035



610 San Jacinto Street
P.O. Box 900
Lockhart, Texas 78644
United States

PHONE (512) 398-5550
FAX (512) 398-5551
E-MAIL general@caldwellcad.org
WEB SITE www.caldwellcad.org

**CALDWELL COUNTY APPRAISAL DISTRICT
VOTE ALLOCATION FOR BOARD OF DIRECTORS SELECTION 2016-2017 TERM**

TAXING UNIT	2014 TAX LEVY	/	ALL LEVIES	=	Quotient	X	1000	=	Product	X	# Members	=	VOTES	ROUNDED VOTES
CALDWELL COUNTY	\$13,079,837.74	/	\$41,345,182.16	=	0.316357	X	1000	=	316.4	X	5	=	1581.8	1582
CITY LOCKHART	\$3,511,079.79	/	\$41,345,182.16	=	0.08492113	X	1000	=	84.9	X	5	=	424.6	425
CITY LULING	\$922,465.06	/	\$41,345,182.16	=	0.02231131	X	1000	=	22.3	X	5	=	111.6	112
CITY MARTINDALE	\$253,306.52	/	\$41,345,182.16	=	0.00612663	X	1000	=	6.1	X	5	=	30.6	30
CITY MUSTANG RIDGE	\$90,199.91	/	\$41,345,182.16	=	0.00218163	X	1000	=	2.2	X	5	=	10.9	11
CITY NIEDERWALD	\$14,196.26	/	\$41,345,182.16	=	0.00034336	X	1000	=	0.3	X	5	=	1.7	2
CITY OF SAN MARCOS	\$99,077.30		\$41,345,182.16		0.00239634	X	1000	=	2.4	X	5	=	12.0	12
CITY OF UHLAND	\$22,680.29		\$41,345,182.16		0.00054856	X	1000	=	0.5	X	5	=	2.7	3
LOCKHART ISD	\$15,088,277.91	/	\$41,345,182.16	=	0.36493437	X	1000	=	364.9	X	5	=	1824.7	1825
LULING ISD	\$4,650,192.98	/	\$41,345,182.16	=	0.11247243	X	1000	=	112.5	X	5	=	562.4	562
PRAIRIE LEA ISD	\$1,010,844.50	/	\$41,345,182.16	=	0.02444891	X	1000	=	24.4	X	5	=	122.2	122
HAYS ISD	\$400,568.29	/	\$41,345,182.16	=	0.00968839	X	1000	=	9.7	X	5	=	48.4	48
GONZALES ISD	\$250,084.26	/	\$41,345,182.16	=	0.00604869	X	1000	=	6.0	X	5	=	30.2	30
SAN MARCOS ISD	\$1,744,766.45	/	\$41,345,182.16	=	0.04219999	X	1000	=	42.2	X	5	=	211.0	211
WEALDER ISD	\$184,308.27	/	\$41,345,182.16	=	0.00445779	X	1000	=	4.5	X	5	=	22.3	22
AUSTIN COM COLLEGE	\$23,296.63		\$41,345,182.16	=	0.00056347	X	1000	=	0.6	X	5	=	2.8	3
TOTAL	\$41,345,182.16		\$41,345,182.16										5000	5000

* = Not including Plumcreek Conservation and Plumcreek Underground
Caldwell-Hays ESD1, Gonzales UWD, Caldwell ESD2

* = Only Levy within Caldwell County PTC 6.03d

STEPS IN THE VOTING PROCESS TO ELECT DIRECTORS OF THE CALDWELL COUNTY APPRAISAL DISTRICT

- 1 Chief appraiser delivers written notice of nominations process and voting entitlement before October 1st to:
 - County Judge
 - County Commissioners
 - Mayors
 - City Managers
 - City Secretaries (if no city manager)
 - School Board Presidents
- 2 Governing body adopts resolution nominating from one to five candidates for directors.
- 3 Presiding officer of governing body submits the resolution naming the unit's nominees to the chief appraiser not later than October 15, 2015.
- 4 Chief Appraiser delivers ballot to the presiding officer of each governing body before October 30, 2015.
- 5 Governing body determines its vote by resolution and submits it to the chief appraiser not later than December 15, 2015.
- 6 Chief appraiser counts the votes, declares the five candidates who receive the most votes elected, and submits the results to the governing bodies and the candidates before December 31, 2015.

9177 (Tex. App.—Amarillo 2005).

TAX LAW

• State & Local Taxes

•• Real Property Tax

Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest;

its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. *Devon Energy Prod., L.P. v. Hockley County Appraisal Dist.*, 178 S.W.3d 879, 2005 Tex. App. LEXIS 9177 (Tex. App.—Amarillo 2005).

OPINIONS OF ATTORNEY GENERAL

JURISDICTION SAVINGS CLAUSE

JURISDICTION. —

Despite the enactment of House Bill 1010 by the Eightieth Legislature, an appraisal district operating in overlapping territory by operation of Tex. Tax Code Ann. § 6.02(b) retains authority to hear and determine pending corrective motions and taxpayer protests concerning property in that territory that relate to the 2007, or prior, tax year. Op. Tex. Att'y Gen. No. GA-0631 (2008).

SAVINGS CLAUSE. —

After the 2007 legislation that altered the legal framework for appraising property for ad valorem taxation in taxing units located in more than one county, an appraisal district is still responsible for litigation filed against it prior to January 1, 2008, and involving property that is no longer in its appraisal district; the general savings clause continues in effect relevant portions of Tex. Tax Code Ann. § 6.02, such that a taxing district has continuing authority to defend itself in the pending litigation, and a taxing unit has a continuing obligation to pay the related costs. Op. Tex. Att'y Gen. No. GA-0590 (2008).

Sec. 6.025. Overlapping Appraisal Districts; Joint Procedures [Repealed].

Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(3), effective January 1, 2008. (Enacted by Acts 1995, 74th Leg., ch. 186 (H.B. 623), § 1, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1357 (H.B. 670), § 1, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 250 (H.B. 1037), § 1, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 250 (H.B. 1037), § 2, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 455 (H.B. 703), § 1, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 1041 (H.B. 1082), § 1, effective January 1, 2004.)

OPINIONS OF ATTORNEY GENERAL

OVERLAPPING DISTRICTS. —

With respect to property lying in overlapping appraisal districts, section 6.025(d) of the Tax Code requires the chief appraiser of each of the overlapping districts to enter in the

appraisal records the lowest values, appraised and market, listed by any of the overlapping districts. Op. Tex. Att'y Gen. No. GA-0283 (2004).

Sec. 6.03. Board of Directors.

(a) The appraisal district is governed by a board of directors. Five directors are appointed by the taxing units that participate in the district as provided by this section. If the county assessor-collector is not appointed to the board, the county assessor-collector serves as a nonvoting director. The county assessor-collector is ineligible to serve if the board enters into a contract under Section 6.05(b) or if the commissioners court of the county enters into a contract under Section 6.24(b). To be eligible to serve on the board of directors, an individual other than a county assessor-collector serving as a nonvoting director must be a resident of the district and must have resided in the district for at least two years immediately preceding the date the individual takes office. An individual who is otherwise eligible to serve on the board is not ineligible because of membership on the governing body of a taxing unit. An employee of a taxing unit that participates in the district is not eligible to serve on the board unless the individual is also a member of the governing body or an elected official of a taxing unit that participates in the district.

(b) Members of the board of directors other than a county assessor-collector serving as a nonvoting director serve two-year terms beginning on January 1 of even-numbered years.

(c) Members of the board of directors other than a county assessor-collector serving as a nonvoting director are appointed by vote of the governing bodies of the incorporated cities and towns, the school districts, the junior college districts, and, if entitled to vote, the conservation and reclamation districts that participate in the district and of the county. A governing body may cast all its votes for one candidate or distribute them among candidates for any number of directorships. Conservation and reclamation districts are not entitled to vote unless at least one conservation and reclamation district in the district delivers to the chief appraiser a written request to nominate and vote on the board of directors by June 1 of each odd-numbered year. On receipt of a request, the chief appraiser shall certify a list by June 15 of all eligible conservation and reclamation districts that are imposing taxes and that participate in the district.

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit participating in two or more districts is entitled to

vote in each district in which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district.

(e) The chief appraiser shall calculate the number of votes to which each taxing unit other than a conservation and reclamation district is entitled and shall deliver written notice to each of those units of its voting entitlement before October 1 of each odd-numbered year. The chief appraiser shall deliver the notice:

(1) to the county judge and each commissioner of the county served by the appraisal district;

(2) to the presiding officer of the governing body of each city or town participating in the appraisal district, to the city manager of each city or town having a city manager, and to the city secretary or clerk, if there is one, of each city or town that does not have a city manager;

(3) to the presiding officer of the governing body of each school district participating in the district and to the superintendent of those school districts; and

(4) to the presiding officer of the governing body of each junior college district participating in the district and to the president, chancellor, or other chief executive officer of those junior college districts.

(f) The chief appraiser shall calculate the number of votes to which each conservation and reclamation district entitled to vote for district directors is entitled and shall deliver written notice to the presiding officer of each conservation and reclamation district of its voting entitlement and right to nominate a person to serve as a director of the district before July 1 of each odd-numbered year.

(g) Each taxing unit other than a conservation and reclamation district that is entitled to vote may nominate by resolution adopted by its governing body one candidate for each position to be filled on the board of directors. The presiding officer of the governing body of the unit shall submit the names of the unit's nominees to the chief appraiser before October 15.

(h) Each conservation and reclamation district entitled to vote may nominate by resolution adopted by its governing body one candidate for the district's board of directors. The presiding officer of the conservation and reclamation district's governing body shall submit the name of the district's nominee to the chief appraiser before July 15 of each odd-numbered year. Before August 1, the chief appraiser shall prepare a nominating ballot, listing all the nominees of conservation and reclamation districts alphabetically by surname, and shall deliver a copy of the nominating ballot to the presiding officer of the board of directors of each district. The board of directors of each district shall determine its vote by resolution and submit it to the chief appraiser before August 15. The nominee on the ballot with the most votes is the nominee of the conservation and reclamation districts in the appraisal district if the nominee received more than 10 percent of the votes entitled to be cast by all of the conservation and reclamation districts in the appraisal district, and shall be named on the ballot with the candidates nominated by the other taxing units. The chief appraiser shall resolve a tie vote by any method of chance.

(i) If no nominee of the conservation and reclamation districts receives more than 10 percent of the votes entitled to be cast under Subsection (h), the chief appraiser, before September 1, shall notify the presiding officer of the board of directors of each conservation and reclamation district of the failure to select a nominee. Each conservation and reclamation district may submit a nominee by September 15 to the chief appraiser as provided by Subsection (h). The chief appraiser shall submit a second nominating ballot by October 1 to the conservation and reclamation districts as provided by Subsection (h). The conservation and reclamation districts shall submit their votes for nomination before October 15 as provided by Subsection (h). The nominee on the second nominating ballot with the most votes is the nominee of the conservation and reclamation districts in the appraisal district and shall be named on the ballot with the candidates nominated by the other taxing units. The chief appraiser shall resolve a tie vote by any method of chance.

(j) Before October 30, the chief appraiser shall prepare a ballot, listing the candidates whose names were timely submitted under Subsections (g) and, if applicable, (h) or (i) alphabetically according to the first letter in each candidate's surname, and shall deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote.

(k) The governing body of each taxing unit entitled to vote shall determine its vote by resolution and submit it to the chief appraiser before December 15. The chief appraiser shall count the votes, declare the five candidates who receive the largest cumulative vote totals elected, and submit the results before December 31 to the governing body of each taxing unit in the district and to the candidates. For purposes of determining the number of votes received by the candidates, the candidate receiving the most votes of the conservation and reclamation districts is considered to have received all of the votes cast by conservation and reclamation districts and the other candidates are considered not to have received any votes of the conservation and reclamation districts. The chief appraiser shall resolve a tie vote by any method of chance.

(l) If a vacancy occurs on the board of directors other than a vacancy in the position held by a county assessor-collector serving as a nonvoting director, each taxing unit that is entitled to vote by this section may nominate by resolution adopted by its governing body a candidate to fill the vacancy. The unit shall submit the name of its nominee to the chief appraiser within 45 days after notification from the board of directors of the existence of the vacancy, and the chief appraiser shall prepare and deliver to the board of directors within the next five days a list of the nominees. The board of directors shall elect by majority vote of its members one of the nominees to fill the vacancy.

(m) [Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(4), effective January 1, 2008.]

(Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 15, 167(a), effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 1, effective September 1, 1987; am. Acts

cumulative voting, the change or rescission has the same effect as a rescission of the change to staggered terms made under Subsection (g) of this section.

(i) If a vacancy occurs on the board of directors of an appraisal district that has adopted staggered terms for board members, the vacancy shall be filled by appointment by resolution of the governing body of the taxing unit that nominated the person whose departure from the board caused the vacancy, and the procedure for filling a vacancy provided by Section 6.03 of this code does not apply in that event.

(Enacted by Acts 1985, 69th Leg., ch. 601 (S.B. 79), § 1, effective June 14, 1985; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 4, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a)(51), effective September 1, 1987 (renumbered from Sec. 6.032); am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 3, effective January 1, 1998.)

Sec. 6.035. Restrictions on Eligibility and Conduct of Board Members and Chief Appraisers and Their Relatives.

(a) An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district; or

(2) owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless:

(A) the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Section 33.02; or

(B) a suit to collect the delinquent taxes is deferred or abated under Section 33.06 or 33.065.

(a-1) An individual is ineligible to serve on an appraisal district board of directors if the individual has engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district at any time during the preceding five years.

(b) A member of an appraisal district board of directors or a chief appraiser commits an offense if the board member continues to hold office or the chief appraiser remains employed knowing that an individual related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the board member or chief appraiser is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district in which the member serves or the chief appraiser is employed. An offense under this subsection is a Class B misdemeanor.

(c) A chief appraiser commits an offense if the chief appraiser refers a person, whether gratuitously or for compensation, to another person for the purpose of obtaining an appraisal of property, whether or not the appraisal is for ad valorem tax purposes. An offense under this subsection is a Class B misdemeanor.

(d) An appraisal performed by a chief appraiser in a private capacity or by an individual related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the chief appraiser may not be used as evidence in a protest or challenge under Chapter 41 or an appeal under Chapter 42 concerning property that is taxable in the appraisal district in which the chief appraiser is employed.

(Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 4, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 561 (H.B. 1345), § 43, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(27), effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 4, effective June 14, 2013.)

OPINIONS OF ATTORNEY GENERAL

ANTI-NEPOTISM RULE QUALIFICATIONS

ANTI-NEPOTISM RULE. —

Texas Tax Code section 6.035(a) does not apply when an appraisal district board member is married to an employee of the appraisal district. The words in section 6.035(a), "is engaged in the business of appraising property for compensation for use in proceedings under this title," refer to an individual who appraises property for commercial profit. Consequently, a tax assessor-collector is eligible to serve as a nonvoting member of the appraisal district board of directors under 6.03(a) despite her marriage to an appraisal district employee. Op. Tex. Att'y Gen. No. GA-0375 (2005).

QUALIFICATIONS. —

Tex. Tax Code Ann. § 6.035(a) disqualifies from employment as a chief appraiser an individual who is related within the second degree by consanguinity "to an individual who is engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district;" whether a chief appraiser's son is, in particular circumstances, "engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district" is a question of fact. Op. Tex. Att'y Gen. No. GA-0627 (2008).

2015.09.21.13 Discussion/Action to consider USFon Inc. for the County's fiber system. **Cost: TBD. Speaker: Judge Schawe. Backup: 1.**

1250 S Capital of Texas Hwy Bldg 2-235
West Lake Hills, Texas 78746

Customer Information				
Customer Business Name: Caldwell County	Order Contact Name: Mark Hinzenkamp	Phone: (512) 995-0519	Email: mark@co.caldwell.tx.us	
Company Address: 110 S. Main Street	City: Lockhart	State: TX	Zip: 78644	

Customer Billing Information				
Billing Contact: Mark Hinzenkamp	Phone: (512) 995-0519	Email: mark@co.caldwell.tx.us		
Address: 110 S. Main Street	City: Lockhart	State: TX	Zip: 78644	Fax: 512-398-1834

Order Information					
Service Order Term (in months): 120	Monthly Minimum Usage Commitment: n/a	Security Deposit: \$0	Order Type (New, Add, Disconnect): New	Order Issue Date: 8/28/2015	Requested Service Date: 12/1/2015

Monthly-Recurring Charges "MRC" and Non-Recurring Charges "NRC" for Services							
Product Type	Description	Quantity	Per Unit MRC	Per Unit NRC	Per MOU rate (if applicable)	Total MRC	Total NRC
Ethernet Services	1Gbps or 10 Gbps redundant service	6	\$ 750.00	\$ 7,750.00	n/a	\$ 4,500.00	\$ 45,500.00
Fiber Construction	Incremental Cost to add County locations to fiber ring	1	\$ -	\$ 107,900.00	n/a	\$ -	\$ 107,900.00
						\$ -	\$ -
						\$ -	\$ -
Total Charges (excluding usage, monthly commitment and deposit):						\$ 4,500.00	\$ 154,400.00

Fiber Locations	
Department	Address
County Courthouse	110 S. Main Street
County Sheriff	1204 Reed Drive
County Justice Center	1703 S. Colorado St.
County Juvenile Justice Center	312 E. San Antonio St.
Scott Annex	1403 Blackjack Street
Precinct 4	405 E. Market St.

Service Order Terms and Conditions
<p>1. This Services provided under this Service Order are for a 120 month term with renewal options.</p> <p>2. Order is for protected point-to-point ethernet services on fiber ring to be built by USFon. Customer will choose between 1Gbps and 10Gbps circuits prior to installation.</p> <p>3. Ethernet Services Installation cost above of \$7,750 is an estimate. Customer has agreed to pay for installation costs on a "Cost Plus" basis resulting in a 20% margin for all equipment, materials, and labor to do the installation. The Technician hourly rate is \$75/hr and travel time will be included. This will include 3rd party costs from USFon's contract network engineer.</p> <p>4. This Service Order will go into effect only after (1) both Parties have executed this document and the Master Services Agreement and (2) funding for the primary construction of the fiber ring has been approved by USA's Schools and Libraries (E-Rate) program related to the executed Service Order between USFon and Lockhart ISD (LUSD). Without that funding being approved for LUSD, this Service Order is not valid.</p> <p>5. The 12/1/2015 requested service date is the goal for which all planning is to occur and is based on the current best guess as to when LUSD will receive funding. However, Customer acknowledges that 3rd Party influences (e.g. Owners of Railroads, Lockhart ISD's receipt of the Schools and Libraries Funding Commitment Decision Letter, abnormal delays related to the procurement of fiber due to high demand, etc.) may negatively impact USFon's ability to meet the 12/1/2015 due date.</p> <p>6. Customer may delay the turn up of any of the locations above based on any term commitments to its current provider.</p> <p>7. Customer may upgrade to services that are technically feasible (e.g. from 1Gbps to 10Gbps) at any time. Upgrades will be charged to Customer on a "Cost Plus" basis as described in item #3 above.</p>

Customer Acceptance				
Please have an authorized signatory execute below acknowledging acceptance of this Service Order, which is also governed by the May __, 2015 Master Service Agreement between USFON, Inc. and Customer.				
<table border="0" style="width:100%"> <tr> <td style="width:30%">Signature of Customer Representative</td> <td style="width:30%">Printed Customer Name</td> <td style="width:20%">Customer Title</td> <td style="width:20%">Date</td> </tr> </table>	Signature of Customer Representative	Printed Customer Name	Customer Title	Date
Signature of Customer Representative	Printed Customer Name	Customer Title	Date	

USFON, Inc. Acceptance	
Signature of USFon Representative	Effective Date

Payment Instructions
By Check: Make payable to USFon, Inc.
By ACH or Wire: Capitol Credit Union - Austin, TX *
ABA #314977191 * Acct. #2802499 *
Phone (512) 477-9465

For completion by USFon, Inc.		
Customer No.	Sales ID	USFon Sales Rep
Order Number	Agent ID	USFon Agent

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is effective when signed by both Parties (the "Effective Date") by and between **USFon, Inc.**, a Texas corporation ("USFON"), whose principal place of business is located at 1250 Capital of Texas Hwy, Bldg 2-235, West Lake Hills, TX 78746 and _____, a _____ corporation ("Customer"), whose place of business is located at _____.

Customer and USFON are referred to herein individually as "**Party**" and collectively as the "**Parties**."

WITNESSETH:

WHEREAS, USFON owns or operates communications and related facilities and is in the business of providing communications services; and

WHEREAS, Customer desires to purchase communications and data related services from USFON, and USFON desires to provide such services to Customer, pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. DEFINITIONS

The following capitalized terms shall have the following meanings for the purpose of this Agreement:

- (a) "**Acceptance**" or "**Accepted**." Customer will be deemed to have given its "Acceptance" or to have "Accepted" a Service on the earliest date of: (i) when Customer has affirmatively accepted the Service in writing; (ii) when Customer puts the Service into commercial use; or (iii) two (2) days past the FOC Date, unless Customer notifies USFON within such period that there are problems with the Service.
- (b) "**Affiliate**" means, with respect to any entity, any other entity controlling, controlled by or under common control with such entity, whether directly or indirectly through one or more intermediaries. For purposes of this definition, "control" and its derivatives mean legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the outstanding voting capital stock (or other ownership interest, if not a corporation) of an entity or management or operational control over such entity.
- (c) "**Agreement**" shall mean this Master Service Agreement, including any schedules, appendices, Exhibits and documents such as accepted Service Orders attached hereto and made a part hereof, or incorporated herein by reference as well as any written amendments to this Agreement which have been signed by the duly authorized representatives of the Parties.
- (d) "**Circuit**" shall mean a transport service between an originating and terminating location with a defined bandwidth and class of service.
- (e) "**Confidential Information**" shall have the definition set forth in Section 9.
- (f) "**Customer Reseller**" shall have the definition set forth in Section 12.1.
- (g) "**Default**" shall have the definition as set forth in Section 8.

- (h) **“Design Layout Record”** or **“DLR”** means a document containing technical information which specifies USFON’s circuit identification and appropriate interconnection information.
- (i) **“Emergency Maintenance”** shall mean maintenance which, if not accomplished promptly by USFON, could result in a serious degradation or loss of Service to Customer.
- (j) **“End User”** means an end user of Customer whose traffic Customer will carry via the Service.
- (k) **“Firm Order Confirmation”** or **“FOC”** shall mean an order confirmation document in which USFON commits to the Requested Service Date or other date agreed upon by the Parties and other terms of a Service Order.
- (l) **“FOC Date”** shall mean the date that has been identified as the installation date in the FOC.
- (m) **“Losses”** shall have the definition set forth in Section 10.1.
- (n) **“Monthly Recurring Charges”** or **“MRC”** shall mean a charge for Services to be invoiced and paid on a monthly basis.
- (o) **“Network”** shall mean the communications network of one of the Parties, as the context of the provision requires or as contemplated under this Agreement.
- (p) **“Non-Recurring Charges”** or **“NRC”** shall mean a charge for Services to be invoiced and paid on a one-time basis.
- (q) **“Planned Service Outage”** shall mean any Service Outage caused by scheduled maintenance or planned enhancements or upgrades to USFON’s Network and either (i) agreed to in writing by Customer’s operations group via e-mail or other means, such agreement not to be unreasonably withheld, provided the scheduled maintenance or planned enhancements or upgrades are performed within the hours of 12:00 midnight and 6:00 AM local time, unless otherwise agreed by the Parties, or (ii) in the case of Emergency Maintenance, USFON’s operations group provides as much prior notice as practicable, via e-mail or other means.
- (r) **“Point of Termination”** shall mean the particular location within the applicable Customer Point of Presence (**“POP”**) or other Site to be served, as specified in a Service Order, if applicable, where USFON’s responsibility to provide USFON Equipment and Service ends and where Customer’s Network and Customer’s responsibilities begin.
- (s) **“Requested Service Date”** for a particular Service, shall be the date requested by Customer for a Service to commence as indicated on the Service Order.
- (t) **“Service(s)”** shall mean service(s) provided by USFON under this Agreement as listed in an applicable Service Order.
- (u) **“Service Commencement Date”** shall mean the date upon which a Service is Accepted.
- (v) **“Service Order”** shall mean the written order executed by Customer which delineates the type of Service, quantity of Circuits, Points of Termination, MRCs, NRCs, Term, Requested

Service Date and other information necessary for USFON to provide Service to Customer. A Service Order shall be deemed incorporated herein if and when it is agreed to by USFON's issuance of a FOC as set out in this Agreement.

(w) "Service Order Term" shall mean the minimum period of time specified in a Service Order for which Customer commits to purchase and USFON commits to supply the Service(s) specified in the Service Order.

(x) "Service Outage" shall have the definition set forth in Section 15.4.

(y) "Site" shall mean the premises of Customer or an End User at which a Point of Termination is located.

(z) "SLA" shall have the definition set forth in Section 2.3.

(aa) "Term" shall have the definition set forth in Section 5.

(bb) "Trouble Ticket" shall have the definition set forth in Section 15.2.

(cc) "Underlying Service Provider" shall have the definition set forth in Section 7.2.

(dd) "USFON Equipment" shall have the definition set forth in Section 16.1.

2. ORDERING, PROVISION AND USE OF SERVICES

2.1 Service Orders. Customer may from time to time throughout the Term place orders for specific Services by the execution and delivery to USFON of a Service Order in the form attached as Exhibit A to this Agreement. USFON shall use commercially reasonable efforts to notify Customer in writing of its acceptance or rejection of the Service Order within three (3) business days. If USFON agrees to provide the Services requested in the Service Order, USFON will issue to Customer a FOC referencing the applicable Service Order within (10) ten business days after the Service Order is accepted by USFON. Each Service Order will be effective and binding on the Parties only upon issuance of the FOC. The Parties agree that Customer may submit Service Orders to USFON via e-mail, facsimile, an Internet-based system established by USFON, or by any other electronic system as agreed to between the Parties.

2.2 Design Layout Record. At Customer's request received by USFON at least ten (10) days prior to USFON's scheduled testing date, USFON will provide Customer with a DLR no less than five (5) days prior to USFON's scheduled testing date.

2.3 Provision of Services. Subject to the terms and conditions of this Agreement, USFON shall, directly or through one or more of its Affiliates, provide Customer the Services pursuant to a written Service Order accepted in accordance with the terms and conditions of this Section 2 and at all times in compliance with the requirements of the Service Level Agreement ("SLA") attached as Exhibit B to this Agreement. Notwithstanding the provision of Services through one or more of its Affiliates, USFON shall in all instances remain fully financially, technically and legally responsible for such Services hereunder as if USFON were providing the Services itself.

2.4 Use of Services. Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of this Agreement. Customer shall not use, or permit the use of the Service, in a manner that will impair USFON's network or facilities or the

ability of other USFON customers to use USFON's services. As between the Parties, USFON is not responsible for (a) any use (whether or not authorized) of the Service, which use shall be deemed Customer's use for purposes of this Agreement; or (b) any content that is stored or transmitted via the Service. Customer will provide USFON reasonable advance written notice of any order for Service to be provided to a governmental entity. The Parties acknowledge and agree that unless otherwise expressly agreed in writing by an authorized representative of USFON, such agreement which shall not be unreasonably withheld, USFON will not be bound by any flow-down clause imposed by a governmental entity.

3. BILLING AND PAYMENT

3.1 MRCs and NRCs. The MRCs and any applicable NRCs payable by Customer for each Service shall be set forth in a Service Order and shall be paid by Customer after being invoiced as provided below. Customer agrees to pay any undisputed charges for the Services within thirty (30) days after the date of the invoice (the "**Due Date**") in immediately available funds as specified in the invoice. USFON shall provide Customer with reasonably requested information for bill validation including, but not limited to, the number of Circuits, any applicable Service codes, and charges for each Service. Should USFON fail to issue any undisputed credits due under this Agreement within ten (10) days, Customer shall have the right to offset such undisputed credits against any payment due to USFON.

3.2 Commencement of Billing. As compensation for the Services provided by USFON, Customer shall be obligated for all MRCs beginning on the Service Commencement Date and all NRCs when a Service Order is executed by both Parties. USFON shall invoice the MRC's beginning on the first day of the month following the Service Commencement Date and the NRCs within ten (10) days of the execution of a Service Order by both Parties, subject to the provisions of Section 3.6. Notwithstanding the foregoing, in the event of a delay in activation of Service under a Service Order due to delays or failures by Customer, a Customer Reseller or an End User that are not otherwise excused under this Agreement, USFON shall be permitted to commence billing the MRCs beginning on the FOC Date for the applicable Service.

3.3 Interest. Unpaid amounts are subject to interest, not to exceed 1.5% monthly, charged by USFON on the balance not paid by the Due Date, calculated on a daily basis from the first day when said amount became due and owing until paid. If the interest rate exceeds the maximum rate allowable by law, then the interest rate shall be equal to the maximum rate allowed by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect undisputed overdue amounts. Notwithstanding the foregoing, Customer shall not be charged any interest on unpaid, disputed amounts if the dispute is subsequently resolved in Customer's favor.

3.4 Billing Disputes. Customer may dispute any charges for a period not to exceed thirty (30) days from the Due Date (the "**Dispute Period**"). In the event Customer disputes any billing by USFON, Customer shall notify USFON in writing with an explanation for the dispute, and shall nevertheless pay all charges not disputed in good faith by the Due Date. The Parties will cooperate in good faith to resolve any such disputes within a thirty (30) day period after the dispute is submitted to USFON. If the dispute is subsequently resolved in favor of USFON, Customer shall promptly pay all disputed amounts due. USFON shall calculate any applicable interest on the disputed amount due calculated in accordance with Section 3.3 above, and bill Customer on the next subsequent invoice for these charges.

3.6 When the Service Commencement Date is on a day other than the first of the month or Service terminates on a day other than the last of the month, the MRCs shall be determined by prorating the monthly payment for the number of days during such month that Service was provided.

3.7 Customer shall not be liable for any amounts that were not previously billed to Customer by USFON and as to which over one hundred eighty (180) days have passed since the applicable Service(s) was provided.

4. TAXES

4.1 Generally. Customer shall pay any applicable federal, state or local sales, use, or excise taxes, fees or surcharges in connection with the Service furnished to Customer pursuant hereto, including state or federal Universal Service Fund contributions, but excluding any taxes based upon USFON's property, net income, franchise, license, or capital stock, or taxes and penalties imposed on USFON due to its failure to pay amounts when due, and taxes on USFON Equipment. Customer shall pay all gross receipts taxes which may be passed through by USFON under the rules of any Federal, state or local governmental authority. Notwithstanding the foregoing, Customer shall not be liable for any gross receipts taxes enacted or imposed in lieu of state or local income or franchise taxes. USFON shall have the right to recover from Customer the amount of any fees or taxes imposed directly on USFON for the Services provided hereunder in accordance with all applicable laws, in the form of a surcharge included on USFON's invoice.

4.2 Exemption Documentation. Customer shall provide USFON with information, including but not limited to duly executed exemption certificates with respect to any exemption from sales, use or other tax or fee exemption claimed by Customer and shall immediately notify USFON of any change in Customer's tax status. To the extent any such exemption documentation is held invalid by the tax or governmental authority for any reason, Customer agrees to reimburse USFON for any tax liability including without limitation related interest and penalties arising from such invalid documentation. This reimbursement is not limited by Section 3.7.

4.3 Protest. Customer and USFON shall each have the right to protest or appeal any tax or charge assessed against it by any taxing authority. However, the appealing party shall bear all costs and expenses associated with such appeal. Any liability related to taxes, fees, penalties, and interest arising in connection with a charge or assessment by any taxing authority shall be allocated to the parties in accordance with this Section 4.

5. TERM AND RENEWAL OPTIONS

5.1 Term of Agreement. The term of this Agreement ("Term") shall commence on the Effective Date of this Agreement, and shall terminate five (5) years thereafter, unless earlier terminated as provided herein. This Agreement shall continue thereafter unless terminated by written notice by one of the Parties giving at least ninety (90) days prior written notice to the other Party. Notwithstanding the foregoing, in the event the period of time for a particular Service or Services to be provided by USFON to Customer pursuant to an applicable Service Order(s) extends beyond the expiration or other termination of this Agreement, the Term shall automatically be deemed extended for the duration of the provision of that Service, subject to specific Service termination provisions set forth herein.

5.2 Service Order Term. The Service Order Term will be specified in the applicable Service Order, and will commence on the Service Commencement Date. Upon expiration of the Service Order Term with respect to a particular Service Order, the Service Order Term shall continue on a month to month basis until terminated by either Party upon ninety (90) days written notice to the other Party.

5.3 Early Termination.

(a) Except as may be agreed upon in a mutually agreed upon document (e.g., Service Order), in the event that Customer terminates a Service at any time after issuance of the FOC Date by USFON

and prior to the applicable Service Commencement Date, Customer shall pay USFON on demand the actual cost of any third party-imposed termination liability incurred as a result of such termination, as well as any out-of-pocket construction expenses or installation charges incurred by USFON prior to such termination.

(b) Except as may be agreed upon in a mutually agreed upon document (e.g., Service Order), in the event that Customer terminates a Service on or after the Service Commencement Date but before the end of the applicable Service Order Term, Customer shall pay to USFON on demand, as liquidated damages and not as a penalty, an early termination charge equal to the sum of: (1) the full amount of all undisputed past due charges and interest thereon, if any, and (2) one hundred percent (100%) of all remaining MRCs for the first year of the Service Order Term, and eighty percent (80%) of all remaining MRCs for periods after the first year.

6. INSURANCE

6.1 USFON Obligations. USFON shall, at its own expense, obtain and keep in full force and effect at all times for the duration of this Agreement, on an occurrence basis with an insurance carrier or carriers having a Best Rating Service rating of A- / X or better and licensed to do business in the State where the Services are to be delivered, insurance policies of the following kinds and in the following amounts, with Customer to be named as an additional insured as its interest may appear:

(a) Workers' Compensation Insurance in accordance with all applicable laws and regulations applicable to the employees who are engaged in the performance of this Agreement;

(b) Employer's liability insurance with limits for employer's liability of \$500,000 per accident/occurrence;

(c) Commercial general liability insurance, covering comprehensive bodily injury and property damage liability insurance, including automobile insurance, contractual liability insurance, and claims for bodily injury, death and property damage, including comprehensive form, premises and operations, independent contractors, products and completed operations, personal injury, and broad form property damage liability coverage, in at least the following amounts:

Bodily injury to any one person	\$1,000,000
Bodily injury aggregate	\$1,000,000
Property damage in any one accident	\$1,000,000
Property damage aggregate	\$1,000,000
Umbrella, or excess liability, coverage in the amount of \$1,000,000	

Upon request of Customer, USFON shall furnish Customer certificates of such insurance, and each policy shall make commercially reasonable efforts to provide that no decrease, non-renewal, or cancellation shall become effective except upon thirty (30) days' prior written notice to Customer of such decrease non-renewal, or cancellation. USFON shall obtain a waiver of rights of subrogation for commercial general liability insurance from its insurer in favor of Customer.

6.2 Customer's Obligations. Customer shall similarly carry such types and amounts of insurance as specified in Section 6.1 to meet Customer's obligations under this Agreement, including without limitation its indemnification obligations set forth in Section 10. Upon request of USFON, Customer will furnish to USFON certificates of such insurance.

7. WARRANTIES AND NETWORK STANDARDS FOR SERVICES

7.1 Representations of the Parties. Each Party hereby represents and warrants to the other Party that such Party has been duly formed and is in good standing in the state of its organization, that such Party is qualified to do business in the states where the Services will be delivered, and that the execution of this Agreement by such Party has been duly authorized in compliance with such Party's organization documents and procedures.

7.2 USFON shall maintain "good standing" with all of its suppliers, property owners or other contract parties on which its ability to provide Services on a continuous basis depends ("**Underlying Service Providers**") and shall not breach any agreement with an Underlying Service Provider. Upon Customer's request, USFON shall disclose all current Underlying Service Providers.

7.3 DISCLAIMER. THE SERVICES AND RELATED EQUIPMENT AND/OR OTHER MATERIALS USED IN CONNECTION WITH THE SERVICES, IF ANY, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY USFON, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. USFON DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE, ERROR-FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT USFON WILL NOT BE RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ITS END USER'S USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO CUSTOMER'S OR END USER'S SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT USFON'S THIRD-PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT AND USFON DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT. AS BETWEEN CUSTOMER AND USFON, USFON WILL NOT BE RESPONSIBLE TO ENSURE THAT THE SERVICES CUSTOMER OR A CUSTOMER RESELLER PROPOSES TO USE TO CARRY THE TRAFFIC OF END USERS WILL MEET THE END USERS' REQUIREMENTS. ANY SERVICES PROVIDED BY CUSTOMER TO ANY THIRD PARTIES (INCLUDING ANY CUSTOMER OF CUSTOMER, CUSTOMER RESELLER OR END USER) ARE THE SOLE RESPONSIBILITY OF CUSTOMER, AND IN NO CIRCUMSTANCES SHALL SUCH SERVICES BE DEEMED TO BE SERVICES PROVIDED BY USFON TO SUCH PARTIES. THE DISCLAIMER OF WARRANTY SET FORTH IN THIS SECTION 7.3 SHALL NOT AFFECT CUSTOMER'S RIGHTS (INCLUDING INDEMNIFICATION RIGHTS) OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT.

8. DEFAULT

8.1. A Party shall be deemed in default of this Agreement (a “Default”) upon the occurrence of any one or more of the following events:

(a) If a Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its creditors or initiates any proceeding seeking general protection from its creditors;

(b) Except with respect to payment defaults, a Party fails to perform its material obligations under this Agreement and such nonperformance is not remedied within thirty (30) days after receipt of written notice thereof, provided that if the breach is of such a nature that it cannot be cured within thirty (30) days, then such Party shall not be in Default so long as it commences to cure within such period of time and thereafter diligently and continuously pursues such cure to completion; or

(c) A Party fails to make any payment under this Agreement when due and such failure is not remedied within ten (10) business days after receipt of written notice thereof.

(d) USFON fails to meet or exceed the financial performance covenants contained in Section 7.2 and receives written notice thereof from a third party supplier critical to providing service to Customer. The parties acknowledge and agree that USFON’s financial stability is critical to its ability to continue to provide Services on an uninterrupted basis such that not curing by USFON jeopardizes Customer. In the event that USFON is unable to cure a default under this Section, USFON shall work in good faith with Customer so that Customer may attempt to assume service from the third party provider directly to insure uninterrupted service to Customer.

8.2 Upon the occurrence of a Default and subject to the applicable notice and cure periods, the non-defaulting Party hereunder may, without liability or further obligation to the other Party, including the payment of any fees, penalties, liquidated damages or termination charges, terminate the applicable Services affected by such uncured Default, or suspend performance with respect to the applicable Service under the affected Service Order(s). The foregoing shall be in addition to any other rights and remedies that USFON may have under this Agreement or at law or equity relating to Customer’s material breach. In the event Customer defaults on its payment obligations under Section 8.1(c), USFON may in its sole discretion, prior to exercising its termination right, require Customer to provide adequate assurances that it will pay all obligations as they become due by providing to USFON a deposit in the amount of two (2) months’ MRCs for the applicable Service(s). Nothing herein will be deemed to limit any other remedies available to USFON hereunder.

9. CONFIDENTIAL INFORMATION

No Party or any of its Affiliates (the “Receiving Party”), without the prior written consent in each instance of the other Party (the “Disclosing Party”), shall disclose to any third party any confidential information supplied to the Receiving Party by the Disclosing Party or any Affiliates of the Disclosing Party which has been designated as CONFIDENTIAL or PROPRIETARY or PRIVATE and which is not otherwise generally available to the public, has not been independently developed by the Receiving Party, and has not previously been known by or disclosed to the Receiving Party by a third party not bound by confidentiality restrictions (collectively, “Confidential Information”). The terms and conditions of this Agreement, as well as pricing information exchanged in connection with this Agreement, or included in any Service hereunder, and all non-public information of either Party or its Affiliates which was disclosed to the other Party in connection with the discussions leading up to the execution of this Agreement, together with any personally identifiable information relating to any Customer Reseller or End User, are hereby designated as Confidential Information without further obligation on the part of either Party to mark or designate it as such. The Receiving Party shall

not use any Confidential Information of the Disclosing Party or its Affiliates for any purpose other than the performance of its obligations under this Agreement, nor permit any of its employees, affiliates, or representatives to disclose such Confidential Information to any third person, and it shall disclose Confidential Information only to those of its employees, affiliates, and representatives who have a need for it in connection with the use or provision of Services or other obligations required to comply with this Agreement. Each Party shall protect the Confidential Information of the Disclosing Party or its Affiliates from both unauthorized use and unauthorized disclosure with the same degree of care as it would protect its own Confidential Information. Upon cessation of Services, or upon written request, each Party shall return or destroy all Confidential Information of the other. Prior to disclosing Confidential Information to its employees, Affiliates, and/or representatives, the Receiving Party shall notify such employees, Affiliates, and representatives of their obligation to comply with this Section 9. If a Receiving Party is required by any governmental authority or by applicable law to disclose any Confidential Information, then such Receiving Party may disclose such Confidential Information, provided that the Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and, unless required by law, prior to such disclosure. Upon receipt of written notice of the requirement to disclose Confidential Information, the Disclosing Party, at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with the requirements of this Section 9 with respect to all or part of such Confidential Information. The Parties hereby designate the terms, conditions, exhibits and schedules of this Agreement to be Confidential Information. Unless required by applicable law, no Party without the written consent of the other Party shall provide a copy of this Agreement in whole or in part to any third person or entity not employed or retained by USFON or Customer. The provisions of this Section 9 shall survive for a period of three (3) years following the date of initial disclosure of that Confidential Information or three (3) years beyond termination or expiration of this Agreement, whichever is greater.

10. INDEMNIFICATION

10.1 Scope of Indemnity. Each Party agrees to defend, indemnify and hold harmless the other Party, its Affiliates, officers, directors, employees, members and agents, from and against all actions, claims, liabilities, damages, costs, demands, losses, penalties and expenses, including but not limited to attorneys' fees ("Losses"), to the extent arising out of a third-party claim for (a) personal injury, including death, or tangible property damage caused by the gross negligence or willful misconduct of the indemnifying Party or its employees or agents, and (b) any violation by the Indemnifying Party or its employees or agents of applicable law. In addition, subject to USFON's indemnification obligations set forth in (a) and (b) of this Section 10.1, Customer agrees to defend, indemnify and hold harmless USFON, its Affiliates, officers, directors, employees, members and agents, from and against all actions, claims, liabilities, damages, costs, demands, losses, penalties and expenses, including but not limited to attorneys' fees, to the extent arising out of a claim by a Customer Reseller or an End User relating to the Service.

10.2 Indemnity Procedure. In the event any action will be brought against the indemnified Party, such Party will immediately notify the indemnifying Party in writing. The indemnifying Party will be permitted to assume primary control of the defense with counsel of the indemnifying Party's choice, and the indemnified Party will cooperate fully in defense of the claim as requested by the indemnifying Party. The indemnified Party may participate with its own counsel and at its own expense. The indemnifying Party will assume the cost of the defense thereof on behalf of the indemnified Party and its Affiliates and will pay all expenses and satisfy all judgments which may be incurred by or rendered against the indemnified Party or its Affiliates in connection therewith, provided that the indemnifying Party shall not enter into or acquiesce to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the indemnified Party or which would otherwise adversely affect the indemnified Party without the indemnified Party's prior written consent (to be given or withheld in the indemnified Party's sole discretion).

11. LIMITATION OF LIABILITY

11.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS) ARISING OUT OF OR RELATING TO THE SERVICES OR EITHER PARTY'S PERFORMANCE OR NONPERFORMANCE UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL USFON'S AFFILIATES, THIRD-PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER, END USERS, OR CUSTOMER RESELLERS HEREUNDER.

11.2 EXCEPT TO THE EXTENT THE SAME ARISE OUT OF AN INDEMNIFICATION OBLIGATION OR AN INTENTIONAL BREACH OF A CONFIDENTIALITY OBLIGATION UNDER THIS AGREEMENT, OR ARISE OUT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND EXCEPT WITH RESPECT TO CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, THE AGGREGATE LIABILITY OF EITHER PARTY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE SERVICE ORDER FOR THE APPLICABLE SERVICE DURING THE SIX (6) MONTHS PRECEDING THE CLAIM.

12. REGULATORY

12.1 Use of Services. Customer's use of the Services and USFON's provision of the Services shall be in accordance, and comply, with all applicable laws, regulations, and rules. Notwithstanding the provisions of Section 4, USFON shall maintain all government assessments, franchises, easements, licenses and other regulatory requirements necessary for its provision of Services to Customer. Customer, or any Customer Reseller, shall obtain all approvals, consents and authorizations necessary to conduct its business and initiate or conduct any transmissions over any facilities covered by this Agreement. USFON or its affiliates shall obtain all approvals, consents and authorizations necessary to conduct its business and to provide the Services covered by this Agreement and, notwithstanding the provisions of Section 4, shall at its own cost ensure that all franchises, licenses, easements or other required permissions related to its provision of Services to Customer are obtained and maintained. If the FCC, a state PUC or a court of competent jurisdiction issues a rule, regulation, law or order which has the effect of canceling, changing, or superseding any material term or provision of this Agreement, including but not limited to the regulatory classification of USFON's Services (collectively, "**Regulatory Requirement**"), then USFON or its affiliates may modify any affected Service Order in such a way as is consistent with the form, intent and purpose of this Agreement and is necessary to comply with such Regulatory Requirement, subject to Customer's reasonable acceptance of such modification. Should the Parties not be able to agree on modifications necessary to comply with a Regulatory Requirement within thirty (30) days, then upon written notice either Party may, to the extent practicable, terminate that portion of this Agreement, Service or a Service Order impacted by the Regulatory Requirement without further liability or obligation to the other Party.

12.2 Effect of Decisions. In the event that a decision by a communications regulatory authority or court with competent jurisdiction at the federal, state or local level without further right of appeal ("**Decision**") has the effect of canceling, changing, superseding or frustrating any material term or provision of this Agreement or otherwise materially increasing USFON's costs or changing the economic structure of the transactions contemplated hereunder, then Customer acknowledges and agrees that USFON may pass through to Customer increased costs arising out of such Decision that directly relate to its provision of Services; provided that USFON shall not pass through such costs on a discriminatory basis.

13. FORCE MAJEURE

13.1 In no event shall a Party have any claim or right against the other Party for any failure of performance by such other Party if such failure of performance is caused by or the result of, in whole or in part, (i) causes beyond the reasonable control of such other Party, including, but not limited to, acts of God, fire, lightning, storm, flood, or other natural disaster, or failures of an unaffiliated third-party service provider; (ii) laws, orders, rules, regulations, directions, or actions of governmental authorities having jurisdiction over this Agreement; or (iii) any civil or military action including national emergencies, riots, war, terrorism and civil insurrections (“**Force Majeure**”). The Party whose performance is affected shall use commercially reasonable efforts to minimize the impact of such Force Majeure event. A Force Majeure event shall never excuse the failure to make a payment due hereunder, except to the extent that the Force Majeure event physically interferes with the delivery of the payment.

13.2 If failure of performance by a Party hereunder due to Force Majeure events is for thirty (30) days or less, this Agreement and all Service Orders issued hereunder then in effect shall remain in effect. If the Force Majeure event continues beyond thirty (30) days, then upon ten (10) days written notice to the other Party, either Party may terminate only the affected Service(s), without incurring any penalty or further obligation to the other Party (including cancellation or termination charges).

13.3 If either Party asserts the applicability of this Section 13, it shall use commercially reasonable efforts to provide prompt notice to the other Party of the commencement and ending of the Force Majeure event.

14. ASSIGNABILITY

No Party may assign this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, and then only when such transfer or assignment can be accomplished without interruption of the use or location of Service. Notwithstanding the foregoing and with written notice to the other Party, either Party may assign this Agreement to an Affiliate or to any entity acquiring all or substantially all of its assets; provided, however that in each instance that the assignee provides adequate assurance that it is financially and technically capable of meeting the assigning Party’s obligations under this Agreement. In addition, USFON shall have the right to engage one or more subcontractors in connection with its performance hereunder. All the terms and provisions of this Agreement will be binding upon, will inure to the benefit of and will be enforceable by the Parties and their respective successors and permitted assigns.

15. TROUBLE TICKET PROCEDURE FOR SERVICE OUTAGE

15.1 USFON will maintain a point-of-contact for Customer’s designated personnel, as mutually agreed upon by the Parties, to report a Service Outage to USFON twenty-four (24) hours a day, seven (7) days a week, including U.S. National holidays. All customer support shall be provided to Customer’s designated personnel only. Customer is solely responsible for interfacing with its employees, Customer Resellers and End Users.

15.2 To initiate an investigation of the cause of a Service Outage (“**Trouble Ticket**”), (i) Customer may contact USFON at (800) 505-4902 to identify a Service degradation when it believes that a Service Outage has occurred that has not been independently noticed by USFON, and USFON will immediately open a Trouble Ticket or (ii) USFON will immediately open a Trouble Ticket when it becomes aware of a Service Outage on its own. Once the Trouble Ticket has been opened, the Service Outage will be deemed to have occurred (subject to Section 15.4), and the appropriate USFON departments will initiate diagnostic testing and isolation activities to determine the source and severity of the degradation in Service. If there is a Service Outage, USFON and Customer will cooperate to restore Service as quickly as possible. If the cause of a Service Outage is a failure of

USFON's Network or USFON Equipment or is within USFON's control, USFON will be responsible for the repair. If the Service Outage is caused by a factor outside the control of USFON, USFON will cooperate with Customer to conduct testing and repair activities at Customer's cost and at USFON's standard technician rates.

15.3 USFON will not contact any End User when a Service Outage is detected, or for any other Service-related issues. If an End User contacts USFON regarding Customer service, USFON will promptly refer the caller to Customer at the contact telephone number provided by Customer.

15.4 For purposes of this Agreement, a "Service Outage" will mean an unavailability of the Service to carry traffic between two Points of Termination; provided that a Service Outage will not be deemed to have occurred in the event that it arises from or relates to any of the following: (i) a Service has not been "Accepted" by Customer; (ii) the negligence, error, acts or omissions of Customer or others authorized by Customer to use the Service; (iii) failure of Customer provided equipment; (iv) during any period in which USFON or its agents are not afforded access to the premises under Customer's control where the access lines associated with the Service are terminated; (v) during any period when Customer has released Service to USFON for maintenance or rearrangement purpose (including, without limitation, during any Planned Service Outage); (vi) any period when Customer elects not to release the Service(s) for testing and/or repair and continues to use it on an impaired basis; (vii) a service affecting fiber cut of USFON or vendor facilities where USFON was not properly notified of work activity in the vicinity of its fiber plant; (viii) a Force Majeure event; or (ix) a breach by Customer of its obligations under this Agreement.

15.5 In the event USFON dispatches a field technician to a Site to perform diagnostic troubleshooting and the problem resides with Customer's equipment or facilities or results in a "No Trouble Found," or the failure is due to Customer acts or omissions, then Customer will pay USFON for time and materials at USFON's standard technician rates listed below:

Years 2015-2018: \$65.00/hr.

Years 2019-2021: \$75.00/hr.

Years 2022-2025: \$85.00/hr.

Materials: USFon cost + 25% markup (i.e. 20% margin)

USFon will trouble shoot with Customer personnel prior to dispatching a technician and will, in almost all cases, have sufficient reason to believe that the issue is with Customer's network prior to dispatching a field technician at chargeable rates shown above.

16. BUILDING AND EQUIPMENT ACCESS

16.1. Site Access. Customer shall allow USFON reasonable, escorted access to the Customer Site or any End User Site to install, operate, maintain, repair and replace (collectively "Work") fiber optic cable, coaxial cable, copper wiring, antennas, and any other transmission medium and associated equipment (collectively, the "USFON Equipment") in and on the Customer Site or End User Site for purposes of providing Services under this Agreement. USFON shall use commercially reasonable efforts to give prior notice to Customer of its intent to enter the Customer Site or End User Site. Customer shall obtain and maintain all rights of way, public and private easements, licenses and consents with respect the performance of Work at any Customer Site or End User Site.

16.2. Space and Power. Customer shall, upon USFON's request and at no cost to USFON, (i) provide adequate clean electrical power at a Customer Site to meet USFON's reasonable requirements during the applicable Service Order Term, at the Site(s) specified in the applicable Service Order, as well as all necessary connections to electrical and mechanical facilities at the Customer Site or End User Site as are

necessary for the operation of USFON Equipment in the Customer Site or End User Site; and (ii) provide floor space, an equipment bay or equipment rack space at the Customer Site or End User Site which will include, without limitation, environment (humidity control, fire suppression, temperature/climate control, security control and alarm monitoring), redundant/DC power and, if available, protected/UPS AC power, technical and maintenance support, site access, cable entrance, conduit, tower/antenna space, ground isolation device and central office repeater.

16.3 Ownership of USFON Equipment. The USFON Equipment, and any and all other equipment used to provide the Services, shall remain the exclusive property of USFON. Customer shall ensure that the USFON Equipment at any Customer Site or End User Site remains free from all liens and encumbrances and Customer shall be responsible for loss or damage to the USFON Equipment while at the Customer Site or End User Site. Customer agrees to conform its equipment and software, and to ensure that each End User conforms its equipment and software, to the technical specifications provided by USFON from time to time. Customer shall not, and shall ensure that its End Users and Customer Resellers shall not, tamper with, remove or conceal any identifying plates, tags or labels affixed to such equipment, nor align, or attempt to repair, USFON's equipment except as expressly authorized in advance in writing by USFON. Unless otherwise agreed in writing by the Parties, interconnection of the USFON Equipment with Customer's, the Customer Reseller's or the End User's equipment will be performed by Customer. USFON Equipment shall not be removed or relocated by Customer, a Customer Reseller or any End User. USFON shall have the right, but not the obligation, to upgrade, modify and enhance the USFON Equipment (including related firmware) and the Service and take any action that USFON deems appropriate to protect the Service and its facilities.

17. NOTICES

17.1 All notices, demands, requests, or other communications under this Agreement shall be in writing and delivered by hand delivery (including overnight mail delivery service or courier), postage prepaid, or mailed by first-class registered or certified mail, return receipt requested, postage prepaid, to the persons whose names and business addresses appear below and such notice shall be effective on the date of receipt by the receiving Party:

If to USFON: **USFon, Inc.**
1250 S Capital of Texas Hwy
Bldg 2-235
West Lake Hills, TX 78746

If to Customer:

17.2 Each Party may designate by notice in writing a new person and/or address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger or facsimile transmission confirmation being deemed conclusive, but not exclusive evidence of such delivery) or at such time as delivery is refused by the address upon presentation.

18. MISCELLANEOUS

18.1 Entire Agreement. This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements, interim agreements, letters of agreement, memorandums of understanding, and any other oral or written documentation of agreements between the Parties hereto with respect to the subject

matter hereof. In the event of any inconsistency between the main body of this Agreement and any appendices, Exhibits, or Service Orders made a part or in accordance with this Agreement, precedence shall be given in the following order to:

1. Any Service Order executed pursuant to this Agreement;
2. The main body of this Agreement; and
3. Appendices and Exhibits hereto.

18.2 Legal Relationship. Nothing in this Agreement shall be deemed to create any relationship between USFON and Customer other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. This Agreement does not render either Party the employee, agent or legal representative of the other Party and does not create a partnership or joint venture between Customer and USFON. Neither Party shall have any authority to enter into any agreement on behalf of or bind the other Party in any manner whatsoever without the prior written consent of the other Party. Except as set forth in Section 11.1, this Agreement confers no rights of any kind upon any third party, except as specifically set forth herein.

18.3 Compliance with Laws. In connection with the matters provided for in this Agreement, each Party hereto shall comply with all applicable laws and regulations, including, but not limited to, the Telecommunications Act of 1996, as may be amended, and the policies, rules and regulations of the Federal Communications Commission, and all applicable local and state rules and regulations, including, but not limited to, any applicable privacy laws. Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of this Agreement, and Customer shall take commercially reasonable steps to ensure that its Customer Resellers' and End Users' use of the Service shall comply with all applicable laws and regulations. This Agreement, its exhibits, and the Service Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which USFON provides the Services. If any provision of this Agreement, its exhibits, or the Service Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of this Agreement, its exhibits, and/or the Service Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of this Agreement, its exhibits, and the Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Agreement, nothing contained in this Agreement shall constitute a waiver by USFON of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

18.4 Waiver. No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both Parties. The waiver by any Party hereto of a breach or a default under any of the provisions of this Agreement, or the failure of either Party on one or more occasions to insist on the strict enforcement of any provision of this Agreement or to exercise any right or privilege hereunder shall not constitute or be construed as a waiver of any subsequent breach or default of a similar nature, or any provision, rights or privileges, and all such terms shall remain in full force and effect.

18.5 Amendments. No subsequent agreement among the Parties concerning the Service (including, without limitation, any amendment to this Agreement or any Service Order) shall be effective or binding unless it is agreed to in writing by authorized representatives of the Parties.

18.6 Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under

applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

18.7 Interpretation. Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require. Unless specified to the contrary, all references to “day” or “days” shall mean calendar day or days.

18.8 Governing Law.

(a) The interpretation, validity and enforcement of this Agreement, and all legal actions brought under or in connection with the subject matter of this Agreement, shall be governed by the laws of the State of Texas (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded).

(b) Any legal action brought under or in connection with the subject matter of this Agreement shall be brought only in the United States District Court in Austin, Texas or, if such court would not have jurisdiction over the matter, then only in a Texas State court sitting in Travis County, Texas. Each Party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum.

(c) Each Party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of this Agreement in the Federal or state courts sitting in Travis County, Texas, and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum.

18.9 Publicity. Neither Party shall issue a news release, public announcement, advertisement, sales promotions or other form of publicity concerning the existence of this Agreement or Services to be provided hereunder or the nature of the relationship between the Parties, or use the other Party’s name, logo, trademarks, trade names, service marks or other proprietary marks in any manner, without obtaining the prior written approval of the other Party, which may be withheld in the other Party’s sole discretion. Each Party shall have the right to review and approve any publicity materials, press releases or other public statements by another Party that refer to, or that describe any aspect of, this Agreement. Nothing in this Agreement establishes a license for any Party to use another Party’s brands, marks or logos without the prior written approval of the other Party.

18.10 Survival. The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties shall survive the completion of performance and termination of this Agreement, including, without limitation, the making of any and all payments hereunder.

18.11 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and both of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[Signature page follows]

USFon, Inc.

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

Dated: _____

List of Exhibits

Exhibit A: Service Order Form

Exhibit B: Service Level Agreement

Exhibit A
Service Order Form

Exhibit B

Service Level Agreement

The following section is a description of USFon's network performance Service Level Guarantees ("SLG") for the Services being provided.

The following table represents monthly average guarantees that will be measured in a given month:

SLG	Target
Network Availability (not including scheduled maintenance)	99.9%
Network Latency Roundtrip	Not to Exceed 60 ms in Average Network Latency
Throughput (Bandwidth)	70% of time at theoretical maximum
Average Response Time to Reported Problems	2 hours
MTTR (depending on severity)	4 – 8 hours

At Customer's request, USFon will make available to Customer monthly reports detailing the network performance of each service in relation to Network Availability. Such report will be available to the Customer in a mutually agreed upon format.

OUTAGE CREDITS

In the event of a Service Outage that lasts for a continuous period of thirty (30) minutes (hereafter an "Outage"), and provided that Customer submits a request in accordance with the "Remedies" section below, USFon shall provide a credit (the "Outage Credit") as follows:

Length of Outage (cumulative)	Credit
30 minutes to 4 Hours	5% of MRC
Between 4 - 24 Hours	10% of MRC
Between 24 - 48 Hours	20% of MRC
48 Hours or greater	30% of MRC

All Outage Credits shall be credited to a Customer no later than the second subsequent monthly invoice issued to Customer for the affected Service. All Customer requests for Outage Credits must include a valid reference Trouble Ticket number.

A. Remedies

Upon Customer's request to the USFon Help Desk made within thirty (30) business days of the closing of a Trouble Ticket in which the relevant Network Availability objective was not met, Customer shall be entitled to Outage Credits as set forth herein. The maximum Outage Credit issued in any one calendar month shall not exceed the applicable month's MRC for the affected Service.

B. Outage Start/End Time For Outage Credit Calculation Purposes

An Outage will begin when Customer opens a Trouble Ticket for the affected Service and USFon acknowledges receipt of such Trouble Ticket and validates that the Service is affected by an Outage, or when USFon becomes aware of network Outages. USFon will not unreasonably withhold or delay such acknowledgement and validation. An Outage is concluded when USFon contacts Customer and closes out the Trouble Ticket relating to such Outage.

C. Recurring Service Errors

If the Services contain recurring errors or deficiencies, then upon Customer's request, USFon and Customer shall coordinate and cooperate to jointly provide the necessary personnel and equipment, at each Party's own cost, to promptly perform a root cause analysis to determine the cause of such recurring errors. Upon such joint determination USFon shall provide Customer with a written copy of its analysis, which shall include an action plan containing a reasonably detailed description of corrective action to be taken by USFon and the date by which such corrective action shall be completed. USFon shall correct such recurring errors whose root causes are found to be with USFon's network, at no additional charge to Customer.

2015.09.21.14 Discussion/Action to consider Caldwell County joining the Lone Star Rail District (LSRD), authorize the County Auditor to submit the annual membership fee, and appoint a member of the Commissioners Court as a LSRD Board member. **Cost: \$4,950.00.**
Speaker: Commissioner Munoz.
Backup: 1.



Lone Star Rail District T 512-558-7360
PO Box 1618 F 612-558-7365
San Marcos, TX 78667 www.LoneStarRail.com

May 19, 2015

The Honorable Ken Schawe
Caldwell County
110 S. Main Street, Room 201
Lockhart, TX 78644

Re: Lone Star Rail District Board Membership

Dear Judge Schawe:

On April 23, 2015, the Rules and Procedures Committee of the Board of the Directors of the Lone Star Rail District discussed the process for including the counties of Bastrop, Caldwell and Guadalupe as members of LSRD. The Committee by unanimous action determined the following:

Based on a request on behalf of Bastrop, Caldwell, and Guadalupe counties, the Committee recommends that the Board approve inviting the three counties where the freight line is currently being planned to join the Lone Star Rail District. The annual fee for membership is set at \$4,950 for each county. Any of the three counties wishing to become members of the District are requested to notify the District of their intent to join the District prior to September 1, 2015. The membership in the District will be effective on payment of the annual fee and appointment of an elected official as a Board member and must be completed no later than November 1, 2015.

The Executive Committee previously decided that representatives of the three counties would be immediately included in an advisory status to the Board of LSRD. In this status, representatives of the three counties would immediately be included in mailings and other information sent to the Board of Directors and have access to information regarding the ongoing planning of the LSRD projects. The recommendation to the Board will be considered at its next meeting on June 5, 2015, for inclusion of the three counties as members of the District.

It would be appropriate for each of the counties to adopt a resolution requesting membership in LSRD and supply this resolution to LSRD prior to the June 5, 2015 Board meeting.

For information regarding LSRD, please feel free to contact me at the address shown below.

I look forward to your involvement with LSRD.

Sincerely,

Ross Milloy, Executive Director
Lone Star Rail District

cc: Board of Directors, Lone Star Rail District
William H. Bingham, General Counsel, Lone Star Rail District
Bastrop County Judge Paul Pape
Guadalupe County Judge Kyle Kutscher

Catch It.

2015.09.21.15 Discussion/Action

authorizing the County Judge to execute an Interlocal Agreement with the City of Austin regarding development in the City's extraterritorial jurisdiction (ETJ).

Cost: None. Speaker: Judge Schawe/Jordan Powel. Backup: 1.



September 16, 2015

SECTION 106: COUNTY HISTORICAL CHAIR CONSULTATION

Caldwell County/ Austin District
CR 222 (Schuelke Rd) Culvert Extension at Unnamed Tributary of Elm Creek
CSJ: 0914-22-068
NBI: 14-028-0-AA01

Mr. Doug Shomette
417 Cibilo Street
Lockhart, TX 78644

Dear Mr. Shomette:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated 12-16-14, and executed by FHWA and TxDOT. In accordance with 36 CFR 800 and our first amended Programmatic Agreement for Transportation Undertakings (PA-TU 2005), this letter represents Section 106 consultation with the representative of local government regarding the effect the proposed undertaking poses for a cultural resource located within the project's area of potential effects (APE). As a consequence of these agreements, TxDOT's regulatory role for this project is that of the Federal action agency.

TxDOT has authorized a project that may result in the extension of the bridge class culvert at CR 222 over an unnamed tributary of Elm Creek near Lockhart, TX. A project location map is attached. This culvert was included in the State Historic Bridge Inventory, a statewide study of historic bridges that TxDOT conducted in consultation with the Texas Historical Commission. Because the culvert did not meet our criteria for statewide significance, it has been determined not eligible for listing in the National Register of Historic Places.

While the culvert does not have known state significance, we do recognize that it may have other local/regional historical associations. If you feel that the culvert is significant at a local or regional level please provide us with written information concerning the history of the culvert and its role in your community's history. We respectfully request that you send us your response no later than Friday, October 16, 2015.

If you feel that the culvert does not have any local/regional significance, then please endorse this letter and return it via email by Friday, October 16, 2015 to monica.swenson@txdot.gov. This endorsement will signify your concurrence that the culvert is not historically significant. If we do not receive a response within 30 days, we will assume that you concur with the findings of the State Historic Bridge Inventory.

Please feel free to call Monica Swenson at 512-832-7181 if you have any questions or need additional information.

Sincerely,

Shirley Nichols
Environmental Coordinator
Austin District

Endorsement to the Texas Department of Transportation:

Caldwell County Historical Commission Chairperson

Date

Cc: Honorable Ken Schawe, Caldwell County Judge
Mark Brown, TxDOT ENV
Roy Dill, P.E., Bastrop Area Engineer

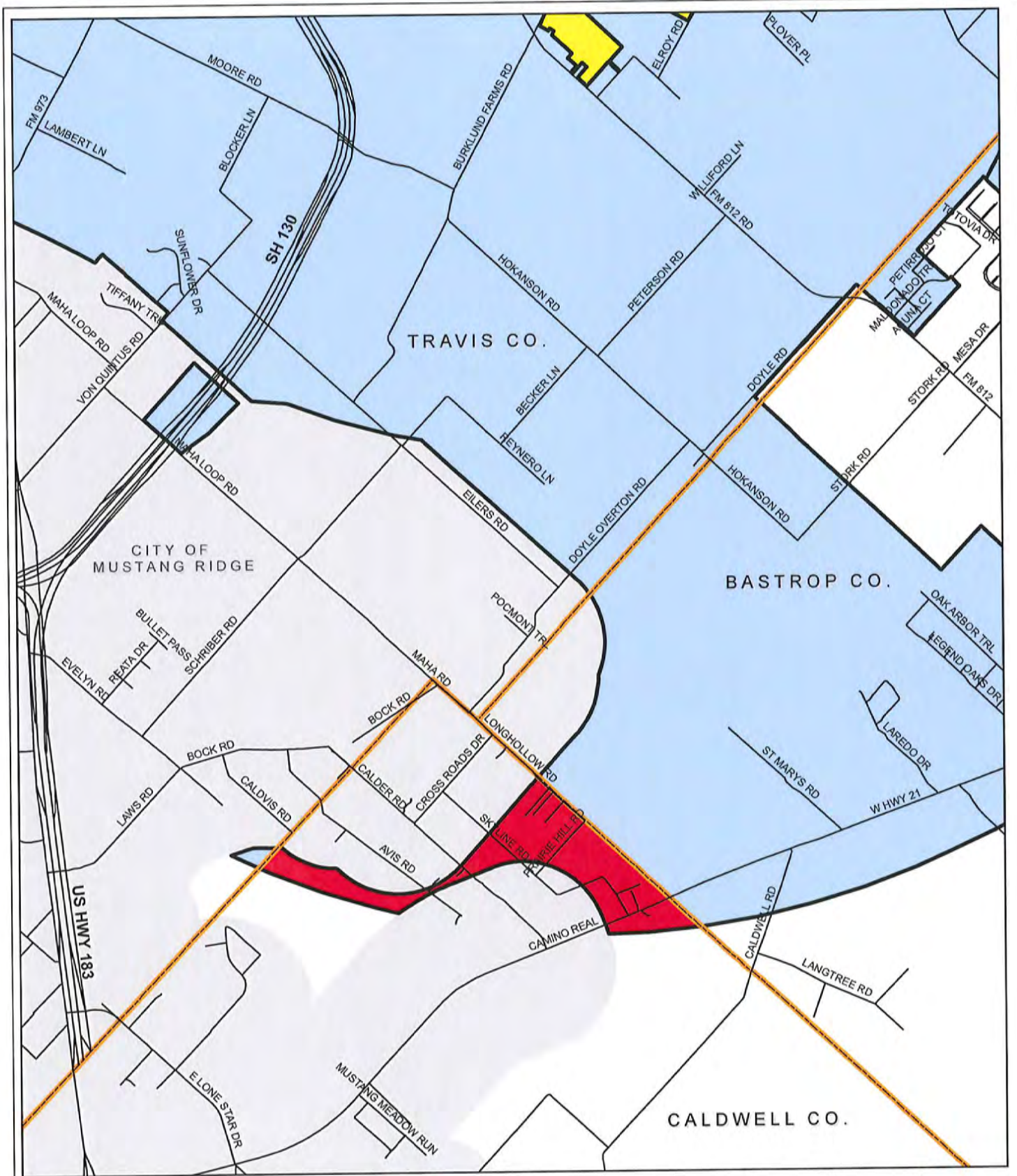
Attachment



Figure 1: Location Map of Culvert Extension

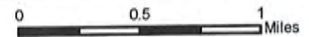


Figure 2: Culvert at Unnamed tributary of Elm Creek



Austin Extraterritorial Jurisdiction in Caldwell County

- Austin ETJ in Caldwell Co.
- Austin City Limit
- Other Austin ETJ
- Mustang Ridge
- County



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



City of Austin
PDRD
October 23, 2014



**AGREEMENT ON SUBDIVISION PLATTING IN THE EXTRA TERRITORIAL
JURISDICTION BETWEEN THE CITY OF AUSTIN AND CALDWELL COUNTY**

RECITALS

WHEREAS, this agreement is made and entered into by and between the City of Austin (“the City”) and Caldwell County (“the County”) hereinafter collectively referred to as “the Parties”; and

WHEREAS, review and approval of subdivision plats is the basic tool that counties and municipalities use to ensure that infrastructure and development in unincorporated areas, including the extra-territorial jurisdiction (ETJ), are planned and constructed in a manner that is consistent with their respective interests; and

WHEREAS, Section 242.001(d)(2) of the Texas Local Government Code authorizes a county and a municipality to enter into an agreement that grants the county exclusive jurisdiction to regulate subdivision plats and related permits in the municipality’s ETJ; and

WHEREAS, the parties recognize that the land within the City’s ETJ in Caldwell County will be adequately protected through compliance with Caldwell County’s subdivision regulations.

NOW, THEREFORE, the Parties agree as follows:

I. Subdivision Regulation by Caldwell County

- a. Caldwell County shall have exclusive jurisdiction to regulate subdivisions and approve all related permits in the Austin ETJ that is in Caldwell County as shown on the map attached to this agreement as Exhibit A.
- b. Caldwell County shall accept subdivision applications and apply its subdivision regulations to proposed subdivisions for land in the City’s ETJ in order to facilitate the filing of plats in the County’s public records. The plats that will be subject to this agreement are those that are filed after the effective date of this agreement. The party receiving an application for plat approval for which the party has no jurisdiction may either direct the developer to the appropriate office or forward the application. Any rights accruing to a person under Texas Local Government Code Chapter 245 shall not be affected.
- c. This agreement does not require any amendment to the City’s or the County’s substantive or procedural subdivision regulations.
- d. For purposes of this agreement, the parties understand that the terms “subdivision” and “plat” and the regulation thereof, are intended to include plat amendments, vacations, replats, and the determination of whether a particular division of land is entitled to an exemption from the requirement to file an application for subdivision.

- e. The County shall provide the City a copy of each complete subdivision application within ten (10) days of receipt and shall notify the City in writing of the final approval of any subdivision plat within the geographic area described in Exhibit A. Once a subdivision plat is approved, the County shall be responsible for administration of subdivision construction agreements, subdivision phasing agreements, and other ancillary matters. The County shall also be responsible for maintaining fiscal deposits and administration of fiscal security.

II. Geographic Scope

- a. This agreement applies only in the ETJ of the City that is in Caldwell County as shown on the attached Exhibit A. The recognition of the ETJ by the Parties shall not be deemed an admission by the City or the County in any dispute with any other person or municipality regarding the boundaries of the City's ETJ.
- b. The City shall notify the County in writing within thirty (30) days of any expansion or reduction of the ETJ regardless of whether resulting from annexation, disannexation, legislation, judgment of a district or other trial-level court, or any other means. In addition to the notification, City will provide County an updated Exhibit A reflecting the change to the ETJ. Upon County's receipt of the written notification and updated Exhibit A, the parties will submit the revised Exhibit A to their respective governing bodies for approval. If the parties' governing bodies approve the revised Exhibit A on different dates, the latter of those two dates shall be the date of amendment for purposes of this agreement. In the event that City's ETJ expands or reduces such that the expansion or reduction of the ETJ necessitates an amendment of this agreement, both City and County agree that County shall continue to be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the City's ETJ until this agreement is amended to take into account such ETJ expansion or reduction.

III. Collection of Fees and Related Costs

- a. County will perform the services described in this agreement and City will have no obligation to pay for the same.
- b. All costs involved with permit application and approval and with the approval of subdivision plats, including but not limited to engineering reviews and inspection of public improvements, shall be borne by County and payable out of current revenues available to it. All fees collected by County shall be retained by County.

IV. Miscellaneous Provisions

- a. It is the intent of the Parties that the various clauses, sentences, provisions, paragraphs, and articles of this agreement be severable from one another. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent

jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article held to be invalid, illegal, or ineffective.

- b. Nothing in this agreement, express or implied, is intended to confer upon any person, other than the parties named hereto, any benefits, rights, or remedies, it being the intent of the parties that there be no third party beneficiaries.
- c. This agreement takes effect upon the complete execution of the agreement by both parties. The agreement is effective for five (5) years and thereafter shall automatically renew annually unless terminated by either party. Either party may terminate this agreement by providing thirty (30) days written notice to the other party.
- d. This agreement shall be construed in accordance with the laws of the State of Texas and venue for all purposes shall be in Caldwell County, Texas.
- e. This agreement is not intended to extend the liability of the parties beyond that provided by law. Neither City nor County waives any immunity or defense that would otherwise be available to it against claims by third parties.
- f. This agreement expresses the entire agreement between the parties regarding the subject matter contained herein and may not be modified or amended except by written agreement duly executed by both parties.
- g. The agreement has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.
- h. All notices required under this agreement shall be provided as follows:

To the City:

Director of Planning and Development Review

505 Barton Springs Road

Austin, TX 78704

With copy to:

City Attorney, City of Austin

301 W 2nd St

Austin, TX 78701

To the County:

~~County Engineer, Caldwell County~~ Kasi Miles

Caldwell County Sanitation Department

1700 FM 2720

Lockhart, TX 78646

With copy to:

~~County Attorney~~ Jordan Powell

Assistant District Attorney

Caldwell County Justice Center

~~PO Box 869~~ 1703 S. Colorado Street, Box 5

Lockhart, TX 78646

- i. The parties certify that this agreement complies with the requirements of Chapter 242 of the Texas Local Government Code.
- j. This agreement may be amended with the approval of the governing bodies of each of the parties and if the amendment is reduced to writing and executed by the parties.

EXECUTED BY THE PARTIES AS SHOWN BELOW:

CITY OF AUSTIN

CALDWELL COUNTY

By: _____

By: _____

Date: _____

Date: _____

2015.09.21.16 Host Agreement
Workshop: Relating to the proposed
host agreement submitted by 130
Environmental Park, LLC. **Speaker:**
Commissioner Munoz.

2015.09.21.17 Discussion/Action

concerning proposed host agreement between Caldwell County and 130 Environmental Park, LLC. **Cost: None**

Speaker: Commissioner Munoz.

Backup: 1.

Draft September 23, 2013

HOST AGREEMENT

This Host Agreement (the "Agreement") is made and entered into this ___ day of _____, 2013, by and between CALDWELL COUNTY, TEXAS a political subdivision organized and existing under the laws of the State of Texas, acting through the Caldwell County Commissioners Court (the "County"), and 130 ENVIRONMENTAL PARK, LLC (the "Company"), a limited liability company organized and existing under the laws of the State of Georgia and duly authorized to do business in the State of Texas.

WITNESSETH:

WHEREAS, it is in the best interests of the citizens, residents, businesses and visitors in Caldwell County to provide an economical, efficient, and environmentally sound long-term plan for management and disposal of the non-hazardous solid waste generated within the County and its municipalities in a modern solid waste disposal facility permitted and operated under current federal and state solid waste laws and regulations; and

WHEREAS, the Company proposes to develop, permit, construct and operate a solid waste disposal facility within the County, and the Company is willing to provide certain payments and other benefits to the County in respect to such facility as provided herein; and

WHEREAS, the County through its duly elected Commissioners has determined that it is in the best interests of the citizens and residents of the County to enter into this Agreement.

NOW, THEREFORE, for and in consideration of monetary and other benefits and services to be provided to the County through this Agreement, the respective covenants and agreements herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the parties, the County and the Company hereby agree as follows, each intending to be legally bound:

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Solid Wastes" shall mean non-hazardous Solid Waste (as defined herein) which the Facility (as defined herein) is authorized to receive for handling, processing, and disposal by the Permits (as defined herein) and under applicable solid waste laws and regulations and facility operating rules and procedures.

"Act" shall mean the Texas Solid Waste Disposal Act, Texas Health & Safety Code, Title 5, Chapter 361, and future amendments thereto if applicable under law to the subject matters of this Agreement.

"C&D Waste" shall mean non-putrescible construction and demolition materials and as otherwise defined in Title 30, Chapter 330 of the Texas Administrative Code.

"Commencement Date" shall mean that date on which the Landfill (as defined herein) commences receipt of solid waste for handling, processing, and disposal following final permitting and construction of the Landfill pursuant to the Permits.

"Commercial Waste" means all types of Acceptable Solid Waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing facilities.

"Company" shall mean 130 Environmental Park, LLC and any authorized successor or assignee of its rights and obligations under this Agreement.

"County" shall mean Caldwell County, Texas, acting through its duly elected Commissioners Court.

"County Solid Waste Management Plan" shall mean any Plan currently or hereafter adopted for Caldwell County concerning the management of Solid Waste in and for Caldwell County including but not limited to Solid Waste handling, processing, recycling, and disposal.

"County Waste" shall have the meaning set forth in Section 6 hereof.

"Effective Date" shall mean the last date on which this Host Agreement is executed by the County and the Company as shown by the dates of execution on the signature page of this Agreement.

"Environmental Law" shall mean any federal, state, or local statute, law, regulation, rule, ordinance, code, directive, policy, license or permit imposing liability or standards of conduct or responsibility concerning or relating to environmental regulation.

"Excluded Wastes" shall mean highly flammable substances, regulated hazardous wastes, , certain pathologic and biological waste, explosives, radioactive materials, petroleum, regulated medical waste, sewage sludge, coal ash, or any other waste excluded by an applicable Environmental Law or excluded by any of the terms and conditions of the Permits. This term shall also include such other Solid Waste materials which the Company determines in its sole discretion, to pose an unreasonable risk to the operational safety of the Facility, the employees thereof, or the environment.

"Facility" shall mean the solid waste handling facility to be developed on a portion of the Facility Site (as defined herein), consisting of the Landfill and ancillary and appurtenant structures, facilities, improvements, and contiguous land used for the handling, storage, processing, or disposal, or the recycling and recovery, of Solid Waste or materials in Solid Waste. The Facility may include a recycling facility for C & D Waste materials, a processing facility for recovery of recyclables and reusable materials, and a Green Waste (as defined herein) mulching facility.

"Facility Site" shall mean that area of real property consisting a total of approximately 1,229 acres in northern Caldwell County east of Toll Road 130/US 183 and north of FM 1185, as

more fully described in Exhibit "A" attached hereto, on which the Company proposes to develop and operate the Facility.

"Footprint" shall mean the area of land within the Landfill permitted for placement and disposal of Solid Waste underlain by the regulatory liner system.

"Force Majeure" shall mean an act, event, or condition, beyond the reasonable control of the party that makes performance under this Agreement impossible or impracticable, upon which a party reasonably relies as justification for delay or excuse from performing or complying with any obligation or agreement herein. Such events shall include the following: act of God; act of public enemy; interference by a third party; strike or similar industrial or labor action; fire; flood; accident; or order of any court, regulatory or civil authority which delays or prevents any aspect of the permitting or construction of the Facility contemplated herein.

"Green Waste" shall mean leaves, brush, shrub and tree prunings, nursery residuals, forestry residuals, and other vegetative matter capable of being mulched for beneficial reuse.

"Host Fees" shall mean the amounts payable pursuant to the terms of Section 5 of this Agreement, based on the volume of Acceptable Solid Wastes disposed of at the Landfill for which the Company receives payment of Tipping Fees (as defined herein).

"Industrial Waste" shall mean Solid Waste generated by manufacturing or industrial activities and processes that is not hazardous waste, and as otherwise defined in the Act and/or the Solid Waste Rules (as defined herein), or by the applicable Permits.

"Landfill" shall mean a Type I municipal solid waste landfill, as defined and permitted under the Act and Solid Waste Rules, located, designed, and operated according to the engineering and environmental protection standards of the "Subtitle D" landfill regulations of the

U. S. Environmental Protection Agency and the Act and Solid Waste Rules, and all appurtenant structures, facilities, and improvements.

“Operator” shall mean the Company or an affiliate thereof or any other qualified company having experience in the design, construction, operation and maintenance of similar facilities.

“Permits” shall mean the solid waste handling permit, air quality permit, and all other necessary permits, approvals, and authorizations issued by TCEQ and any other state or federal agency authorizing the development, construction, and operation of the Facility or any component of the Facility.

“Permit Area” shall mean the 519.746 acre area located within the Facility Site and described in Appendix IC of landfill permit application No.2383 on file with TCEQ.

“130 Environmental Park” shall mean a mixed used development commercial and industrial park including the Facility, located within the boundaries of the real property described in Exhibit A hereto.

“Recovered Materials” shall mean materials removed from Solid Waste delivered to the Facility for processing and disposal which are diverted from the waste stream for sale, reuse, recycling, or other beneficial use.

“Solid Waste” shall mean municipal solid waste, as defined in the Act and Solid Waste Rules, and other non-hazardous solid waste allowed by the Permits, but shall not include any Excluded Wastes.

“Solid Waste Rules” shall mean the current applicable rules and regulations governing solid waste management set forth in Chapter 330 of the Texas Administrative Code and any other applicable sections of the Texas Administrative Code, future amendments to those

regulations if applicable under law to the subject matters of this Agreement, and any other applicable requirements of the TCEQ for the permitting, design, construction, operation, and maintenance of the Facility.

“TCEQ” shall mean the Texas Commission on Environmental Quality, including the officials and staff of that agency.

“Tipping Fees” shall mean the fees established at the Facility for the handling and disposal of County Waste and other Solid Waste, as determined by the Company pursuant to the provisions of Section 6 of this Agreement.

“Ton” shall mean 2000 pounds.

“Transfer Station” shall mean a Type V municipal solid waste processing facility to be located within the Permit Area as proposed in registration application No. ____ [to be inserted when provided by TCEQ] on file with TCEQ.

The terms “Hazardous Waste,” “Municipal Solid Waste”, “Municipal Solid Waste Landfill”, “Municipal Solid Waste Disposal Facility”, and any other undefined terms of art used herein, shall have the definitions given those terms in the Act and or the Solid Waste Rules, which definitions are incorporated herein by reference.

2. **FACILITY DEVELOPMENT.** Subject to the Company's acquisition of legal title to the Facility Site, and the Company's receipt of all necessary Permits and associated approvals authorizing the development, construction and operation of the Facility, the Company shall develop, construct and operate the Facility on and within the Facility Site. The Company agrees that the permitting, development, construction and operation of the Facility will comply in all respects with the Act and the Solid Waste Rules, and with all other applicable Environmental

Laws, (subject to the Company's right to contest in good faith the interpretation, application, and enforcement of any such laws).

3. **COUNTY OBLIGATIONS.**

(a) Cooperation and Compliance with Law. To the full extent authorized or required by local, state, or federal law, and subject to compliance with all such applicable law, the County agrees to cooperate with the Company with respect to the permitting and development of the Landfill and the Facility contemplated in this Agreement, and the operation of the Facility following the Commencement Date. The County agrees to carry out in a timely manner, in accordance with existing County ordinances and State law requirements as applicable, all County administrative or other functions necessary for Company to obtain and maintain the Permits and associated approvals for permitting and development of the Landfill and Facility. The County further agrees to comply with all public notice and meeting requirements required by law for official actions and decisions taken by the County with respect to this Agreement or the Facility.

(b) Zoning and Land Use. The County confirms and represents that no zoning and/or other land use law or restriction exists under the current ordinances or orders of the County which would restrict or prohibit the permitting, development, and operation of the Facility, as proposed in landfill permit application No.2383 and transfer station registration application No. ____ [to be inserted when provided by TCEQ] on file with TCEQ. The County may exercise all regulatory and land use authority granted to it in connection with any other proposed land use on the Facility Site.

(c) Solid Waste Plan. If subsequent to the Effective Date of this Agreement the County prepares or adopts any solid waste plan or similar plan with respect to solid waste

management in the County, pursuant to state law or regulation or otherwise, the Company may propose for the County's consideration specific modifications to any such solid waste plan as the Company deems necessary or appropriate relating to the Facility.

(d) Council of Governments Process. The County agrees to cooperate with the Company in connection with any required process and proceedings before the applicable Council of Government (COG) relating to the Facility.

(e) No County Funds. Except for the payment of the Tipping Fees for acceptance for processing and disposal of County Waste at the Facility under the terms of Section 6, and the normal and customary operating expenses, legal expenses and incidental expenses incurred by the County in connection with this Agreement and other incidental expenses to carry out the functions of the County contemplated herein and the obligations accepted herein by the County, the County shall not be required to provide any manner of financing, or pledge or expenditure of County funds, for or in connection with the permitting, development, construction, or operation of the Facility.

(f) The County, subject to applicable legal requirements, agrees to cooperate with the Company as reasonably requested in connection with proposed development within the land comprising the Facility Site of a mixed use commercial and industrial park.

(g) Local Taxes. For purposes of State and County ad valorem property taxation, the County agrees that the Facility Site and all improvements thereon will be assessed at their fair market value in the same manner as comparable commercial and industrial properties located in the County. To the extent allowed by law, all vehicles and equipment owned by the Company and based at the Facility will be registered and taxed in the usual manner in Caldwell County.

4. **PERMITTING AND OPERATION OF THE LANDFILL AND FACILITY.**

(a) Permits. The Company agrees that the Landfill and Transfer Station shall be permitted/registered in accordance with all applicable State of Texas laws and regulations governing the permitting, development, construction, operation, closure, and post-closure care of such solid waste handling facilities, and with other applicable Environmental Laws. The Company also agrees that the Landfill will be consistent with the engineering design and operation standards contained in the "Subtitle D" municipal solid waste landfill regulations of the U. S. Environmental Protection Agency, 40 C.F.R. Part 258, as adopted in the Act and Solid Waste Rules. Upon reasonable request by the County, the Company shall inform the County of the current status of all permit applications, and shall provide the County with copies of public documents following submittal to TCEQ in connection with the Company's application(s) for the Permits. The County acknowledges that a complete copy of the Company's applications for the solid waste handling permit/registration for the Landfill and Transfer Station as submitted to TCEQ has been placed in the Dr. Eugene Clark Public Library in Lockhart, Texas prior to the Effective Date of this Agreement. The Company agrees that it will never seek a permit for an industrial hazardous waste facility on the Facility Site. The Company further agrees that it shall not seek to change or amend any provision of the permits/registration for the Landfill or Transfer Station affecting any requirement under this Agreement without first obtaining a resolution approving such change or amendment from the Caldwell County Commissioners Court.

(b) Time. The Company shall exercise reasonable and diligent efforts to apply for and obtain the Permits authorizing construction and operation of the Facility. The Company and the County acknowledge and agree that the periods of time necessary for the Company to obtain the Permits in final form, and to complete the construction of the Facility for

commencement of operation, are uncertain and are not within the control of the Company and, therefore, this Agreement is not intended to establish or require any specific date or deadline for commencement of operation of the Landfill or other component of the Facility.

(c) Acceptable Waste. The Company will accept for handling, processing, and disposal at the Facility only Acceptable Solid Wastes allowed by the Permits. The Solid Waste accepted for handling, processing, and disposal at the Facility may include but is not limited to Municipal Solid Waste, non-hazardous Industrial Waste, C & D Waste, and Green Waste. The Company agrees that it will not accept for handling, processing, or disposal in the Facility any amount of Excluded Waste, industrial hazardous waste, untreated medical waste, sewage, dead animals, slaughterhouse waste, sludge, grease or grit trap waste, liquid waste from municipal sources other than such waste that the Company may accept for solidification/stabilization and disposal in the Landfill, municipal hazardous waste from conditionally exempt small quantity generators, out-of-state waste, coal ash, sewage sludge, regulated Medical Waste, or regulated Hazardous Waste (“Municipal hazardous waste”) as those terms are defined in Title 30, Chapter 33, Section 330.3 of the Texas Administrative Code in effect on the date of this Agreement. .

(d) Landfill Footprint. The Company agrees that the Footprint shall be limited to a total area over the life of the Landfill of two hundred fifty (250) acres.

(e) Landfill Elevation. The Company agrees that the final maximum elevation of the Landfill shall not exceed 175 feet above the existing ground elevation at that location.

(f) Buffer Zone. The Company agrees to maintain a minimum separation distance of 250 feet between the Footprint and the Facility Site boundary on all sides of the Facility.

(g) Sources of Wastes. The Company agrees it will accept Solid Waste for handling, processing, and disposal at the Facility only from sources (generators, haulers, or TCEQ-authorized transfer stations) within the State of Texas.

(h) Host Fees. The Company during the term of this Agreement shall pay the County Host Fees and the City Host Fees based on the tonnage of Acceptable Solid Waste disposed of at the Landfill, as more specifically provided in Section 5 hereof.

(i) Hours of Operation. After the Commencement Date, the operation of the Facility shall be conducted on weekdays and Saturdays only. The Facility will not accept waste any time on Sunday, without the prior approval of Caldwell County. The Company will conduct other necessary activities at the Facility at times determined by the Company. Except for Facility construction activities and work required due to an emergency situation, no activity shall be conducted at the Facility outside of the regular hours of operation or on Sunday. "Emergency situation" as used herein shall refer to any directive or approval from TCEQ or other regulatory agency, or any condition that creates an imminent threat to the operation of the Facility or to the environment as determined by the Company. The Company will make reasonable efforts under the circumstances to provide prior notice to Caldwell County, when such activities will be conducted at the Facility on Sunday or outside of the normal hours of operation, provided that notice of activities to respond to an emergency situation shall be given as soon as reasonably possible under the circumstances.

(j) Operating Rules. In addition to requirements of the Permits, the Act, and the Solid Waste Rules, the Company shall have the right to implement such additional measures, rules and procedures as it deems necessary or appropriate for the safe and efficient operation of the Facility in accordance with the Permits. A copy of such rules and procedures shall be provided to the County on a timely basis.

(k) Facility Tipping Fees and Charges. Subject to the terms of Section 6 with respect to the payment of Tipping Fees for County Waste, and subject to the payment of Host Fees as provided in Section 5 hereof, the Company shall have the sole right to establish, charge, collect and retain any and all fees and charges at the Facility, including but not limited to any and all Tipping Fees for the handling, processing, and/or disposal of all Solid Waste received at the Facility.

(l) Recordkeeping; County Audits and Inspections. The Company will maintain records concerning operation of the Facility, receipt, processing, and disposal of Solid Waste, and any other records required to be maintained by the Act and/or the Solid Waste Rules. The Company agrees to maintain sufficient records to demonstrate compliance with all Permits for construction and operation of the Facility, and compliance with the terms of this Agreement related to the operation of the Facility and payment of the Host Fees including the volume and tonnage of Solid Waste received at the Landfill. Upon receipt of a written request from the County, the Company will allow the County's designated representative to review or audit the following records, within seven (7) business days from the Company's receipt of such written request: (i) records of the volumes and sources of waste received at the Landfill; (ii) financial records relating to the calculation and payment of the Host Fees; and (iii) records relating to inspections and regulatory compliance of the Facility with the Permits. Such records shall be

subject to review or audit by the County's authorized representative, at the Facility, during regular business hours. The County agrees that its requests to review records as provided in this subsection shall not occur more frequently than once per calendar month and that its requests to audit records as provided in this subsection shall not occur more frequently than once per calendar quarter. The Company acknowledges that the County must comply with the Texas Public Information Act, and cannot agree to withhold information from public disclosure, unless the information is confidential under state law. As such, if the County's request includes information that the Company determines is confidential, the Company shall notify the County in writing what information it believes is confidential and provide the legal basis for confidentiality. The County agrees that it will seek to withhold information that is confidential under state law, from public request, as provided by the Texas Public Information Act. The Company shall provide to the County no later than ten (10) business days following receipt by the Company a copy of any administrative or consent enforcement order, if any, received by the Company from TCEQ concerning the Facility.

(m) Facility Inspections. The County shall be permitted to designate one or more County officials or employees who shall, from and after the Commencement Date, be provided access to the Facility for the purpose of observing operations at the Facility and conducting general inspections of the Facility related to compliance with the terms of this Agreement. The County agrees that the Company or the Operator shall be entitled to provide one or more employees to accompany such person(s) designated by the County during any such inspection. Such designated County representative shall be required to abide by all facility safety rules and requirements.

(n) Local Hiring, Contractors, Vendors and HUB businesses. The Company agrees to use reasonable efforts to hire employees, utilize contractors and subcontractors, and to purchase materials, supplies and equipment from vendors in Caldwell County in connection with the construction and operation of the Facility. The County acknowledges that certain aspects of the construction and operation of the Facility require specialized equipment and expertise and other services that may not be available locally in Caldwell County or the surrounding area. When purchasing materials, supplies, or equipment necessary for day-to-day operation of the Facility, the Company will give preference to Caldwell County merchants and vendors, provided that the materials, supplies, or equipment are offered for sale in that area at a competitive price and meet the Company's procurement requirements. In addition, the Company agrees to use its best efforts to grant a preference in hiring to Caldwell County residents, provided they meet the Company's pre-hire job qualifications. The Company shall maintain a list of qualified, historically under-utilized businesses and shall utilize its best efforts to notify and provide opportunities to contract with said businesses.

(o) Property Value Protection Program. The Company will implement a Property Value Protection Program in the vicinity of the Facility Site, in accordance with the terms set forth in Exhibit "B" to this Agreement.

(p) Facility Entrance. The Company agrees that ingress and egress to and from the Facility for commercial operation shall be provided by an entrance/exit road with appropriate signage and signalization, in accordance with all necessary approvals required from the Texas Department of Transportation or other governmental agency having jurisdiction. The Company agrees that the location, width, and other specifications for the entrance road shall be determined by the Company, and shall be sufficient to prevent traffic congestion at the entrance

on US Highway 183 by ensuring adequate capacity for all vehicles which enter the landfill property, subject to required permits and regulatory approvals.

(q) Traffic. The Company agrees to require that waste haulers contracting with the Company shall, within the County, be permitted to transport loaded Solid Waste transfer trailers to the Facility only upon state or federal roads and highways.

(r) Landscape Plan. The Company agrees prior to the Commencement Date to provide landscaping of the Landfill in the vicinity of Hommanville Trail that will include soil berms and plants..

(s) Litter Control. From and after the Commencement Date, the Company will provide a Litter Control Program for collection of litter on a daily basis on the public right-of-way on US Highway 183 for a distance of two miles in both directions from the entrance road to the Facility, on the public right-of-way of FM1185 from its intersection with US Highway 183 to its intersection with Homannville Trail, and on the public right-of-way of Homannville Trail adjacent to the boundary of the Facility Site.

(t) Facility Website. The Company agrees that promptly following the Commencement Date the Company at its expense shall create and maintain a public website available to the County and its citizens, which shall contain at minimum the following information: (i) the amount in tons of Solid Waste disposed in the Landfill as reported to the TCEQ or other applicable state agencies; (ii) the amount of Host Fees paid for the preceding calendar quarter following issuance of payment; (iii) applicable rules and procedures for the receipt of Solid Waste at the Facility from County citizens, and a schedule of fees for delivery of waste materials to the Facility by the public; rules for use of the citizens convenience center described in Section 7(b); rules for operation of the Property Value Protection Program; copies

of final inspection reports for the Facility by the TCEQ following receipt of the report by the Company; a copy of any final administrative order or consent order if any, as may be issued by any governmental entity regarding the operation of the Facility. The Company shall cooperate with the County to create an electronic link from the County website to the Facility website described in this subsection.

5. PAYMENT OF HOST FEES.

(a) Following the Commencement Date and during the Term of this Agreement (unless earlier terminated), a Host Fee shall be paid by the Company to the County in the amount of One Dollar (\$1.00) per ton for all Acceptable Solid Wastes disposed of at the Landfill from any source, subject to the exceptions and limitations to the Host Fee payments provided below in this subsection (e) of this Section 5 (the "County Host Fee"). The Host Fees payable pursuant to the provisions in this Section 5 are in lieu of any other fees, surcharges, or other monetary amounts payable to the County or to municipalities within the County with respect to the delivery, processing, or disposal of Solid Waste at the Facility during the Term of this Agreement, except as provided herein with respect to adjustment of Host Fee, and except for payment of state and county ad valorem property taxes, and any other state or county taxes, if any, as may be imposed by general law without regard to the nature of the Facility as a solid waste handling and disposal facility. Payment of the County Host Fees, and the City Host Fees described in subsection (c) below, shall be in addition to the per ton fee payable by regulation to the state of Texas and available to local governments by grant as provided in such regulations.

(b) Payment of Host Fees. The payment of the County Host Fees shall be made by the Company before the last day of the month following the end of each calendar quarter, with respect to all Solid Waste received at the Landfill during the preceding calendar

quarter for which the Host Fees are payable pursuant to the provisions of this Section 5. With the payment of the Host Fees the County shall be provided a reconciliation showing the total number of tons of Solid Waste received at the Landfill from any source during the preceding calendar quarter for which the Host Fees are payable, subject to the exceptions and limitations provided below in this subsection (e) of Section 5 (the “County Host Fee”).

(c) City Host Fees. In addition to the County Host Fee, the Company after the Commencement Date shall pay a Host Fee of Twenty Five Cents (\$0.25) per ton for all Acceptable Solid Wastes disposed of at the Landfill from any source, subject to the exceptions and limitations to the Host Fee payments provided in subsection (e) below, to and for the benefit of municipalities in Caldwell County (the “City Host Fee”). Except for the provisions in this subsection regarding the City Host Fees, no municipality located with the County shall have any contractual rights under this Agreement, unless such municipality enters into a municipality waste contract with the Company as provided in Section 6(b) of this Agreement.

(d) Host Fee Adjustment. On the anniversary of the Commencement Date, and every year thereafter, the amount of the County Host Fee and the City Host Fee shall be adjusted and increased based upon any increase in the Consumer Price Index since the date of the last adjustment of the Host Fee amount, utilizing the Consumer Price Index – Southern Region City Average, All Urban Consumers – All Items (1992-1994 equal 100), as published by the United States Department of Labor, Bureau of Labor Statistics, for the month prior to each such annual anniversary of the Commencement Date. Such increase in the Host Fees by the CPI adjustment shall be capped on an annual basis at an amount no more than two percent (2%) above the previous amount of the Host Fee. If this CPI is no longer available, then a comparable replacement index will be used, subject to approval by the County which approval shall not be

unreasonably withheld. There will be no decrease in the County Host Fee or the City Host Fee by reason of any decrease in the Consumer Price Index.

(e) Exceptions to Host Fee Payments. No County Host Fees or City Host Fees shall be payable by the Company for or in respect to any of the following:

(i) No Host Fees shall be payable in respect to Solid Waste collected through a County or municipality litter abatement program and accepted for disposal in the Landfill at no charge pursuant to the provisions of Section 7(d), any household Solid Waste, white goods, or bulky waste delivered to the Citizens Convenience Center by an individual citizen free of charge pursuant to provisions Section 7(b), or for any Solid Waste accepted at no charge on County cleanup days as allowed by Section 7(e), or any Recovered Materials;

(ii) No Host Fees shall be payable in respect to Solid Waste delivered to the Facility for disposal in the Landfill for which the Company receives a Tipping Fee in an amount less than ten dollars (\$10) per ton.

(f) Host Fee Payment Dispute Resolution. In the event of any unresolved dispute between the parties regarding any matter under this Section 5 involving payment of Host Fees, the parties agree to resolve such dispute in accordance with the following procedures:

(i) The parties shall first attempt to resolve by mutual agreement any such dispute between the parties pertaining to the method or amount of payment of the Host Fees, including but not limited to the accuracy of tonnage, by good faith negotiation between authorized representatives of the parties;

(ii) In the event such a dispute cannot be settled amicably through negotiation, then either party may submit such dispute to a formal mediation process, to be

participated in by authorized representatives of both parties, to occur with thirty (30) days of a final good faith determination by either party that the dispute cannot be resolved through the mutual negotiations described in (i) above;

(iii) In the event such dispute cannot be settled through formal mediation, the parties agree to jurisdiction and to participate in a proceeding before a state or federal tribunal wherein the prevailing party shall recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing party, general or special, at law or in equity, to which the prevailing party may show itself justly entitled and that the state or federal tribunal deems reasonable and necessary.

(iv) The continued performance of this Agreement by both parties shall not directly or indirectly be prevented, hindered, or interrupted by reason of a dispute between the parties with respect to the calculation or payment of the Host Fees or the initiation of any dispute resolution process as described herein.

6. **WASTE SERVICES TO COUNTY.** During the Term of this Agreement following the Commencement Date (unless earlier terminated), the Company will provide the following Solid Waste handling and disposal services to and for the benefit of the County and its citizens:

(a) County Waste Disposal Capacity Assurance. The Company guarantees that it will accept and have sufficient capacity and capability for disposal at the Landfill for the Term of this Agreement following the Commencement Date (unless earlier terminated) of all Acceptable Solid Waste generated by residences in the County, or any participating municipality located within the County, whether collected by the County or those municipalities directly or collected for a fee by a private contractor having a waste collection contract with or residential

waste collection franchise from the County or a municipality to provide residential waste collection services within its geographic boundaries. The Company further guarantees that it will have sufficient capacity and capability for disposal at the Landfill of Commercial Waste and Industrial Waste (as defined herein) generated within the County, or within a participating municipality located within the County, provided such wastes are Acceptable Solid Waste as defined in this Agreement. The Tipping Fees for processing and disposal in the Landfill of County Waste shall be determined as provided in this Section 6.

(b) Municipality Waste Contracts. The Company agrees that it will enter into appropriate agreements with those municipalities within the County desiring to utilize the Facility or the Landfill for their Solid Waste processing and disposal needs (a “participating municipality”).

(c) County Tipping Fees. The Company will accept eligible County Waste described in this subsection for processing or disposal in the Facility and the Landfill for a Tipping Fee of _____ (\$____) per ton, subject to annual adjustment of the Tipping Fee as provided below (the “County Tipping Fee”). The County Tipping Fee shall apply to all Solid Waste generated at a residence within the County and delivered to the Facility by a resident of such residence, or generated at any buildings or facilities owned or operated by the County and delivered to the Facility by the County (except for Solid Waste delivered to the Facility for handling and disposal without charge as provided in the provisions of Section 7). Tipping Fees for Commercial Waste and Industrial Waste received for processing or disposal at the Facility shall be as provided in subsection (d) of this Section 6. The County shall be invoiced by the Company on a monthly basis at the amount of the County Tipping Fee for the amount of County Waste delivered to the Facility by the County. All invoice amounts shall be payable to

the Company within thirty (30) days of the invoice date. If the Company ever charges to a third party (an entity or individual not affiliated with the Company) a disposal-only tipping fee below \$____ per ton for a waste load generated outside of Caldwell County, the Company shall immediately lower the County Tipping Fee for the same type of waste and terms (including volume discounts, etc.) to an amount less than such lower rate. Further, on the anniversary of the Commencement Date, and every year thereafter, the amount of the County Tipping Fee shall be adjusted and increased based upon any increase during the preceding one year period in the Consumer Price Index – Southern Region City Average, All Urban Consumers – All Items (1992-94 equal 100), as published by the United States Department of Labor, Bureau of Labor Statistics for the month prior the applicable adjustment date. The increase in the County Tipping Fee by this CPI-Adjustment shall be capped on an annual basis at an amount no more than two percent (2%) above the previous applicable County Tipping Fee amount. If this CPI is no longer available, then a comparable replacement index will be used, subject to approval by the County which approval shall not be unreasonably withheld. In addition to the CPI adjustment described above, the County agrees that the County Tipping Fee may be adjusted by the Company from time to time during the Term of this Agreement by the amount of any fee, assessment, surcharge, or tax imposed on the Facility, or on the Solid Waste processing and disposal services provided to the County by the Facility under the terms of this Agreement, by or pursuant to any federal or state law or regulation which takes effect after the Effective Date of this Agreement.

(d) Commercial and Industrial Waste Tipping Fees. The Tipping Fees at the Facility for handling and disposal of Commercial Waste generated by businesses in the County and Industrial Waste generated by manufacturing and industrial businesses within the County, or located within any participating municipality in the County, shall be determined in the

Company's reasonable discretion based upon prevailing rates for handling and disposal of similar waste materials in the State of Texas.

(e) Tipping Fees for any County Waste received at the Facility for processing or disposal that requires special handling shall be determined by the Company in its sole discretion, except that such Tipping Fee may not exceed the rate charged or that would be charged to a third party at that time for processing or disposal of the same type of waste.

7. **ADDITIONAL BENEFITS AND SERVICES TO COUNTY.**

(a) Community Pavilion. The Company will construct at its expense a pavilion to be used for community events and meetings on the Facility Site at a location selected by Company to take advantage of the views of the lake on the property and other natural areas.

(b) Citizens Convenience Center. The Company will establish and maintain after the Commencement Date a Citizens Convenience Center at a suitable, accessible location on the Facility. Between the hours of 8:00 a.m. and noon each Saturday, the Citizens Convenience Center shall be open to individual citizens of the County and participating municipalities located within the County for delivery of household Solid Waste from individual residences, including but not limited to white goods and bulky wastes, at no charge to County citizens, other than any fee required to be paid to the State of Texas or a state agency. The amount of such household Solid Waste accepted at the Citizens Convenience Center at no charge shall be limited to pickup truck loads or other vehicle loads not exceeding two (2) cubic yards in volume.

(c) Recycling. The Citizens Convenience Center shall also be available to citizens of the County and participating municipalities between the hours of 8:00 a.m. and noon each Saturday for drop off of recyclables. Recyclables accepted at the Citizens Convenience

Center shall include aluminum and bi-metal cans, newsprint, recyclable cardboard materials, and white goods. Recyclables shall be accepted at the Citizens Convenience Center at no charge to the Citizens of the County and participating municipalities. The Company from time to time will evaluate other recyclables markets and, in its sole discretion, may add other materials to this list of accepted recyclables, if recycling of such materials is determined by the Company to be economically viable.

(d) County Litter Abatement Program. From and after the Commencement Date, Solid Waste generated or collected through any litter abatement program sponsored by the County or by a participating municipality shall be accepted for disposal at the Facility at no cost, other than any fee required to be paid to the State of Texas or a state agency. This waste disposal service to the County will also be provided to any participating municipality. The provisions of this subsection shall not apply to Solid Waste for which any cost or fee has been or will be received by any commercial contractor(s) or other person(s) for the collection, transportation, or disposal of that Solid Waste collected through such County or municipality sponsored litter abatement program.

(e) County Clean-up Days. From and after the Commencement Date the Company will sponsor County-wide clean-up days six times each year, to be designated by the Caldwell County Commissioners Court. During regular operating hours on these Saturdays, the Company shall accept for handling and disposal at the Facility, at no charge to the County or its citizens or to any participating municipality or its citizens, other than any fee required to be paid to the State of Texas or a state agency, any acceptable Solid Waste collected from public property within the County or a participating municipality requiring clean-up (provided that the Facility will not accept any Excluded Waste). Alternatively, such waste may be deposited in

specially designated collection dumpsters located in the County on said Saturdays, and then delivered to the Facility at no charge through the following Wednesday. The acceptance of Solid Waste at no charge on these annual clean-up days will not include Solid Waste for which monetary payment or fee has been or will be received by any commercial contractor(s) or other person(s) for collecting, transporting, or disposing of such waste. In addition, the Company will assist the County with organizing "amnesty" days for citizens of the County to deliver to the Facility for disposal for proper handling, at no cost to those citizens, household hazardous materials, and unused agricultural chemical residues, which require special handling and are not authorized to be disposed in a municipal solid waste landfill, such as electronics, computers, paint, household chemicals, residential pesticides, and medications.

(f) Public Education. The Company agrees that, following the Commencement Date, it will provide access to the Facility and appropriate literature for field trips by classes of students from the public school system and other schools located in the County who are studying environmental sciences or similar studies. The Company also agrees to provide access for field trips by local civic groups or similar groups and organizations, as reasonably requested by the County. All such field trips shall be scheduled at appropriate times by the Company and shall be coordinated with the Company by appropriate authorized officials of the school, group, or organization requesting a field trip to the Facility.

(g) Citizens Advisory Committee. The Company agrees that the County shall be authorized, after the Effective Date, to form a Citizens Advisory Committee, consisting of five (5) persons who are Caldwell County residents. The County shall appoint the members of the Citizens Committee. The term of each appointment shall be alternating two (2) year terms. The purpose of the Citizens Committee shall be to communicate with representatives of the

Company concerning the Facility and its operation as representatives of the citizens of Caldwell County, including communicating with the Company with respect to concerns or grievances of Caldwell County residents.

(h) Development of 130 Environmental Park. After the Permits are issued and become final and non-appealable, the Company shall exercise its best efforts to develop 130 Environmental Park (as defined herein) within the boundaries of the real property described in Exhibit A. As used herein the term “best efforts” shall mean diligent efforts and commitment of business resources, including but not limited to monetary and personnel resources, that a reasonable person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved within a reasonable period of time under the circumstances, provided that this term shall not require the violation of any laws or regulations or efforts that would create financial hardship to the Company or that are financially unfeasible, or that require the Company to ensure results that are beyond the company’s reasonable control.

(i) Scholarships. From and after the Commencement Date, the Company will fund a general scholarship in the amount Two Thousand and No/100 Dollars (\$2,000.00) annually for each public high school with an attendance zone located within the County.

(j) Upon the Commencement Date and each anniversary date thereafter for a period of four(4) years thereafter, the Company shall pay the sum of \$5,000 to the County to be utilized for county library support. Upon the fifth anniversary date of the Commencement Date and each anniversary date thereafter for a period of four (4) years thereafter, the Company shall pay the sum of \$10,000 to the County to be utilized for county library support.

8. TERM. The Term of this Agreement shall commence as of the Effective Date, and shall continue for a period of thirty (30) years after the Commencement Date and for so long

thereafter as Solid Waste is being accepted at the Facility, unless sooner terminated under the termination provisions in Section 13 of this Agreement. In the event any federal or state law operates to limit or modify the Term of this Agreement as provided in this Section 8, and subject to the right of either party to challenge the legality of such law, the parties agree that the Term of this Agreement shall extend for the longest period of time authorized by applicable law and the provisions of this Section.

9. **REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

(a) Representations, Warranties and Covenants of the County. The County represents, warrants, and agrees as follows:

(i) the County is validly existing as a political subdivision in good standing under the laws of the State of Texas, and the County through its Commissioner's Court has full power and authority to enter into this Agreement and to perform all obligations of the County hereunder;

(ii) the County has determined that it is in the public interest of the County and its citizens to enter into this Agreement, and the County Commissioners Court has duly authorized the execution and delivery of this Agreement and the County's performance of the obligations contained herein;

(iii) this Agreement constitutes a valid and legally binding obligation and agreement of the County enforceable in accordance with its terms

(iv) the County will cooperate with the Company in defending any claim or suit seeking to invalidate this Agreement or any right of the Company or obligation of the County provided in this Agreement.

(b) Representations, Warranties and Covenants of the Company. The Company represents, warrants, and agrees as follows:

(i) it has been duly organized under the laws of the State of Georgia, is qualified to do business in the State of Texas, and will continue to be qualified throughout the Term of this Agreement so long as the Company is a party to this Agreement;

(ii) the Company has all requisite corporate powers and authority to enter into and fully perform its obligations in this Agreement;

(iii) the Company's execution and delivery of this Agreement and performance of its obligations contained herein have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement is enforceable against the Company in accordance with its terms; and

(iv) there is no action, suit, or legal proceeding pending or threatened against or affecting the Company wherein any decision would materially and adversely affect the transactions contemplated herein.

10. INSURANCE AND FINANCIAL RESPONSIBILITY.

(a) Liability Insurance. Beginning no later than the commencement of construction at the Facility pursuant to the Permits, and continuing so long as this Agreement remains in effect and such insurance coverage remains available, the Company will carry liability insurance insuring the Company against claims arising out of the Company's construction and operation of the Facility, as follows:

(i) public liability insurance in the sum of at least Two Million Dollars (\$2,000,000) insuring the Company against personal injury and property damage claims arising out of the Company's construction or operation of the Facility;

(ii) commercial general liability insurance coverage with combined single limits of no less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate;

(iii) commercial automobile liability insurance coverage with limits of no less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage; and

(iv) umbrella liability insurance coverage with limits of no less than Three Million Dollars (\$3,000,000). Such liability insurance coverages shall be carried with an insurance company or companies licensed to do business and in good standing in the State of Texas.

The Company shall cause the County to be named as an additional insured on all liability insurance policies required by these provisions. The Company shall furnish the County with certificates attesting to the existence of the foregoing liability insurance coverages.

(b) Financial Responsibility – Facility Operation. The Company will comply with all applicable requirements of the Act and the Solid Waste Rules with respect to financial responsibility for emergency actions, preventive or corrective actions, monitoring, and related actions regarding the Landfill and its operation.

(c) Financial Responsibility – Post-Operation. The Company will comply with all requirements of the Act and the Solid Waste Rules with respect to financial responsibility for closure and post-closure care of the Landfill. Upon final approval of a financial responsibility instrument for the Facility by TCEQ, the Company will provide to the County complete copies of all approved financial responsibility documentation and TCEQ approval.

11. **FORCE MAJEURE.** From and after the Commencement Date, in the event the Company or the County is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of its obligations under this Agreement, then such obligation of the Company or the County may be suspended during the continuation of such inability so caused by the event of Force Majeure, but for no longer period. At any time the Company or the County intends to rely upon an event of Force Majeure to suspend its obligations under this Agreement as provided in this Section, the Company or the County shall notify the other party as soon as reasonably practicable describing in reasonable detail the circumstances of the event of Force Majeure, and shall provide prompt written notice to the other party when the event of Force Majeure has ceased.

12. **ASSIGNMENT.**

(a) **By Company.** The Company shall not assign this Agreement, any permits or rights to the Landfill or Transfer Station, or any portion of the Facility Site to any entity that is exempt from county property taxes. Provided that the Company is not in default hereunder, the Company shall have the right to assign this Agreement and all rights and obligations of the Company hereunder to any other person or entity, upon written notice to the County, provided that such assignment by the Company shall be subject to the following requirements: (i) prior to the effective date of such assignment or transfer, a proposed assignee or transferee of this Agreement shall be required to assume in writing the obligations and liabilities of the Company to the County under this Agreement; (ii) an assignment of this Agreement shall be subject to the County's right to require that the proposed assignee provide documentation reasonably demonstrating the financial ability of the proposed assignee to carry out the terms of this Agreement; and (iii) an assignment of this Agreement shall be subject to the County's right to

require that the proposed assignee (including a corporation, partnership, or association, an officer, director, manager, or shareholder of 5 percent or more of stock or financial interest in said corporation, partnership, or association) provide a certification of no prior “bad acts” as described herein. The term “bad acts” shall include anytime the proposed assignee (ii) has obtained or attempted to obtain a permit or registration by misrepresentation or concealment; (iii) has been convicted by final judgment, and all appeals have been exhausted, in any state or any federal court of any felony involving moral turpitude within the three years immediately preceding the proposed assignment; (iv) has been convicted of any violations of any environmental laws punishable as a felony in any state or federal court within the five years preceding the proposed assignment; or (v) has been adjudicated in contempt of any court order enforcing any federal environmental laws or any State’s laws within the five years preceding the proposed assignment. In the event of an assignment of this Agreement by the Company, the term “Company” as used herein will apply in all respects to such assignee. In the event of a sale of the majority ownership interest in the Company to, a merger of the Company with, or a lease or operating agreement for the Landfill or Facility with, another entity, the County may require that it be provided with: (a) documentation reasonably demonstrating the financial ability of such entity to carry out the terms of this Agreement; and (b) a certification of no prior “bad acts” as described above. The foregoing conditions to assignment of this Agreement by the Company shall not apply to assignment and transfer of this Agreement and the rights and obligations of the Company under this Agreement to any affiliate of the Company. As used herein “affiliate” means any company or other legal entity controlled by the Company or under common ownership or common control as the Company. The Company shall not assign any rights and/or obligations to a proposed assignee that: (1) has intentionally misrepresented or concealed any

material fact in the financial documents submitted to the County; or (2) cannot provide a certification of no prior “bad acts” as described above.

(b) By County. The County may assign this Agreement to a County-controlled solid waste management authority, resource recovery authority or similar governmental entity created for the purpose of solid waste management, if any, created or activated by the County after the Effective Date pursuant to applicable Texas law, provided that such an assignment by the County may not materially alter the obligations of the County in this Agreement.

(c) The Company in the performance of certain obligations in this Agreement may utilize the services of qualified independent contractors, professionals, and consultants, provided that the Company will remain responsible to the County for the performance of its obligations hereunder.

13. TERMINATION OF AGREEMENT.

(a) Termination by Company. The Company shall have the right to terminate this Agreement at any time upon occurrence of any of the following events:

(i) if, prior to fifteen (15) years after the Commencement Date, the County authorizes or enters into an agreement with any other person or entity with respect to the location or development in the County of any other Type I municipal solid waste facility;

(ii) if TCEQ fails or refuses to issue, grant, or renew any Permit, license, consent, authorization, or approval required by the Company for the construction, operation, or continuation of operation of the Landfill;

(iii) if TCEQ or other agency with jurisdiction permanently suspends, revokes or terminates any Permit or other license, consent, authorization or approval necessary for continuation of operation of the Landfill;

(iv) if a change occurs in any applicable law, regulation, rule, ordinance, or Permit condition, or in the interpretation or enforcement thereof, or any new law, regulation, rule, ordinance or Permit condition is imposed or takes effect, the impact of which prevents or materially impairs the ability of the Company to construct, operate, or continue to operate the Landfill, or to carry out the Company's performance obligations under this Agreement;

(v) if any order, judgment, action or determination of any federal, state or local court, agency, or governmental body is entered or imposed which prevents or materially impairs the ability of the Company to construct, operate, or continue to operate the Landfill, or to perform its obligations under this Agreement;

(vi) an event of Force Majeure occurs and continues unabated for a period of one hundred eighty (180) days which, in the Company's sole discretion, renders the permitting, construction, operation or continued operation of the Landfill impossible or unfeasible for financial or other reasons;

(vii) if the Company (1) determines in its reasonable discretion that the Landfill cannot feasibly or economically be permitted, constructed, or continue to be operated after the Commencement Date for reason(s) other than the grounds for termination specifically described above in this subsection (a), and (2) agrees and commits, in a covenant running with the land, not to accept solid waste at the Facility after the date of termination;

(viii) if a default of this Agreement is committed by the County that is not cured in accordance with the terms in Section 14 of this Agreement (subject to the Company's right to waive such default by the County);

(ix) if the County, acting through a majority of the County Commissioner's Court acting in an official capacity: requests that TCEQ or any other agency conduct a contested case hearing regarding any of the Permits; seeks party status in any contested case hearing to oppose any of the permits; otherwise opposes, assists others in opposing, objects to or otherwise seeks to prevent or delay efforts by the Company to obtain any of the Permits; or brings, aids, supports, or participates, except as a defendant, in any legal proceeding seeking to invalidate this Agreement, or to terminate any material right of the Company or material obligation of the County under this Agreement.

(b) Termination by County. The County shall have the right to terminate this Agreement in the event a default of this Agreement is committed by the Company that is not cured in accordance with the terms of Section 14 of this Agreement. The County agrees that in the event any such termination of this Agreement by the County occurs subsequent to the Company's receipt of the Permits, the County's remedies for such default shall be limited to a claim for damages, if any, caused by such default of the Company, and/or specific performance or injunctive relief to enforce the covenants running with the land provided for in this agreement. The Company will remain liable for payment of all Host Fees, if any, accrued and payable pursuant to Section 5 of this Agreement as of the date of delivery to either party of a notice of termination as provided in subsection (c) below.

(c) Termination Notice. Any termination of this Agreement shall be by written Notice of Termination delivered to the other party by hand or certified mail, setting forth

in detail the reason(s) for termination. Unless otherwise agreed by the parties, termination of the Agreement shall be effective thirty (30) days after the date of delivery of such written Notice of Termination, unless the Notice of Termination is contested by the other party by legal means, or if the parties mutually agree to delay such termination date.

(d) Project Continuation. The County acknowledges and agrees that an election by the County at any time to terminate this Agreement for any reason shall not prevent or preclude the right of the Company in accordance with applicable law and the Permits (if then issued), to Permit, develop, construct, operate, or continue to operate the Landfill and Facility contemplated by this Agreement. The Company agrees that such termination of this Agreement by the County shall not release Company from any obligation imposed upon the Company by the Permits, the Act, or the Solid Waste Rules, or by any other applicable Environmental Law, concerning the operation, closure, or post-closure maintenance of the Facility, or other legal or regulatory requirements applicable to the Facility.

14. DEFAULT AND REMEDIES.

(a) Default. An event of default shall mean a breach of this Agreement by the Company or by the County, which breach is not cured pursuant to the provisions of this Section. A "breach" shall mean a material breach of a party to comply with a material provision or obligation of this Agreement, which results in a material harm, damage, or injury to the other party. In the case of any breach of this Agreement by a party, that party upon receipt of notice or breach from the other party shall either:

(i) cure the breach within sixty (60) days of receipt of written notice from the non-breaching party, or

(ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the breach, and in such case the sixty-day period will be extended for so long as the breaching party is actively and continuously pursuing a cure of the breach. Notwithstanding the foregoing, in the event of a failure of any party to this Agreement to pay the other party any monetary amount required to be paid when due hereunder, the cure shall consist of payment to be made within fifteen (15) days of written demand from the non-breaching party, together with interest accruing at the legal rate from the date the payment originally was due.

(b) Remedies. In the event of a default under this Agreement, the non-defaulting party, upon five (5) days prior written notice to the defaulting party, shall have the right, but not the obligation or duty, to cure such default, and to offset the cost of curing the default against any sums due or which thereafter become due to the defaulting party. If an event of default occurs in the payment obligations of either party and is not cured in the manner provided in subsection (a) of this Section, Agreement shall continue in force and the non-defaulting party shall have the right to take whatever action it deems necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement. Subject to the provisions of Section 11 with respect to an event of Force Majeure, if the Company during the Term of this Agreement after the Commencement Date is unable, for any reason not caused or contributed to by the County, to accept County Waste as provided in Section 6 for a continuous period three (3) business days, and if the County is therefore required to dispose of County Waste at some other solid waste disposal facility, then the Company agrees to reimburse the County for the amount by which the actual costs of disposal of the County Waste at such other

solid waste disposal facility exceeds the County Tipping Fee, but only if and for so long as the Facility is unable to accept County Waste for processing or disposal.

15. **INDEMNIFICATION.** Except to the extent caused by or resulting from (a) the negligence or willful misconduct of the County, or any of its commissioners, officers, or employees, or (b) caused by or resulting from a breach by the County of any obligation, covenant, representation, or warranty of the County contained in this Agreement, the Company agrees to defend, indemnify, and hold harmless the County, including its commissioners, officers, and employees (collectively the "County Indemnitees"), from and against any loss, claim, suit, cause of action, liability, penalty, fine, demand, or damages, as well as related costs and expenses (including costs of defense, any monetary settlement, and reasonable attorney's fees and expenses of litigation) ("Indemnified Costs"), caused by or directly resulting from the following: (i) any negligent or willful act or omission of the Company, its agents, employees, or contractors in connection with the Company's development, construction, or operation of the Facility; (ii) default by the Company of its obligations, covenants, representations, or warranties contained in this Agreement; or (iii) arising from the existence of this Agreement or actions by the County pursuant to its obligations under this Agreement with respect to the Landfill (an "Indemnified Claim"). The Company will reimburse the County Indemnitees for Indemnified Costs arising from an Indemnified Claim within forty-five (45) days of receipt from the County of invoices or other satisfactory documentation of such Indemnified Costs and the amount thereof. With respect to an Indemnified Claim, the County Indemnitees agree they will employ legal counsel, experts and other professionals only when reasonably necessary to defend any Indemnified Claim, and that such professionals shall be mutually agreed to by the parties. Nothing herein shall limit the ability and the obligation of the County Indemnitees to assert any

sovereign immunity, official immunity, or legislative immunity defense or any other defense under applicable law against any claim or suit described herein involving an Indemnified Claim.

16. **NOTICES.** All notices or other communications to be given hereunder shall be in writing and may be given by personal delivery or by registered or certified United States Mail, return receipt requested, properly addressed as follows:

To the Company: 130 Environmental Park, LLC
c/o Green Group Holdings, LLC
132 Riverstone Terrace, Suite 103
Canton, Georgia 30114
Attention: Ernest C. Kaufmann

With a copy to: Brent W. Ryan
McElroy, Sullivan, Miller, Weber & Olmstead L.L.P.
P. O. Box 12127
Austin, Texas 78711

To the County: Caldwell County Commissioners Court

Attention: County Judge

With a copy to: _____

A change of address by either party shall be communicated by notice given to the other in the same manner as specified above. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery if personally delivered in writing, or if such notice is sent by registered or certified United States mail as provided above, then upon the third regular business day following the date on which such notices were deposited with the United States Postal Service or upon actual delivery as shown by a return receipt, whichever first occurs.

17. **GOVERNING LAW.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of laws principles.

18. **SEVERABILITY.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Provided that such invalidation of a provision of this Agreement does not materially alter the rights or obligations of a party under this Agreement, the parties further agree that, in lieu of any material term or provision held to be invalid, illegal or unenforceable, there shall be added by mutual consent as part of this Agreement an alternative term or provision to such invalidated term or provision as shall be valid, legal and enforceable. (Notwithstanding anything to the contrary in this Section, either party shall continue to have in such event the right of termination of this Agreement in accordance with the terms of Section 13 hereof).

19. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective authorized successors and assigns.

20. **CONSTRUCTION.** This Agreement is a result of joint negotiations and authorship by the parties and, therefore, no part of this Agreement shall be construed as the product of any one of the parties hereto.

21. **FURTHER ASSURANCE.** The parties each agree to cooperate in good faith to enter into such amendments or addenda to this Agreement as shall be reasonably necessary or appropriate to carry out the purposes and intent of this Agreement.

22. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the Company and the County and, unless otherwise specifically provided, cancels and supersedes all prior negotiations, representations, understandings and agreements, whether written or oral, between the parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Agreement will be effective unless in writing and signed by the parties hereto.

23. **COUNTERPARTS.** This Agreement may be executed in two (2) counterparts each of which will be considered an original.

24. **AUTHORITY OF PARTIES.** The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of the respective party for the purpose of duly binding that party to this Agreement. The County represents and warrants that it has taken all official action in accordance with applicable law for the approval and authorization of the execution of this Agreement on behalf of the County.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or officials as of the date(s) and year provided below.

COMPANY:

130 ENVIRONMENTAL PARK, LLC

By: _____

Typed or Printed Name: _____

Title: _____

Date of Execution: _____

Draft September 23, 2013

Attest: _____
Title: _____

BEFORE ME, the undersigned authority, on this _____ day of _____,
_____, personally appeared _____, on behalf of 130 Environmental
Park, LLC, known to be the person whose name is subscribed to the foregoing instrument and
acknowledged to me that he executed the same for the purposes and consideration therein
expressed.

Notary Public

My commission expires on: _____

(seal)

Draft September 23, 2013

CALDWELL COUNTY, TEXAS

By: _____

Printed or Typed Name: _____

Title: County Judge, Caldwell County

Date of Execution: _____

Attest: _____

Title: _____

[COUNTY SEAL]

BEFORE ME, the undersigned authority, on this _____ day of _____, _____, personally appeared _____, on behalf of Caldwell County, Texas, known to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Notary Public

My commission expires on: _____

(seal)

Draft September 23, 2013

EXHIBIT "A"

DESCRIPTION OF THE FACILITY SITE

Legal Description

EXHIBIT “ B” TO HOST AGREEMENT

PROPERTY VALUE PROTECTION PROGRAM

1. Effective Date. This Property Value Protection Program (“this Program”) shall take effect when the Company (as defined in the Host Agreement) has received all final, non-appealable Permits (as defined in the Host Agreement) for the construction and commencement of operation of the 130 Environmental Park Type I solid waste disposal and recycling facility (“the Facility”) and as of that date the Facility commences commercial operation (the “Effective Date”).

2. Eligibility. The Program will be available to property owners who hold legal title to residential real property, as of the effective date of the Host Agreement between the Company and Caldwell County (the “Eligibility Date”), located within a one (1) mile radius of the boundaries of the approved waste disposal area (footprint) within the facility as identified in the Permits. As used herein, eligible residential real property means property consisting of a legal tract of no more than thirty (30) contiguous acres, as designated by the property owner, which, as of the Eligibility Date, contains a personal residence occupied or leased by the property owner. Eligibility to participate in the Program extends only to the lawful owner or owners of such eligible property on the Eligibility Date, and will not be transferable to a subsequent purchaser of the real property after the Eligibility Date. Eligibility to participate in this Program will not be transferrable to a subsequent purchaser after the Eligibility Date.

3. Participation in Program. On or after the Effective Date, the Company will provide written notice by certified mail to each eligible property owner of the rights and obligations provided by this Program, including the Owner’s right to participate in the Program,

the Effective Date of the Program, and the requirements for participation in the Program. A copy of this Exhibit "B" to the Host Agreement shall be provided to the property owner with such notice. The property owner may elect to participate in the Program by delivering notice to the Company in writing, no later than ninety (90) days after the date of receipt of such notice from the Company, that the property owner desires to participate in the Program. The property owner (hereinafter the "Participant"), at the same time of such notification to the Company of the Participant's election to participate in the Program, shall also provide the Company with a copy of the deed or other legal instrument demonstrating the Participant's legal ownership of the property, including a complete legal description and any existing survey plat of the Participant's eligible property. Any eligible property owner who fails to timely elect to participate in the Program in this manner will not be authorized to participate in this Program after expiration of the 90-day notice period provided in this Section. For any eligible property having more than one lawful owner as of the Eligibility Date, the owners shall be authorized to participate in this Program only if each owner elects to participate by notifying the Company in the manner and within the time period provided in this Section.

4. Sale of Property. If an eligible Participant during the Term of the Program as defined below desires to sell his or her eligible property, then the Participant must notify the Company in writing, and, no later than ninety (90) days after such notification, provide the Company with either: (a) a copy of the most recent certified appraised value of the eligible real property from the Caldwell County Appraisal District; or (b) a written appraisal of the Property, performed by a qualified appraiser having at least five (5) years of appraisal experience and having no current or former relationship with the Company or the Participant. The eligible property shall include improvements to the property existing as of the Effective Date. The

appraisal shall determine the fair market value of the eligible property as of the Eligibility Date without regard to any potential or theoretical impact to the market value of the property from the existence and operation of the Facility. If the Company disagrees with the appraised value of the property provided by Participant, then the Company may, within ninety (90) days, obtain a second, independent appraisal of the property, at the Company's expense. If the second appraisal results in an appraised value of the property which is less than the first appraisal by more than five percent (5%) of the first appraisal value, then the average of the two appraisals will constitute the fair market value of the property for purposes of this Program.

5. Property Value Protection. To be eligible for the property value protection provided under this Program, the Participant's eligible property (a) must be offered or listed for sale and actively marketed by the Participant or a real estate broker at a price no less than the appraised fair market value determined by the appraisal method described in Section 4 above, and (b) must be sold to a *bona fide* purchaser for value. "*Bona fide* purchaser for value" means a third party not related by blood, marriage, or business association to the Participant, and with whom the Participant has entered into a good faith, arms length agreement in writing for sale and purchase of the property for a *bona fide* price. Upon closing of the sale of the Property and lawful conveyance of title to the *bona fide* purchaser, the Participant shall furnish the Company complete and accurate copies of the sales contract and all closing documents pertaining to the sale, including the deed or other legal instrument transferring title to the *bona fide* purchaser. If the Participant sells his or her property in this manner, and if the actual sales price is less than the fair market value of the property as determined under Section 4 above, then the Company will reimburse the Participant for the difference between such actual sales price, as shown in the closing documents, and the fair market value as determined by the appraisal method described in

Section 4. Unless the Company has notified the Participant that the information provided by the Participant is incomplete, or the Company has notified the Participant of an objection to the Participant's request for reimbursement due to a failure to comply with the terms of this Program, then the Company shall reimburse the Participant the amount due under the terms of this Section 5 no later than thirty (30) days from the Company's receipt of the Participant's request for reimbursement with the required documentation. This Program shall apply only to the first sale of an eligible property following the Effective Date. If the Participant is unable to sell the eligible property within twelve (12) months of the original listing date, provided the property has been actively marketed for sale during the full 12-month period, Company shall pay the Participant the difference between the appraised value determined in accordance with the provisions of Section 4 and the highest *bona fide* offer price received by the Participant during the 12-month period or other period of the listing for sale. Alternatively, the Company in such case shall have the option of purchasing the eligible property for the amount of such highest *bona fide* offer received by the Participant.

6. Term of Program. This Program shall remain in effect for a period of ten (10) years from the Effective Date. No Participant shall have any rights under the Program after that termination date, unless the Company has received from the Participant prior to that termination date the written notification and documentation of a *bona fide* sale of the Participant's property as required the provisions of Section 5.

7. Release. Each Participant, by and through his or her election to participate in this Program, agrees that such participation in this Program will be in lieu of any right of Participant to make or assert any legal complaint, claim, or demand alleging that the value of the Participant's property has been damaged or diminished due to the presence or operation of the

Facility. In consideration for the benefits of participation in this Program, the Participant may be requested by the written notification from the Company of the Participant's eligibility to participate in the Program, to execute a written waiver and release of all rights to assert any such complaint, claim, or demand, against the Company, in consideration of the Participant's election to exercise the rights granted by this Program.

8. Wherever used herein, the term "Company" shall have the meaning given that term in the Host Agreement. As used herein the term "Participant", with respect to any property having more than one legal owner, shall be deemed to include all such owners, provided that each legal owner shall have elected to participate in the Program in accordance with the provisions in Section 3 hereof.

2015.09.21.18

Adjournment.