

# Item # 3

**PROCLAMATION  
AFRICAN AMERICAN HISTORY MONTH**

**WHEREAS**, the citizens of our community have long been aware of the historic achievements and contributions of individuals; and

**WHEREAS**, the linkage of these contributions to education is recognized; and

**WHEREAS**, without a strong, free, great nation, these contributions would not have been possible; and

**WHEREAS**, we recognize and appreciate the culture, language, lifestyle, diversities and corresponding aesthetic values of all Americans, including African Americans; and

**WHEREAS**, all of these contributions have made our city, state and nation the great society it has become.

**NOW, THEREFORE**, I, Joanna Morgan, serving as Mayor of the City of Smithville, do hereby proclaim February as

**AFRICAN AMERICAN HISTORY MONTH**

and urge all citizens and institutions of the City and Community to reaffirm their commitment to promoting awareness of, and appreciation for, the African American Heritage and its place in American Society.

In witness whereof, I have hereunto set my hand and caused the seal of the City of Smithville, Texas to be affixed, this the 8<sup>th</sup> day of February 2021.

\_\_\_\_\_  
Joanna Morgan, Mayor

Attest:

\_\_\_\_\_  
Jennifer Lynch, City Secretary

# Item # 5

Form #2201 Rev. 05/2020

Submit to:

SECRETARY OF STATE

Government Filings

Section P O Box 12887

Austin, TX 78711-2887

512-463-6334

512-463-5569 - Fax

Filing Fee: None



**STATEMENT OF OFFICER**

**Statement**

I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Title of Position to Which Elected/Appointed: \_\_\_\_\_

**Execution**

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer



Submit to:  
SECRETARY OF STATE  
Government Filings Section  
P O Box 12887  
Austin, TX 78711-2887  
512-463-6334  
FAX 512-463-5569  
Filing Fee: None



OATH OF OFFICE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,  
I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully  
execute the duties of the office of \_\_\_\_\_ of  
the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws  
of the United States and of this State, so help me God.

\_\_\_\_\_  
Signature of Officer

Certification of Person Authorized to Administer Oath

State of \_\_\_\_\_

County of \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Affix Notary Seal,  
only if oath  
administered by a  
notary.)

\_\_\_\_\_  
Signature of Notary Public or  
Signature of Other Person Authorized to Administer An  
Oath

\_\_\_\_\_  
Printed or Typed Name

# Item # 6

CITY OF SMITHVILLE

JANUARY 11, 2020

COUNCIL MEETING

Present: Councilmembers, Mike Kahanek, Janice Bruno, Bill Gordon, Joanna Morgan, Sharon Foerster, and City Manager Robert Tamble. This meeting was a zoom Conference call.

**Open Meeting:** Call to order: Mayor Pro-tem Morgan called the meeting to order at 6:00 p.m.

Invocation: Joanna Morgan gave the invocation.

Recognition/Awards/Proclamations/Announcements/Presentations: Mayor Pro-tem Morgan read a proclamation for "It's Time Texas Challenge" & MLK Day".

Citizen Comments: None

Discussion and Action on acceptance of Mayor Scott Saunders Jr.'s resignation: Councilwoman Bruno made a motion to accept Mayor Saunders's resignation. Councilman Gordon seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on the appointment to fill the unexpired term of Mayor: Councilman Gordon made a motion to appoint Joanna Morgan to fill the unexpired term of Mayor.

Councilman Kahanek seconded and the vote was:

Abstain- Morgan

For- Gordon, Kahanek, Bruno, and Foerster

Opposed-None

Citizen Comments: None

Discussion and Action on Election of Mayor Pro-Tem: Councilman Kahanek made a motion to appoint Councilman Gordon as Mayor Pro-Tem. Councilwoman Foerster seconded and the vote was:

Abstain- Gordon

For- Foerster, Bruno, and Kahanek

Opposed- None

Citizen Comments: None

Approval of the minutes from December 14, 2020, Council Meeting and Public Hearing and November 16, 2020, Special Called Council Meeting: Councilwoman Bruno moved to approve the minutes. Councilman Gordon seconded and the motion passed unanimously.

Hear recommendation from Planning and Zoning on:

- a. Amending Central Business District (CBD) Regulations in Section 2.2.11 of the Zoning Ordinance Chapter 14: Brian Riewe said the P&Z recommends approval of the Ordinance Amendment.
- b. An amendment to the Zoning Ordinance Chapter 14 by Deleting Fence Regulations in Section 3.3 Open Spaced and Amending Fence Regulations found in Section 3.6 Fences and Walls: Brian Riewe said the P&Z recommends approval of the Ordinance Amendment.

- c. A Minor re-plat at Mt. Pleasant Block 26 Lots 2, 3, & 4 (R#47230) Owner Brolo Endeavors: Brian Riewe said the P&Z recommends approving the minor re-plat.
- d. A Minor re-plat located at 200 Washington St., Townsite Block 70 Lots 11, 12, 13 & 14, R20246 Owner James Kasson: Brian Riewe said the P&Z recommends approval of the minor re-plat.

**Public Hearing:**

- a. On a 10 ft side yard setback variance at 300 4th Avenue, Mount Pleasant Block 8 Lot 1, R17249, Owner Aaron Kimball: No one signed up to speak for or against this item.
- b. On a minor re-plat at 216 & 218 Washington St., Townsite Block 70 Lots 19 & 20, (R20266 & R20262) Owner- Ramon Oscar Gonzales, agent Cynthia Gonzales: No one signed up to speak for or against this item.
- c. On a minor re-plat at 301 San Jacinto, Smithville City Block 89 lot 1 & ½ of 2 (R20790) Owner- Michael and Danielle Davis: No one signed up to speak for or against this item.
- d. On a Petition to Annex 20.767 acres situated in the Thomas DeCrow Survey, A-27, in Bastrop County Texas and 2,093 square feet within a proposed ingress/egress easement tract situated in the Thomas DeCrow Survey, A-27, Tract 4B, Acres 0.163 in Bastrop County Texas Owner Dan Vogler-Pentric, Inc.: No one signed up to speak for or against this item.

**Open Meeting:**

Council Discussion and Action on:

- a. Amending Central Business District Regulations in Section 2.2.11 of the Zoning Ordinance Chapter 14: We are amending the CBD section of the Zoning ordinance to remove the word “prohibited” with respect to the front and side yard setbacks. Front and side yard set-backs are now “not required” which gives property owners within the CBD zoning district the option of a “zero” lot line. Councilwoman Bruno made a motion to approve the amendment. Councilman Gordon seconded and the motion passed unanimously.
- b. An amendment to the Zoning Ordinance Chapter 14 by Deleting Fence Regulations in Section 3.3 Open Space and Amending Fence Regulations found in Section 3.6 Fences and Walls : Approving this amendment to the Zoning ordinance will limit the height of a fence in the front yard to 4-feet. Councilwoman Bruno made a motion to approve the amendment. Councilwoman Foerster seconded it and the motion passed unanimously.
- c. A minor re-plat at Mt. Pleasant Block 26 Lots 2, 3, & 4 (R#47230) Owner Brolo Endeavors: Troy Streuer and John Scallorn (Brolo Endeavors) are requesting approval for a minor replat to convert three (3) lots into four (4) so they may build residential homes (see survey in your packets). The property is zoned SF-2 and the minimum square footage of the new parcels is greater than 6,500 sq. ft. Although there were four neighboring property owners that expressed objection to the project,



the P&Z voted unanimously to recommend approval of the minor replat to the City Council. Councilwoman Foerster made a motion to approve the minor re-plat. Councilman Gordon seconded and the motion passed unanimously.

- d. A minor re-plat located at 200 Washington St., Townsite Block 70 Lots 11, 12, 13 & 14, R20246 Owner James Kasson: Mr. Kasson would like to combine four (4) lots into two (2) to provide a larger lot size required to construct residential homes. Councilman Gordon made a motion to approve the minor re-plat. Councilwoman Bruno seconded and the motion passed unanimously.

Citizen Comments on: None

Discussion and Action on Extending the Face Covering Ordinance until June 14, 2021, at 11:59 PM: Approving Ordinance #2021-603 will amend emergency ordinance #2020-591 to extend the requirements related to the posting of public notice by commercial establishments and the wearing of face coverings within the Smithville city limits until 11:59 pm Monday, June 14, 2020. Councilman Kahanek made a motion to approve the 380 Economic Development Agreement. Councilman Gordon seconded and the motion passed unanimously.

Citizen Comments:None

Discussion and Action on Awarding the Engineering Services (RFQ) for the TxDOT Safe Routes to School and TA Set-Aside Pedestrian Walkways Project: Proposals for engineering services (i.e., Request for Qualifications) for the TXDOT Safe-Routes-to-School (SRTS) / Transportation Alternatives Set-Aside (TASA) sidewalk project were received and reviewed by the City of Smithville on 1/6/21. Experience, work performance, and capacity to perform were criteria used by the City staff to evaluate / differentiate each engineering consultant's qualifications. Three (3) Engineering services consultants submitted their qualifications KSA Engineering received a perfect score with 100 total points. As such, it is the decision of the evaluation team to recommend KSA Engineering to the City Council for consideration / selection as the Engineering services firm to design and manage the TXDOT SRTS / TASA sidewalk project. Councilwoman Bruno made a motion to award KSA the Engineering Services. Councilwoman Foerster seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on rescinding approval of a minor re-plat at 109 Wilkes, Byrne Addition, Block 121, lots 6,7 & 8, this item was approved at January 8, 2019, Council Meeting at the request of the owner Troy Streuer: We received a letter from Troy Streuer requesting the City to rescind the minor replats (approved at January 8, 2019, Council Meeting) for "Lots 4 & 5 at 1103 NE 2nd Street Property ID 16963" (the "NE 2nd Replat") and "Lots 6 & 7 at 109 Wilkes Property ID 17077" (the "Wilkes Replat"). Neither the NE 2nd Replat nor the Wilkes Replat were submitted with a plat map prepared by a licensed surveyor and neither have been recorded with Bastrop County. Items 15 & 16 on the agenda will be to rescind the approval of the NE 2nd Replat and the Wilkes Replat. If Council approves to rescind both items, the City will consider the lots involved to be in their original configuration prior to the NE 2nd Replat and the Wilkes Replat. Councilman Kahanek made a motion to approve the rescinding of the plat. Councilwoman Bruno seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on rescinding approval of a minor re-plat at 1103 NE 2nd Street, Byrne Addition, Block 116, Lot 4-5 this item was approved at January 8, 2019, Council Meeting at the request of the owner Troy Streuer: See notes from Item above. Councilwoman Bruno made a motion to approve the rescinding of the plat. Councilman Gordon seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on the appointment/re-appointment of members to the Smithville Hospital Authority: Per Article 9.100 of our City Ordinances, the Smithville Hospital Authority shall be governed by a board of directors consisting of seven (7) members. Three (3) directors (Places 2, 4, and 6) shall be appointed by the city council and the board of directors shall appoint four (4) additional members (Places 1, 3, 5, and 7). Each of said directors shall serve for a term of two (2) years. Vacancies shall be filled for the unexpired terms. Places 1, 3, 5 and 7 shall be appointed for terms ending in even numbered years and Places 2, 4, and 6 shall be appointed for terms ending in odd numbered years. All terms shall expire on February 3rd. I received an email from Mr. James Wither (Smithville Hospital Authority Board President) confirming he would like the City Council to consider the following people for appointment / re-appointment to the Smithville Hospital Authority Board:

Ann Fulcher – Re-appointment

Mark Bunte – Reappointment

Jimmy Trousdale – New Appointment to replace Dareld Morris III

Councilwoman Bruno made a motion to approve the Appointments/Reappointments to the Hospital Authority Board. Councilwoman Foerster seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on a Resolution Calling for the May 1, 2021, Municipal General Election: Approving this resolution is required for holding Councilmember elections in May. Three places will be on the ballot: Place 1 - currently held by Sharon Foerster, Place 2 - currently held by Mike Kahanek, and Place 3 - currently held by Bill Gordon. New and incumbent candidates may file beginning Wednesday, January 13, 2021. The deadline to file is Friday, February 12, 2021 at 5:00 pm. Councilman Gordon made a motion to approve the Resolution. Councilwoman Bruno seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on a Resolution Calling for the May 1, 2021, Special-Called Election: Approving this resolution is required for holding a special-called election on May 1, 2021 for candidates to file to run for the unexpired term(s) of Mayor and Place 4 Alderman. New and incumbent candidates may file beginning Wednesday, January 13, 2021. The deadline to file is Friday, February 12, 2021 at 5:00 pm. Councilman Kahanek made a motion to approve the Resolution. Councilman Gordon seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on the Financial Report: Councilman Gordon made a motion to approve the Financial Report. Councilman Kahanek seconded and the motion passed unanimously.

*Adjourn:* at 7:04 p.m.

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Joanna Morgan, Mayor

Attest:

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Jennifer Lynch, Asst. City Secretary



Item # 7

# CITY OF SMITHVILLE

## PLANNING & ZONING APPLICATION

### APPLICATION TYPE

Zoning Change Request:

- ☐ Change in Zoning Class
- ☐ Change in Ordinance
- ☒ Variance
- ☐ Special Exception Use
- ☐ Minor Plat/Subdivision
- ☐ Other \_\_\_\_\_

Number of Requests:

- ☐ Single
- ☐ Multiple

### PROPERTY IDENTIFICATION

Street Address 401 N. Main Street, Smithville, Tx 78957

\*\*\* Applicant must submit an accurate location map and site plan for application to be considered \*\*\*

Legal description ☒ Platted Land (please provide subdivision, block and lot information below)  
☐ Unplatted Land (please submit the metes and bounds description from deed)

Subdivision Name: Smithville City 001

Property Tax Code: 19169 Block Number: 13 Lot Number: 5,6,7,8

Property Owner (as listed on Deed): Bracton Bledsoe & Mary Bledsoe

Property Owner Mailing Address: 1504 Robinhood Trail, Suite A, Austin, Tx 78703

Owner's Phone No: 512 694-2626 Owner's Email: mb@Qr8creative.com

Agent's Name (if applicable): \_\_\_\_\_

Agent's Mailing Address: \_\_\_\_\_

Agent's Phone No: \_\_\_\_\_ Agent's Email: \_\_\_\_\_



## DESCRIPTION OF VARIANCE / EXCEPTION REQUEST

|                     |   |                               |                      |   |                               |
|---------------------|---|-------------------------------|----------------------|---|-------------------------------|
| Current Zone Class: | SF-1 <input type="checkbox"/>           | SF-2 <input type="checkbox"/> | Proposed Zone Class: | SF-1 <input type="checkbox"/>           | SF-2 <input type="checkbox"/> |
|                     | MR <input type="checkbox"/>             | C-1 <input type="checkbox"/>  |                      | MR <input type="checkbox"/>             | C-1 <input type="checkbox"/>  |
|                     | C-2 <input type="checkbox"/>            | C-3 <input type="checkbox"/>  |                      | C-2 <input type="checkbox"/>            | C-3 <input type="checkbox"/>  |
|                     | MHS <input type="checkbox"/>            | MF <input type="checkbox"/>   |                      | MHS <input type="checkbox"/>            | MF <input type="checkbox"/>   |
|                     | CF <input type="checkbox"/>             | PD <input type="checkbox"/>   |                      | CF <input type="checkbox"/>             | PD <input type="checkbox"/>   |
|                     | PD-Z <input type="checkbox"/>           | I <input type="checkbox"/>    |                      | PD-Z <input type="checkbox"/>           | I <input type="checkbox"/>    |
|                     | CBD <input checked="" type="checkbox"/> | PD-Z <input type="checkbox"/> |                      | CBD <input checked="" type="checkbox"/> | PD-Z <input type="checkbox"/> |

Describe variance requested:

*Eliminate the zero setback requirement for all 4 lots.*

Describe special use requested:

Reason for Request:  
(explain why special exception is sought or why a variance has been requested)

*This home built in 1887 is located in the Central Business District, but has always been a residence with setbacks appropriate to that use and appearance. We want to keep setbacks on new structures consistent with the look and feel of this beautiful property.*

## PETITION

As Owner/Agent, I hereby petition the City of Smithville for approval of the above described request as provided by the laws of the State of Texas and Ordinances of the City. I understand and agree that the Petition fee is non-refundable and that I must attend the Planning & Zoning meeting and subsequent City Council meeting in order for my application to be considered for approval.

Signature: \_\_\_\_\_

Date: 11.12.2020

### OFFICE USE ONLY:

Fee Amount: \_\_\_\_\_

Fee Payment: \_\_\_\_\_

P&Z Date: \_\_\_\_\_

Council Date: \_\_\_\_\_

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

Date Submitted: \_\_\_\_\_

☐ Notice sent to property owners within 200 feet of proposed property

## VARIANCE CRITERIA EXPLANATION FORM

(for Zoning Code Variances Only)

(This Form is required with submittal of a Variance Application. If more than one variance is requested in an application, a separate Variance Criteria Explanation Form shall be required for each Variance. Please include additional pages as necessary.)

- 1) Describe the special conditions affecting the land involved, such that literal enforcement of the regulation would result in the unnecessary hardship?

*Please see attached sheet for explanations of  
all 4 points.*

- 2) Describe the unnecessary hardship that would result due to a literal enforcement of the regulation.

- 3) Describe how granting the variance will not be contrary to the public interest.

- 4) Describe how granting the variance will be in the spirit of the regulation.

**\*Note for the Board / Commission:**

The following responses were provided by the applicant and may not be consistent with the Department staff report.



## **Variance Criteria Explanation for 401 N. Main Street, Smithville**

### **1 Special Conditions**

This home was built in 1887 and is an historic landmark in the city. Since it was built, subsequent zoning ordinances have placed it within the Central Business District (CBD) which has a zero setback from the property lines. This setback is appropriate for the commercial buildings of which most of this district is comprised, but are not appropriate for this historic residential property.

### **2 Hardship from literal enforcement**

The new owners of this property are making major renovations due to the poor condition of the structure. This has necessitated removal of a porch and outbuildings that could not be salvaged and need to be replaced. Since these represent new construction, the zero-lot line requirement would apply unless a variance is granted. Without this variance, resulting structures would be unsightly.

### **3 Not contrary to public interest**

The public interest is served by allowing this property to be restored and enhanced in a manner that is consistent with the historic look and feel.

### **4 Meets the spirit of the regulation**

The intent of the zoning ordinances is to maintain consistency within a zone class and to preserve the historic charm of our town. When the CBD boundaries were set, this property was grandfathered as an exception. Because it is being restored to its former glory, allowing it to remain an exception, preserving its historic appearance, is consistent with the spirit of the ordinances.

# LEGEND

- ⊙ IRON ROD W/CAP FOUND  
STAMPED J.E. GARON RPLS 4303
- ⊙ POWER POLE
- E— OVERHEAD ELECTRIC LINE
- D— DOWN GUY
- (BRG.-DIST.) RECORD CALL

0 50 100

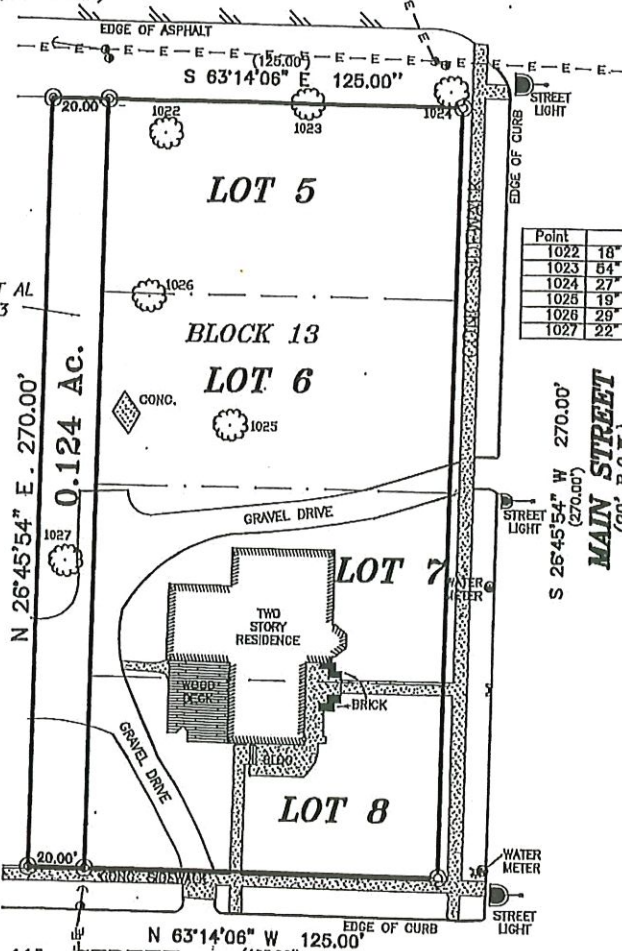
SCALE: 1"= 50'

BEARINGS SHOWN ARE GRID NORTH BASED ON GPS  
OBSERVATIONS FOR TEXAS STATE PLANE COORDINATE  
SYSTEM "CENTRAL ZONE" NAD83.



**N.W. 5th STREET**  
(70' R.O.W.)

SALLIE BLALOCK, ET AL  
INST# 202007623  
0.124 ACRE



| Point | Description   |
|-------|---------------|
| 1022  | 18" LIVE OAK  |
| 1023  | 64" LIVE OAK  |
| 1024  | 27" CEDAR ELM |
| 1025  | 19" LIVE OAK  |
| 1026  | 29" LIVE OAK  |
| 1027  | 22" PECAN     |

N 63°14'06" W 125.00'  
(125.00')

**N.W. 4th STREET**  
(70' R.O.W.)

SCHEDULE "B" ITEMS ADDRESSED:

10(d) RIGHT OF WAY EASEMENT  
GRANTED TO LOWER COLORADO  
ELECTRIC COOPERATIVE, INC.  
RECORDED IN VOLUME 104, PAGE  
422, DEED RECORDS OF BASTROP  
COUNTY, TEXAS.

TO THE OWNERS, LIENHOLDERS AND STEWART TITLE COMPANY

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO DISCREPANCIES, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY LINES OR ROADS IN PLACE, EXCEPT AS SHOWN HEREON, AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY, EXCEPT AS SHOWN HEREON.

THE UNDERSIGNED DOES FURTHER CERTIFY THAT THE PROPERTY DESCRIBED HEREON IS LOCATED IN ZONE "X" AND IS NOT WITHIN A 100-YEAR FLOOD HAZARD AREA AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP, PANEL NO. 48021C0395E, EFFECTIVE JANUARY 19, 2006.



**JAMES E. GARON & ASSOC.**

LAND SURVEYORS & CIVIL ENGINEERS  
Firm Reg. #10058400 & F-20386  
185 McAllister Road  
Bastrop, Texas 78802  
(512) 303-4185  
jgaron@auetn.rr.com  
www.jamesegarons.com

REFERENCE: BRACON BLEDSOE & MARY BLEDSOE  
ADDRESS: 401 N. MAIN STREET, SMITHVILLE, TEXAS.

LEGAL DESCRIPTION: LOTS 5, 6, 7 & 8, AND 0.124 ACRES (QUITCLAIM DEED # 20207623), SMITHVILLE TOWNSITE, MAP OR PLAT RECORDED IN CABINET 1, PAGE 24-A, PLAT RECORDS OF BASTROP COUNTY, TEXAS.  
FIELD BOOK: B-627/32 & B-538/13  
FILE: S:\Counties\Bastrop\City of Smithville\Smithville Townsite\69320.dwg



AUGUST 17, 2020

G.F. NO.: 033737ST



additional info sent from Bledsoe's - item #5

401 MAIN STREET, SMITHVILLE, TX : PERSONAL LETTER FROM THE BLEDSOES

2.1.2. Commercial Districts:  
Section D. CBD Central Business District (Mixed Use)

Application for Variance  
Bracton and Mary Bledsoe

401 Main Street - Block 13, Lots 5,6,7, and 8

My wife and I are in the process of performing a massive renovation of the Skelley Mansion at 401 Main Street. My wife is an Interior Architect and I have a degree in Architecture. While my wife is performing all of the project design, and nearly all of the oversight of the construction, this renovation reflects a dream we both share.

We very much believe in the spirit of the CBD mixed-use zoning criteria and are eager to be a part of the neighborhood.

Per 2.2.11 CBD -- Central Business District, Section C, Front and Side yard setbacks are " prohibited" , except by variance.

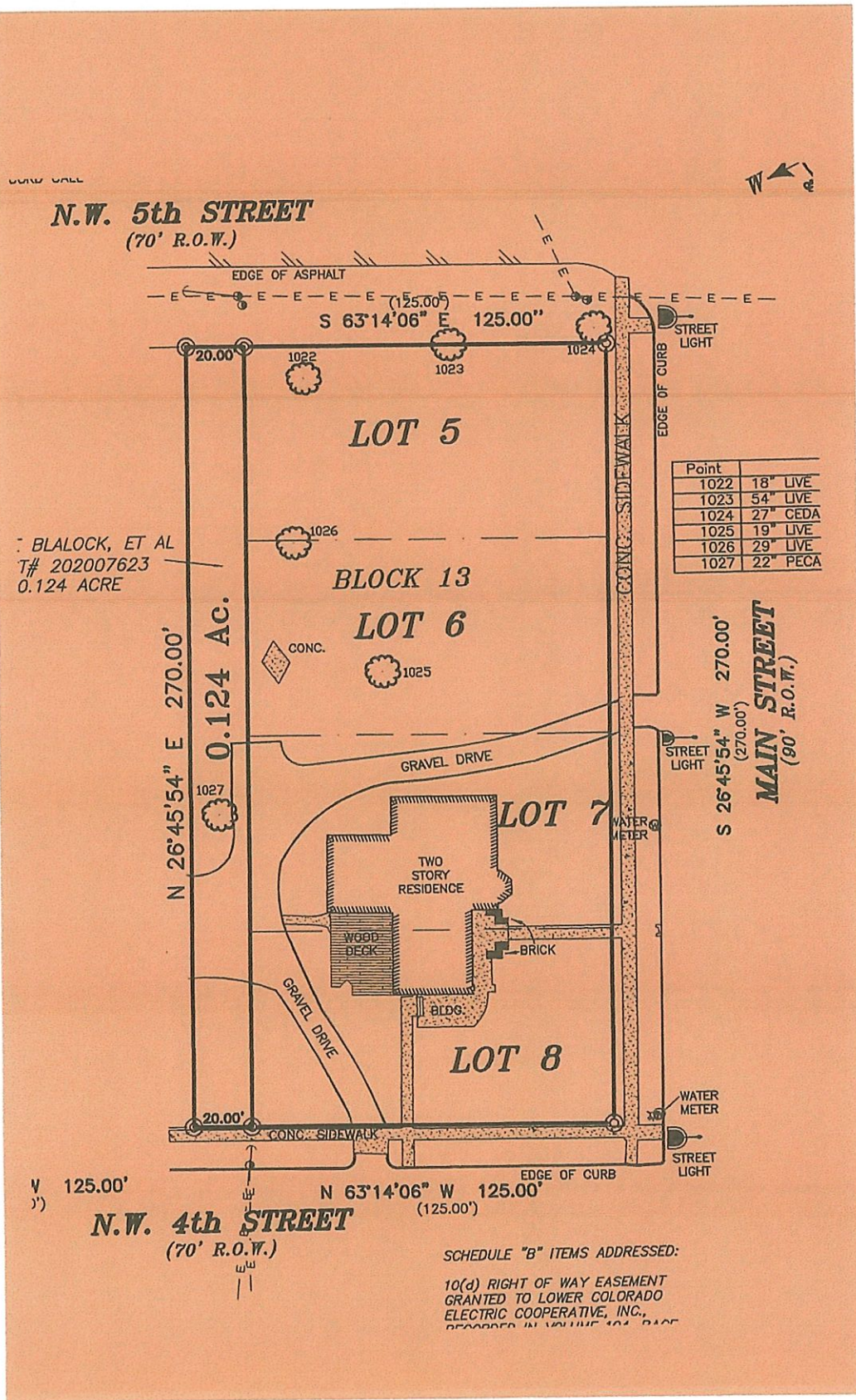
We recognize and appreciate the intent behind the zero-setback requirement in the ordinance and its intent to encourage a vibrant mix of uses; however we believe that a continuation of the use of the Skelley Mansion as a residence (our home) with a mix of additional residential and commercial uses on the remaining Lots is in keeping with the spirit of the ordinance.

Thus, we respectfully request a variance to allow for improvements on the site, with a removal of the zero setback requirement. A property survey, and a visual depiction of our planned historically-accurate renovations for the Skelley Mansion, with an adjacent commercial structure (Mary's design studio) are shown attached. While we recognize future improvements to Lot 5 are possible, we have not designed these at this time and want to avoid the existing 54" Live Oak tree on the northern property line as much as practically possible.

We thank you in advance for your consideration of this application and we look forward to joining your community.

Trac and Mary







# 401 MAIN STREET, SMITHVILLE, TX : SKETCH SITE PLAN





401 MAIN STREET, SMITHVILLE, TX: MAIN STREET ELEVATION





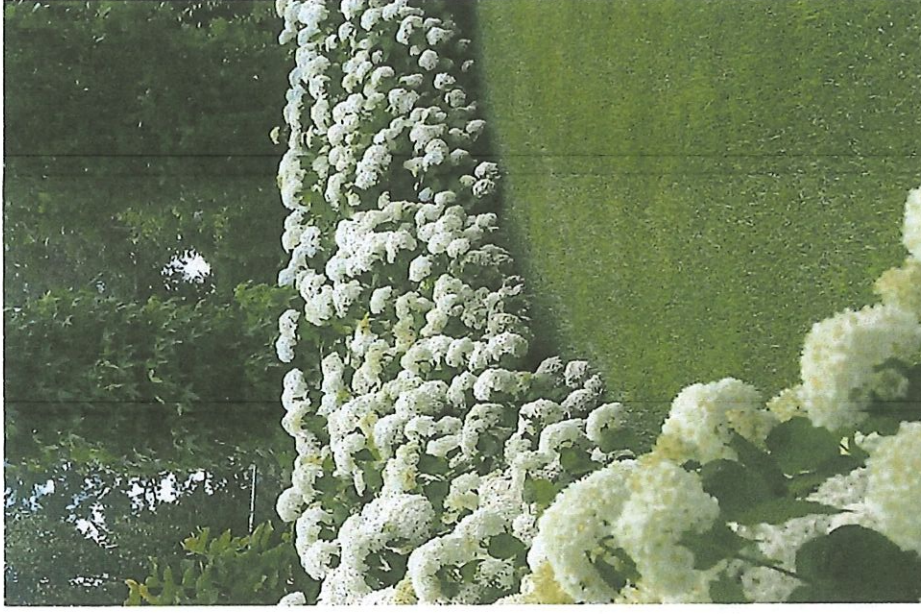
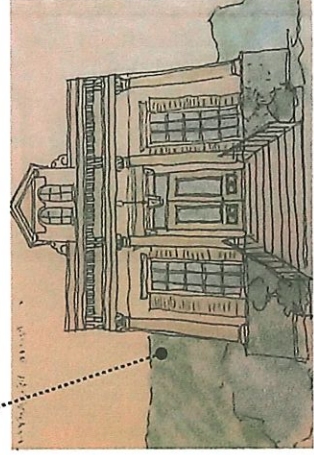
401 MAIN STREET, SMITHVILLE, TX : NEW PORCH AT LIVING ROOM & KITCHEN



Curated.



401 MAIN STREET, SMITHVILLE, TX : IVY-COVERED PRIVACY WALL AT COURTYARD, HYDRANGEAS AT VERANDAS



Curated.



NEW DESIGN STUDIO ON MAIN STREET, SMITHVILLE, TX





# CITY OF SMITHVILLE

## PLANNING & ZONING APPLICATION

### APPLICATION TYPE

Zoning Change  
Request:

- ☒ Change in Zoning Class  
☐ Change in Ordinance  
☐ Variance  
☐ Special Exception Use  
☐ Minor Plat/Subdivision  
☐ Other \_\_\_\_\_

Number of  
Requests:

- ☒ Single  
☐ Multiple

### PROPERTY IDENTIFICATION

20.93 Acres including: Tract 1 is 20.767 Acres & Tract 2 is 2,093 Sq Ft in Thomas DeCrow Survey, A-27, Bastrop County, Texas. (See metes and bounds survey.)

Street Address

\*\*\* Applicant must submit an accurate location map and site plan for application to be considered \*\*\*

Legal description

- ☐ Platted Land (please provide subdivision, block and lot information below)  
☒ Unplatted Land (please submit the metes and bounds description from deed)

Subdivision Name:

Thomas DeCrow Survey

Property Tax Code:

Block Number: A-27

Lot Number:

Property Owner  
(as listed on Deed):

Pentric Incorporated

Property Owner  
Mailing Address:

P.O. BOX 3321 Austin, TX 78764-3321

Owner's Phone No:

512/923-4741

Owner's Email:

dan@falcongreen.com

Agent's Name  
(if applicable):

David M. Cox

Agent's Mailing  
Address:

1727 Ben Crenshaw Way Austin, TX 78746

Agent's Phone No:

512/296-5040

Agent's Email:

dmcox64@gmail.com

## DESCRIPTION OF VARIANCE / EXCEPTION REQUEST

|                     |  |                               |                      |                               |   |
|---------------------|--|-------------------------------|----------------------|-------------------------------|---|
| Current Zone Class: | SF-1 <input checked="" type="checkbox"/> | SF-2 <input type="checkbox"/> | Proposed Zone Class: | SF-1 <input type="checkbox"/> | SF-2 <input type="checkbox"/>           |
|                     | MR <input type="checkbox"/>              | C-1 <input type="checkbox"/>  |                      | MR <input type="checkbox"/>   | C-1 <input type="checkbox"/>            |
|                     | C-2 <input type="checkbox"/>             | C-3 <input type="checkbox"/>  |                      | C-2 <input type="checkbox"/>  | C-3 <input checked="" type="checkbox"/> |
|                     | MHS <input type="checkbox"/>             | MF <input type="checkbox"/>   |                      | MHS <input type="checkbox"/>  | MF <input type="checkbox"/>             |
|                     | CF <input type="checkbox"/>              | PD <input type="checkbox"/>   |                      | CF <input type="checkbox"/>   | PD <input type="checkbox"/>             |
|                     | PD-Z <input type="checkbox"/>            | I <input type="checkbox"/>    |                      | PD-Z <input type="checkbox"/> | I <input type="checkbox"/>              |
|                     | CBD <input type="checkbox"/>             | PD-Z <input type="checkbox"/> |                      | CBD <input type="checkbox"/>  | PD-Z <input type="checkbox"/>           |

Describe variance requested:

Describe special use requested:

Tract 2 will be used for access to Tract 1 which will be a solar farm owned by Smithville Solar One, LLC for purposes of generating solar electricity for the City of Smithville. It shall consist of solar panels, racking and equipment.

Reason for Request:  
(explain why special exception is sought or why a variance has been requested)

Special use zoning change is sought for Pentric, Inc. and Smithville Solar One, LLC to achieve a modest property tax rebate and for the City of Smithville to expand its City Limits through an Annexation of the 20.93 Acres. The Zoning change is appropriate for the use.

### PETITION *Fee waived per 380 agreement*

As Owner/Agent, I hereby petition the City of Smithville for approval of the above described request as provided by the laws of the State of Texas and Ordinances of the City. I understand and agree that the Petition fee is non-refundable and that I must attend the Planning & Zoning meeting and subsequent City Council meeting in order for my application to be considered for approval.

Signature: *[Signature]*

Date: *Nov. 17, 2020*

#### OFFICE USE ONLY:

Fee Amount: \_\_\_\_\_

Fee Payment: \_\_\_\_\_

P&Z Date: \_\_\_\_\_

Council Date: \_\_\_\_\_

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

Date Submitted: \_\_\_\_\_

☐ Notice sent to property owners within 200 feet of proposed property

Tracie Wallace

*Comment for item #6*

**From:** Sydney Sell <sydney\_sell@yahoo.com>  
**Sent:** Monday, January 4, 2021 11:05 AM  
**To:** Tracie Wallace  
**Subject:** January 5th questions regarding zoning

Good morning,

I wanted to submit a few questions I would like answered regarding the rezoning the 20acres located behind of my property for the solar farm.

1. How will this effect my property value?  
Rise or decrease in value?
2. How will this effect my property taxes?  
If I will see a rise, why if we are staying zoned at SF-1?
3. How will this effect in and out traffic behind my home/ property?  
As well as Noises, machines during the day or throughout the night?
4. How will this effect future resale of my home and property?
5. When does the building of the solar farm plan to start?

Thanks,  
Sydney Jacobs  
Casey Jacobs  
Jo Ann Nelson

# Item # 12



## 2020-21 Municipal Trash Rates

| City                               | Service  | Price   | 2X Price | Provider             |
|------------------------------------|--|---------|----------|----------------------|
| Bastrop                            | 1x weekly trash, every other week recycle, 2x month bulk | \$18.24 | \$36.48  | Waste Connections    |
| Elgin                              | 1x weekly trash, every other week recycle, 2x month bulk | \$17.19 | \$34.38  | Waste Management     |
| Manor                              | 1x weekly trash, every other week recycle, 2x year bulk  | \$17.50 | \$35.00  | Republic Services    |
| LaGrange                           | 1x weekly trash, every other week recycle, 4x year bulk  | \$20.58 | \$41.16  | Waste Management     |
| Giddings                           | 1x weekly trash, every other week recycle                | \$21.75 | \$43.50  | TDS                  |
| Pflugerville (Within City Limits)  | 1x weekly trash, every other week recycle                | \$18.94 | \$37.88  | Waste Connections    |
| Pflugerville (Outside City Limits) | 1x weekly trash, every other week recycle                | \$20.94 | \$41.88  | Waste Connections    |
| Georgetown (Within City Limits)    | 1x weekly trash, every other week recycle                | \$19.55 | \$39.10  | TDS                  |
| Georgetown (Outside City Limits)   | 1x weekly trash, every other week recycle                | \$27.46 | \$54.92  | TDS                  |
| Round Rock                         | 1x weekly trash, every other week recycle                | \$20.97 | \$41.94  | Round Rock Refuse    |
| Cedar Park                         | 1x weekly trash, every other week recycle                | \$20.23 | \$40.46  | Central Texas Refuse |
| City of Austin                     | 1x weekly trash, every other week recycle, 2x year bulk  | \$48.00 | \$96.00  | City of Austin       |
| Kyle                               | 1x weekly trash, every other week recycle                | \$22.14 | \$44.28  | TDS                  |
| Leander                            | 1x weekly trash, every other week recycle                | \$16.66 | \$33.32  | Clawson Disposal     |

|            |  |         |         |                  |
|------------|--|---------|---------|------------------|
| Smithville | 2x weekly trash, 2x weekly bulk, unlimited trash | \$14.82 | \$27.95 | Waste Management |
|------------|--|---------|---------|------------------|

NEW 2x weekly trash, One 95 gallon can, 1x Bulk / month (4 yds)



## MUNICIPAL SOLID WASTE AGREEMENT

This Municipal Solid Waste Agreement (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, between the **CITY OF SMITHVILLE, TEXAS** ("City"), a municipal \_\_\_\_\_, acting by and through its duly authorized City Manager, and **WASTE MANAGEMENT OF TEXAS, INC.** (the "Contractor"), acting by and through its duly authorized representative.

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

**WHEREAS**, City desires to grant to Contractor the exclusive right to operate and maintain the service of collection, transportation, and disposal of residential and commercial garbage and trash over, upon, along and across the present and future streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement; and

**WHEREAS**, Contractor desires to operate and maintain the service of collection and transportation of residential and commercial garbage and trash over, upon, along and across the present and future streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

#### 1. **DEFINITIONS:**

- 1.01. **Bulky Waste:** Furniture, bicycles (without tires), refrigerators that have CFCs removed by a certified technician, stoves, Brush, and other oversized wastes which are customary to ordinary housekeeping operations of a Residential Unit and whose large size precludes or complicates its handling by normal solid waste collection, processing or disposal methods. Each Bulky Waste item should not be larger or weigh more than two persons could safely lift and deposit into the collection truck.
- 1.02. **Brush:** Any cuttings or trimmings from trees, shrubs, or lawns, and similar materials that weigh less than 50 pounds are four (4) feet or less in length and four (4) inches or less in diameter or that are properly bundled or bagged in yard waste bags. The term "Brush" specifically excludes material resulting from services of a Third-Party Provider.
- 1.03. **City:** The City of Smithville, Texas.
- 1.04. **Commercial Unit:** All commercial and industrial businesses and establishments, including, but not limited to, stores, offices, restaurants, warehouses, and manufacturing facilities, and other premises, locations or entities, public or private, within the corporate limits of the City, but excluding temporary construction project sites. A Commercial Unit includes a multi-family dwelling, condominium dwelling

or apartment dwelling consisting of three or more residents.

- 1.05. **Commercial Waste:** All Garbage, Rubbish, Waste, and Refuse generated by a Commercial Unit, excluding Unacceptable Waste.
- 1.06. **Compactor:** Any container, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.07. **Construction Debris:** Waste building materials resulting from construction, remodeling, repair, or demolition operations that are directly or indirectly the by-products of construction work or that result from demolition of buildings or other structures, but specifically excluding inert debris, land-clearing debris, yard debris, or used asphalt, asphalt mixed with dirt, sand, gravel, rock, concrete, or similar materials.
- 1.08. **Contractor:** Waste Management of Texas, Inc.
- 1.09. **Customer:** The owner or tenant of a Residential Unit, Industrial Unit, or Commercial Unit located within the City and identified by the City as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.10. **Dead Animals:** Animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.
- 1.11. **Disposal Site:** A duly permitted sanitary landfill selected by Contractor.
- 1.12. **Dumpster:** Metal receptacle designed to be lifted and emptied mechanically for use only at Commercial Units or Industrial Units.
- 1.13. **Garbage:** Solid Waste consisting of putrescible or animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products, and all Dead Animals of less than ten pounds (10 lbs.) in weight, except those slaughtered for human consumption.
- 1.14. **Hazardous Waste:** Any Solid Waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.01. **Industrial Unit:** All industrial businesses and establishments, including manufacturing facilities, temporary construction sites, and other premises, locations or entities, public or private, within the corporate limits of the City.
- 1.01. **Industrial Waste:** Solid Waste resulting from or incidental to any process of industry, manufacturing, construction, demolition, mining or agricultural operations. Industrial Waste includes Construction Debris but excludes Unacceptable Waste.



- 1.02. **Light Commercial Unit:** A retail or light commercial type of business, which generates no more than one (1) cubic yard of Garbage, Rubbish, and Refuse per week, excluding Unacceptable Waste.
- 1.03. **Medical Waste.** Waste generated by health care related facilities and associated with health care activities, not including Garbage or Rubbish generated from offices, kitchens, or other non-health-care activities. The term includes Special Waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions).
- 1.04. **Polycart:** A rubber-wheeled receptacle with a maximum capacity of 90 - 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs.
- 1.05. **Refuse:** Same as Rubbish.
- 1.06. **Residential Unit:** A residential dwelling within the service area of the City occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit.
- 1.27 **Residential Waste:** All Refuse, Garbage and Rubbish generated by a Customer at a Residential Unit, excluding Unacceptable Waste.
- 1.28. **Roll-off Bin:** Container measuring 20 cubic yard, 30 yards or 40 cubic yards, capable of pickup and transport to a Landfill by loading of container onto rear of transporting vehicle.
- 1.29. **Rubbish:** Nonputrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- 1.30. **Solid Waste or Waste:** All Residential Waste and Commercial Waste to be collected by Contractor pursuant to this Agreement. The term "Solid Waste" or "Waste" specifically excludes Unacceptable Waste.
- 1.31. **Special Waste:** Waste that requires special handling and management due to the

nature of the waste, including, but not limited to, the following: (A) containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) residue and debris from the cleanup of a spill or release of chemical(s), or (H) any other waste defined by applicable law, rule or regulation as "Special Waste."

- 1.32. **Unacceptable Waste:** Any waste or material that (i) the acceptance and handling of which by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, (ii) substantial damage to Contractor's equipment or facilities, or (iii) contains information (in hard copy or electronic format) that is protected or regulated under any local, state or federal privacy or data security laws, including without limitation, the Health Insurance Portability and Accountability Act (HIPAA), or (iv) presents a danger to the health or safety of the public or Contractor's employees, and/or (v) is or contains Hazardous Waste, Special Waste, untreated Medical Waste, Dead Animals weighing ten pounds (10 lbs.) or greater, or (vi) is or contains solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, or (vii) is soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements, or (viii) results from activities associated with the exploration, development, or production of oil or gas or geothermal resources.
- 1.33. **Unusual Accumulations:** As to Commercial Units and Industrial Units, (i) any Waste or other material placed on top of or located outside the Dumpster or Compactor regularly used for such collection service or (ii) in excess of the applicable weight limits or intended capacity such that the lid will not completely close.

## 2. **GRANT OF EXCLUSIVE FRANCHISE:**

Contractor is hereby granted the exclusive right and privilege within the corporate limits of the City to conduct business for the purpose of collection and disposal of Waste from Residential Units, collection of Commercial and Industrial Waste from Commercial and Industrial Units, subject to the terms hereof, including any tracts, territories and areas hereafter annexed to or acquired by City.

## 3. **TERM:**

The term of this Agreement shall commence on **March 1, 2021** (the "Commencement Date") and continue to remain in full force and effect for a period of five (5) years, provided, however, that the term of this Agreement shall automatically extend without further action of the parties for two (2) additional terms of one (1) year each, unless, not less than ninety (90) days before the termination of the then current term, one party advises the other in writing of its desire to terminate the Agreement at the conclusion of the then current term of the Agreement.



4. **RATES:**

Contractor is authorized to charge, and shall receive from the City, the rates set forth on Schedule "A" attached hereto and incorporated herein by reference ("Base Rates"). The Base Rates are subject to adjustment as set forth in Section 8 below.

5. **CONTRACTOR SERVICES:**

5.01 **Residential Collection:**

(a) Contractor shall collect Residential Waste generated at a Residential Unit and placed in that Residential Unit's Waste Polycart two (2) times per week. The Contractor shall not be obligated to collect any Waste not properly contained in the Customer's Waste Polycart.

(b) Construction Debris generated at a Residential Unit by the owner or tenant of that Residential Unit, and not using the services of a Third-Party Provider, shall be subject to the Bulky Waste limitations set forth in this Agreement. Any Waste or Bulky Waste generated by a Third-Party Provider is Commercial Waste and Contractor has no obligation to collect those materials.

5.02 **Residential Door-to-Truck Service:** Contractor will provide Residential Door-To-Truck back door Waste collection for Residential Customers that the City determines have demonstrated a need or hardship necessitating this special service; however, this service excludes Bulky Waste collections. The City has sole responsibility for determining which Residential Unit Customers qualify for this special service, and the City will provide Contractor with a list of qualifying Customers' addresses. Door-to-Truck collection service means the Customer places their Waste Polycart near their garage or carport rather than curbside. Contractor may refuse to provide this service if the location of the Polycart exceeds 150 feet from the curb line or edge of pavement and no such service will be provided for Bulky Waste.

5.03 **Residential Brush/Bulky Waste Collection:** Contractor shall provide a once (1) per month collection service to Residential Units for collection of Bulky Waste and Brush. Contractor agrees to collect up to, but not to exceed, a total of four (4) cubic yards of Bulky Waste and Brush from each Residential Unit. Contractor shall have no obligation to collect any Brush or Bulky Waste in excess of the above volumes, or any Construction Debris generated by a Third-Party Provider hired by a Customer and generated and/or located at that Residential Unit. Brush and Bulky Waste shall be placed within three (3) feet of the curb, swale, paved surface of the roadway, closest accessible roadway, or other location agreed to by Contractor and Customer, that will provide safe and efficient accessibility to Contractor's collection crew and vehicle.

5.04 **Residential Carts:**

(a) Contractor shall provide one (1) Polycart to each Residential Unit within 90 days of the

commencement of this Agreement. Polycarts (the "Carts") shall be placed by the Customer of a Residential Unit in a location that is readily accessible to Contractor and its collection equipment, not to exceed three (3) feet from the curb or edge of the travel portion of the street, road or alley, and not to be located in a manner that will block the driveway or mailbox or otherwise inhibit proper servicing. The City shall aid Contractor in resolving problems of Cart location by the Customer. Customers shall not overload Carts, and the Carts shall be loaded such that the lids shall close securely.

(b) Contractor shall not be required to collect (i) any Residential Waste that is not placed in a Polycart, (ii) any Residential Waste from a Polycart that is overloaded by weight or volume, or (iii) a Polycart that is not properly placed curbside.

(c) The Carts furnished by the Contractor hereunder shall remain the property of Contractor, and the Customer will have no interest in the Carts. The Carts shall remain at the location of the Residential Unit where delivered by Contractor. Additional Carts are available for residential Customers at an additional charge to be paid by the Customer as reflected in **Schedule A** attached. Any Cart removed from, lost or missing from a Customer location shall be deemed lost, and Contractor agrees to provide a replacement Cart at a cost of \$65.00 per Cart to the City.

5.05 **Commercial and Industrial Unit Collection:** Contractor shall have the exclusive right to collect and transport Commercial Waste from the Commercial Units and Industrial Waste from the Industrial Units, respectively, utilizing Dumpsters or Compactors, at such frequency as shall be reasonably requested and agreed to between the Customer and Contractor. The Dumpster or Compactor shall be located on a concrete pad to accommodate equipment and at a location reasonably acceptable to Contractor. Contractor may, at its sole option, require Commercial or Industrial Unit Customers to enter into individual contracts with Contractor, subject to the terms of this Agreement.

5.06 **Services for City:** Contractor will provide the equipment and services to the City facilities identified in the attached **Schedule B** at no cost:

5.07 **Unusual Accumulations Collection/Overage:** Contractor shall have no obligation to collect Unusual Accumulations/Overage and may charge for the collection of any Unusual Accumulations/Overage.

5.08 **Unacceptable Waste:** Contractor shall not be obligated to collect Unacceptable Waste. Title to Unacceptable Waste shall not pass to Contractor, and liability for any unacceptable Waste shall remain with the generator of such Waste.

## 6. **COLLECTION OPERATION:**

6.01. **Hours of Operation:** Collection of Residential Waste shall begin no earlier than 7:00 A.M. and shall generally not extend beyond 6:00 P.M. No collection shall be made on Sunday. Collection of Commercial Waste shall be collected at such hours as may be determined by Contractor. No collection shall be made on Sunday, unless requested by a Customer and agreed to by Contractor.



6.02. **Routes of Collection:** Collection routes shall be established by the Contractor as reasonably approved by City. City shall provide Contractor with maps of the City containing sufficient detail for Contractor to design collection routes. Contractor shall provide to the City route maps for approval by the City, which approval shall not be unreasonably withheld.

6.03. **Holidays:** The following shall be holidays for purposes of this Agreement:

New Year's Day  
Thanksgiving Day  
Christmas Day

Contractor may decide to observe any or all of the above-mentioned holidays by suspension or collection service on the holiday, but the Contractor shall be responsible for providing make-up collection for residential routes that occur on specified holidays. Make-up days will be pushed one day for the balance of the service week for any week affected by a holiday.

6.04. **Complaints:** Customer complaints shall be directed by the City to Contractor, and Contractor shall promptly resolve such complaint based on the nature of the complaint. Contractor shall be responsible for maintaining a log of complaints based on the information provided to Contractor by the City, and shall provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Any alleged missed pickups will be investigated and, if such allegations are verified, Contractor shall arrange for collection on the next business day after receipt of such complaint. If the missed pickup is a result of Customer related acts or omissions, the City shall take appropriate action to cause such Customer to subsequently properly set out such Waste.

6.05. **Collection Equipment:** Contractor, at its sole cost and expense, agrees to furnish, all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport Waste from Customers serviced by Contractor in accordance with this Agreement.

6.06. **Disposal:** The Contractor shall deliver Waste collected to a duly permitted Disposal Site operated in compliance with rules stipulated by the applicable state agency and/or the U.S. Environmental Protection Agency.

6.07. **Spillage:** The Contractor shall not be responsible for scattered Waste unless the same has been caused by Contractor, in which case all scattered Waste shall be timely collected by Contractor.

6.08. **Vicious Animals:** Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Waste collection service. Contractor shall immediately notify the City, in writing, of such condition and of his inability to make collection.

- 6.09. **Protection From Scattering:** Each vehicle shall be equipped with a cover which may be net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of Waste onto public or private property.
- 6.10. **Point of Contact.** All dealings and contacts between Contractor and the City shall be directed between **Gary Gauci**, Public Sector Solutions Manager of Contractor, or such other individual identified by Contractor, and the Contract Administrator designated by the City.

## 7. **BILLING:**

- (a) City shall provide billing and bill collection services for Residential Units during the term of this Agreement. Within twenty (20) days of the end of each month during which collection services are provided by Contractor, Contractor shall submit to the City an invoice setting forth sums due by the City to Contractor for services rendered under this Agreement to Residential Units for the prior month. In addition, the City shall remit payment to Contractor for invoiced amounts within thirty (30) days after receipt of invoice. All past due invoices shall bear interest at the highest rate permitted by law.
- (b) Contractor shall provide billing and bill collection services for services rendered to Commercial and Industrial Units. Invoices sent to Commercial and Industrial Units by Contractor shall be paid within thirty (30) days after receipt by such Customer. All past due invoices shall bear interest at the highest rate permitted by law.
- (c) The City shall notify Contractor in writing of any Customer that City direct bills and that has failed to timely pay the City for waste collection services, and Contractor shall have the right to suspend service to such delinquent Customer until notified by the City to resume such services. Contractor shall have the right to suspend service to any Customer that Contractor direct bills that has failed to timely pay Contractor the provision of its services. If Contractor suspends service to a Customer for failure to timely pay City or Contractor invoices, Contractor has the right to charge a service reactivation fee. If Contractor suspends service to a Customer for failure to timely pay Contractor invoices, Contractor has the right to assess a finance charge or late payment fees if such service to the Customer is reinstated.

## 8. **MODIFICATION TO RATES:**

8.01 **CPI Adjustment** . Base Rates charged by Contractor for services will remain fixed as set forth on Schedule "A" and will not be adjusted for changes in the Consumer Price Index (as hereinafter defined), until the first anniversary of the Agreement Commencement Date. ("Anniversary Date"). Continuing annually on each Anniversary Date thereafter, the Base Rates for services shall be adjusted by eighty percent (80%) of the average monthly percentage increase that the Consumer Price Index, US City Average for All Urban Consumers, Garbage and Trash, Not Seasonally Adjusted, Base Period December 1983 = 100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the "C.P.I.") has increased over the 12 most recently published months. The C.P.I. published



on the first Monday prior to the end of November (or the first business day thereafter if such Monday is a Federal Holiday) shall be used to determine the monthly percentage increase change. The average will be determined by calculating the percentage change in the CPI each month during the applicable 12-month period. Once that average is determined, then the average change for the 12-month period during the prior year will be subtracted and that sum will be multiplied by 80%. The product shall be the CPI adjustment component of the annual modification to Base Rates. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

**8.02 Fuel Adjustment.** Beginning on the Anniversary Date and every anniversary thereafter, the Base Rates shall be adjusted by 20% of the average percentage increase or decrease in the price of diesel fuel determined by the Energy Information Administration of the US Department of Energy ("EIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Gulf Coast during the applicable 12-month time period. The average will be computed by calculating the percentage change in the EIA/DOE price each month during the applicable 12-month period. Once that average is determined, then the average change for the 12-month period during the prior year will be subtracted and that sum will be multiplied by 20%. The product thereof shall be the fuel adjustment component" of the annual modification to Base Rates.

**8.03 Annual Rate Adjustment Cap.** – Parties agree that the cap on rate adjustments is 5% annually.

**8.04 Uncontrollable Adjustments.** - Contractor shall be entitled to petition the City for a reasonable increase in annual rate adjustment Base Rates from time to time during the term of this Agreement, and upon thirty (30) days' written notice to the City and subject to approval by the City, which shall not be unreasonably withheld, to offset any change in uncontrollable conditions which increase the Contractor's costs, including but not limited to, increases in disposal costs, increases in landfill fees, increases in the costs of recycling, changes in the laws, regulations, rules, or ordinances or interpretation or enforcement thereof that increase Contractor's costs of providing the services. Documentation of such increases shall be submitted to the City at its request.

## **9. CITY'S OBLIGATIONS:**

The City agrees to perform all obligations required of the City pursuant to the terms of this Agreement, including, but not limited, the following:

- (a) The City shall communicate City decisions to Contractor on a timely basis from time to time as required under this Agreement;
- (b) The City shall provide the total number of Residential Units to the Contractor no later than the 25<sup>th</sup> day of each month (i.e., the total house count that to receive Contractor services). Contractor will use the most recent house count it has received

from the City in its invoice to the City. Contractor has no responsibility for any incorrect house counts provided by the City, but has the right, in its discretion, to verify the Residential Unit count information provided by the City. Any error or mistakes in the Residential Unit count provided by the City to Contractor shall be corrected within six months of the date provided or the mistake is waived and released by both parties;

- (c) The City shall timely pay Contractor pursuant to Section 8 of this Agreement;
- (d) The City shall timely inform Contractor of complaints made by Customers;
- (e) The City shall work with Contractor in good faith to resolve complex Customer service issues; and
- (f) The City shall educate Customers to encourage, promote and obtain proper Waste disposal as required by this Agreement, including educating Residential Unit Customers to assure proper and timely Waste set out.

**10. DISASTER EVENT:**

Contractor and City understand and agree that, in the event of a hurricane, tornado, major storm, flood, natural disaster, war, act of terrorism, pandemic, or other Act of God ("Disaster Event"), Contractor shall have no obligation under this Agreement to collect any debris or material resulting from the Disaster Event. The City has the right to engage a contractor of its choice to collect material or debris resulting from a Disaster Event. If the Contractor and City mutually agree that Contractor will collect material and debris resulting from the Disaster Event, the parties will enter into a separate, written agreement that reflects the agreed upon rates, services, and equipment to be used for such services..

**11. ENFORCEMENT:**

City grants unto Contractor the right to seek an injunction against any third party which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor's exclusive franchise rights granted herein. By granting this right to Contractor, the City in no way reduces its right or obligation to enforce this Agreement or any other City ordinance relating to the collection and disposal of Waste. Furthermore, Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of fees by City and/or Commercial Unit Customers. The City agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Agreement.

**12. TERMINATION:**

Except as otherwise provided herein, if either party defaults in the performance of any of the covenants or conditions contained herein, and fails to cure such default within thirty (30) days after the non-defaulting party has given the defaulting party written notice of such default (or if such default is of a nature that it cannot be cured within such thirty (30) day period, the defaulting party fails to commence the curing of such default within such thirty (30) day period, and fails to



thereafter diligently pursue the curing thereof) (the "Cure Period"), the non-defaulting party may: (a) terminate this Agreement as of any date which the non-defaulting party may select, provided said date is at least thirty (30) days after the expiration of the Cure Period; (b) cure the default at the expense of the defaulting party; and/or (c) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right to all damages or losses suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

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

The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or controversy that arises among the parties under or relating to this Agreement that is not amicably settled shall be submitted to mediation. If the parties remain unable to resolve the controversy through mediation, then either party may pursue their claim, dispute, disagreement or controversy in a court with proper venue in the state within which the services are being performed.

### **14. FORCE MAJEURE:**

The performance of this Agreement may be suspended, and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. "Force Majeure" shall mean:

(a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, weather conditions, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strike or other labor disturbances, governmental actions or regulations, governmental requests or requisitions for national defense, or breakdown or injury to, or shortage in, facilities used for the handling, processing or transportation of Solid Waste or any other cause beyond the reasonable control of either party;

(b) The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

(c) The suspension, termination, interruption, denial, or non-renewal of any permit or approval essential to the operation of the Contractor; or

(d) A Change in Law. "Change in Law" means (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not



adopted, promulgated, modified or reissued on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this Agreement more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law. However, if a federal, State or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax shall be treated as a Change in Law.

**15. INSURANCE:**

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The City shall be named as an additional insured under the policies, except for workers' compensation, subject to Contractor's indemnities set forth herein. Contractor shall provide the City with a certificate of insurance reflecting the City's additional insured status and agreeing to give the City at least 30 days' written notice in case of policy termination. The cost of such insurance shall be borne by the Contractor.

Minimum Limits of Insurance:

| Type of Coverage  | Per Occurrence Minimum   | Aggregate Minimum   |
|---|--|---------------------|
| Workers Compensation  | As required by law and shall cover all employees including drivers | As required by law. |
| Commercial General Liability<br>Bodily Injury/Property Damage | \$1,000,000<br>\$1,000,000 occurrence<br>combined single limit     | \$1,000,000         |
| Commercial Auto Liability<br>Bodily Injury/Property Damage    | \$1,000,000<br>\$1,000,000 each accident<br>combined single limit  | \$1,000,000         |
| Excess/Umbrella Liability                                     | \$1,000,000 occurrence   | \$2,000,0000        |

**16. INDEMNITY:**

The Contractor shall indemnify the City against any third-party claims, actions, or suits, to the extent caused by Contractor's negligent or willful misconduct in providing the services required by this Agreement. Upon obtaining knowledge of any matter giving rise to possible indemnification, the City shall notify the Contractor immediately. The Contractor shall have the right to defend or contest any such claim or demand in the name of the City. The City shall cooperate as the Contractor may reasonably request and shall make available to the Contractor or its representatives all records, and other materials reasonably required in such defense. So long as the Contractor is contesting or defending any such claim or demand in good faith, no amount shall be deemed to be due hereunder unless the City has been required by order of any court to pay any

sum arising from the subject matter of the suit.

**17. OWNERSHIP:**

Title to Waste shall pass to Contractor when placed in Contractor's collection vehicle. Title to Unacceptable Waste shall remain with the generator of such Unacceptable Waste.

**18. SEVERABILITY:**

Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.

**19. PRIOR AGREEMENTS:**

This Agreement contains the entire agreement between the parties hereto with respect to the matter set forth herein. No provision of any other document, including any request for proposal, shall be deemed incorporated herein, it being the intent of the parties that this Agreement sets forth the full agreement of the parties with respect to the services described herein. No change, alteration or amendment will be binding on either party unless set forth in a document duly executed by all parties hereto.

**20. ATTORNEY'S FEES AND VENUE:**

In the event suit is filed by either party as a result of the performance or non-performance of the terms set forth in this agreement, the prevailing party shall recover its attorney fees and court costs, with venue of any such action to be in Bastrop County, Texas.

**21. NOTICES:**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

If to the City, at:

City of Smithville  
PO Box 449



Smithville, TX 78759  
ATTN: City Manager

If to the Contractor at:

Waste Management of Texas, Inc.  
9708 Giles Rd.  
Austin, TX 78754  
ATTN: Senior Legal Counsel

with a copy to:

CT Corporation System  
350 North St. Paul Street  
Dallas, Texas 75201

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

EFFECTIVE AS OF THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

**CITY:**

CITY OF SMITHVILLE, TEXAS

**CONTRACTOR:**

WASTE MANAGEMENT OF TEXAS, INC.

\_\_\_\_\_  
BY:  
Mayor

\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary,  
City of \_\_\_\_\_, \_\_\_\_\_

**SCHEDULE "A"**  
**Base Rates Effective March 1, 2021**

\* The Rates below are net rates to the City of Smithville

**Residential Unit Rate**

| <u>Residential Collection</u><br><u>Service Rates</u> | <u>Size</u>   | <u>Frequency</u> | <u>Per Home/Per</u><br><u>Month</u> |
|---|---------------|------------------|-------------------------------------|
| Residential Trash                                     | 95 gallon     | Twice per week   | \$27.95                             |
| Residential Bulk                                      | up to 4 yards | Once per month   | Included                            |
| Additional Cart                                       |               |                  | \$6.00                              |

**Light Commercial, Commercial and Industrial Customer Rates**

Rates based on weekly services, which will be invoiced monthly.

| <u>Commercial Collection</u><br><u>Container Size</u> | <u>1X Per Week</u> | <u>2X Per Week</u> | <u>3X Per Week</u> | <u>4X Per Week</u> |
|---|--------------------|--------------------|--------------------|--------------------|
| 96 Gallon   | \$29.23            | \$58.44            |                    |                    |
| 2yd   | \$110.42           | \$220.83           | \$331.25           | \$441.66           |
| 3yd   | \$129.90           | \$259.80           | \$389.70           | \$519.60           |
| 4yd   | \$140.64           | \$281.28           | \$421.92           | \$562.55           |
| 6yd   | \$189.91           | \$379.83           | \$569.74           | \$759.66           |
| 8yd   | \$235.55           |                    |                    |                    |

Lock bar service/per month: \$5.00

Commercial Container Delivery Fee: \$90.00 per Cart or Dumpster

Commercial Container Exchange Fee: \$45.00 per Cart or Dumpster

Commercial Container Extra Pickup Fee: \$128.00 per Dumpster

Commercial Container Unusual Accumulation/Overage Fee: \$135.00 per occurrence



### Schedule B – No Charge Services to City Facilities

| City of Smithville - Free Municipal Services  |                                |      |         |               |
|---|--------------------------------|------|---------|---------------|
| Location  | Address                        | Qty. | Size    | Frequency     |
| MLK Community Baseball Park   | 1002 SE Martin Luther King Rd  |      |         |               |
| Smithville Fire Station   | 106 Taylor St.                 | 1    | 96 Gal. | 2 X per week  |
| Railroad Park   | 100 NW 1st. St.                | 1    | 96 Gal. | 2 X per week  |
| Smithville Sewer Plant  | 105 Royston St.                | 1    | 96 Gal. | 2 X per week  |
| City Hall   | 317 Main St.                   | 2    | 96 Gal. | 2 X per week  |
| Smithville Library  | 101 NE 6th St.                 | 1    | 96 Gal. | 2 X per week  |
| City of Smithville Yard   | 1000 SE Martin Luther King Rd. | 1    | 3 yd.   | 1 X per week  |
| Oak Hill Cemetary   | FM 2336 & CR 361               | 1    | 6 yd.   | 1 X per week  |
| City of Smithville Recycling Center   | HWY 95 Loop 230                | 1    | 6 yd.   | 2 X per week  |
| Keilberg Park   | 502 Maple St.                  | 1    | 3 yd.   | 1 X per week  |
| Riverbend Park  | 130 W. SH 71                   | 1    | 6 yd.   | 2 X per week  |
| City of Smithville Sewer Plant  | 105 Royston St.                | 1    | 3 yd.   | 1 X per week  |
| City of Smithville Airport  | 789 W. Loop 230                | 1    | 3 yd.   | 1 X per week  |
| City of Smithville Boat Ramp  | 557 NW Loop 230                | 1    | 6 yd.   | 2 X per week  |
| City of Smithville Fire Station   | 319 NW Loop 230                | 1    | 6 yd.   | 1 X per week  |
| City of Smithville Recreation Center  | 106 Gazely St.                 | 1    | 6 yd.   | 1 X per week  |
| Willow Creek Sewer Plant  | 443 Hill Rd.                   | 1    | 3 yd.   | 1 X per week  |
| City of Smithville Warehouse  | 1000 SE Martin Luther King Rd. | 1    | 40 yd.  | 1 x per month |
| City of Smithville Annual Cleanup   | 1000 SE Martin Luther King Rd. | 1    | 40 yd.  | 4 per year    |
| **Any 40 yd rolloff above the annual 4 container limit will be charged at a rate of \$125 delivery and \$600 per haul |                                |      |         |               |

\*Any additional Free Municipal locations that come into service during the contract will have to be acknowledged and agreed upon by both parties.