

## Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Aaron Russell, P.E., Director of Public Works

Date: July 6, 2009

Subject: Professional services contract with SMS Woodstone, Inc. for brush and yard waste processing.

---

### **Council Action Requested:**

Award a professional services contract with SMS Woodstone, Inc. for brush and yard waste processing.

### **Background Information:**

On April 20, 2009, council approved the new rate effective June 1, 2009 for solid waste collection by a private vendor. At that time, the rate calculation included \$.55 per household, accounting for the cost of brush processing. This rate was calculated using historic volume for brush collection and a price per cubic yard for brush processing submitted by the private vendor IESI. The contract with IESI does allow for the City to pursue other alternatives regarding brush processing. Brush processing is defined in the IESI contract as follows.

***Brush Processing*** – Grind Brush and Yard Waste through a 2" x 3" screen at the City's compost site. Also includes disposal of all mulch resulting from ground brush in excess of 10,000 cubic yards of brush each year.

In an effort to further reduce the solid waste rate, staff issued a Request for Proposals to private vendors regarding brush processing. The selected proposal will result in a monthly brush processing rate that equates to \$0.18 per household. This rate has been secured for a two year period and will not affect the Consumer Price Index (CPI) or Fuel Index adjustments included in the solid waste collection contract with IESI. This reduces the residential solid waste rate from \$16.42 to \$16.05 per month per residential unit. Additionally, per the contract submitted for approval, the mulch that will be available to the public will be processed twice, yielding finer, higher quality mulch than that currently available.

The non-residential rate structure is not affected since brush collection is not included for non-residential customers.

**Board/Citizen Input:**

N/A

**Financial Considerations:**

Revenues will be deposited in the Solid Waste Fund, Public Works Department.  
(Account # 404-0000-341-1000).

There is no expenditure of City funds associated with approval of this ordinance.

**Attachments:**

Brush processing contract with SMS Woodstone, Inc.  
Summary of Proposals

**Staff Contact:**

Aaron Russell, P.E., Director of Public Works  
817-447-5410 X250  
[arussell@burlesontx.com](mailto:arussell@burlesontx.com)

Rey Gonzales, Assistant Director of Public Works  
817-447-5410 X271  
[rgonzales@burlesontx.com](mailto:rgonzales@burlesontx.com)

**WOOD WASTE SUPPLY AGREEMENT**

THE CITY OF BURLESON (the "*City*"), and SMS WOODSTONE, Inc., a Texas business corporation with its principal place of business at PO Box 516, Burleson, Texas ("*Woodstone*") hereby enter into this Wood Waste Supply Agreement (the "*Agreement*") effective as of \_\_\_\_\_, 2009 (the "*Effective Date*"). The City and Woodstone are each referred to herein as a "*Party*" and collectively as the "*Parties*".

**WITNESSETH:**

WHEREAS, the City will from time to time collect wood waste debris and other municipal biomass materials (collectively, "*Wood Waste*") from its citizens:

WHEREAS, the City will transport the Wood Waste to that certain tract of real property owned by the City further described in Exhibit "A" hereto (the "*Delivery Property*");

WHEREAS, Woodstone wishes to collect and grind the Wood Waste at the Delivery Property and transport all single grind material away from the site, and

NOW THEREFORE, in consideration of the undertakings of each Party to the other Party contained in this Agreement, the Parties agree as follows:

1. "**Wood Waste**": means trees, limbs, brush, unbagged leaves and pine straw and other wood (but specifically excluding tree stumps or roots, treated or creosote wood) which the City deposits at the Delivery Property or specifically inspects and authorizes to be deposited at the Delivery Property. During the Term of this Agreement Woodstone shall be the exclusive recipient of such Wood Waste to be delivered to the Delivery Point and what wood is to be landfilled.

2. **Delivery and Collection**: On the terms and subject to the conditions set forth in this Agreement, the City agrees to grant exclusively to Woodstone the right to receive all Wood Waste collected by the City and deposited at the Delivery Property. Woodstone agrees to single grind the Wood Waste at \$.50 per cubic yard cost to the City, re-grind at an additional \$.50 per cubic yard to be left on the delivery property and at Woodstone's sole cost, to transport the Wood Waste to its markets. A stock of 500 cubic yards of 2" X 2" re-grind will be maintained at the delivery property at all

CITY OF BURLESON AND WOODSTONE confidential

times for City use with options to request up to 300 additional cubic yards of 2" X 2" re-grind if needed for customer use at no additional cost to the City.

**Tracking:** Woodstone will keep accurate record reflecting the actual quantities of Wood Waste which is single and double ground by Woodstone and will send the City an invoice each month showing the quantities which have been single and double ground and the charges for such grinding. The City will pay the invoice within 15 days after receipt of the same. If the City disputes the quantities of Wood Waste ground by Woodstone as shown on the invoice, the City will have the right to examine Woodstones' records concerning the same.

**Term:** This Agreement shall be effective July 7, 2009 and shall continue until July 6, 2011 (the "**Initial Term**"). Upon agreement of both of the Parties the initial term may be extended for two (2) consecutive renewal terms of one (1) year each. The extension of the term will be automatic unless written notice to the other party is delivered prior to the expiration of the Initial Term and/or first renewal term, as the case may be. The agreement may be terminated by either party at the end of each year and in accordance with Item 4.

1. **Title and Risk of Loss.** Title and risk of loss with respect to all Wood Waste shall pass to Woodstone once deposited by the City at the Delivery Property. Once Wood Waste is deposited at the Delivery Point, Woodstone further agrees to be responsible for its proper disposal and for obeying any further requirement, regulation, order, or the like of Texas Commission on Environmental Quality (TCEQ), the State or Federal governments or their agencies regarding such Waste Wood. In no event will such Wood Waste remain at the Delivery Property longer than four months without being ground and removed nor shall it otherwise be allowed to become a nuisance.

2. **Grinding Equipment.** Woodstone will provide Wood Waste grinding equipment (the "**Grinding Equipment**") on the Delivery Property at the times requested by The City. The Grinding Equipment shall be operated by Woodstone's employees at the Delivery Property and shall remain the property of Woodstone at all times.

3. **Exclusivity.** The City agrees that throughout the Initial Term of this Agreement and any renewal terms Woodstone will have the exclusive right to grind Wood Waste for the City that is collected and delivered by the City to the Delivery Property.

CITY OF BURLESON AND WOODSTONE confidential

4. **Termination.** Either party may terminate this Agreement for cause if the other party fails to comply with the terms of this Agreement and does not correct such failure within 15 days after receiving written notice of such failure to comply from the other party. In addition to termination for failure to comply with this Agreement, after the primary term, either party may terminate this Agreement by giving the other party thirty (30) days prior written notice. (Consider termination for cause even in the primary term?)

5. **Liabilities – Claims – Indemnifications**

(a) WOODSTONE WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY AGAINST ANY LIABILITY (WHETHER STRICT OR OTHERWISE) FOR ANY CLAIM, LOSS OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) ON ACCOUNT OF (i) ANY INJURY, DISEASE OR DEATH OF PERSONS (INCLUDING WOODSTONE'S EMPLOYEES) OR DAMAGE TO PROPERTY (INCLUDING WOODSTONE'S) ARISING OUT OF WOODSTONE'S LOADING, UNLOADING, STORAGE, HANDLING, USE OF THE WOOD WASTE (EXCEPT TO THE EXTENT CAUSED BY THE CITY'S NEGLIGENCE) FROM AND AFTER THE DELIVERY POINT OR (ii) ARISING AS A RESULT OF ANY CONTAMINATION, RELEASE, SPILL OR DISCHARGE CAUSED BY WOODSTONE OR ITS EMPLOYEES, AGENTS, CONTRACTORS, LICENSEES, SUBLESSEES, ASSIGNEES, CONCESSIONAIRES, OR AUTHORIZED REPRESENTATIVES, OR BY THIRD PARTIES DEPOSITING WOOD WASTE AT THE DELIVERY POINT WITHOUT AUTHORIZATION BY THE CITY.

THIS INDEMNIFICATION INCLUDES ANY AND ALL REASONABLE AND NECESSARY COSTS INCURRED BY THE CITY BECAUSE OF ANY INVESTIGATION OF AN ENVIRONMENTAL ACT FOR WHICH WOODSTONE IS ADJUDICATED RESPONSIBLE THAT REQUIRES ANY CLEANUP, REMEDIATION, REMOVAL OR RESTORATION MANDATED BY FEDERAL, STATE OR LOCAL AGENCY OR POLITICAL SUBDIVISION.

(b) TO THE EXTENT ALLOWED BY LAW, THE CITY WILL INDEMNIFY, DEFEND AND HOLD HARMLESS WOODSTONE AGAINST ANY LIABILITY (WHETHER STRICT OR OTHERWISE) FOR ANY CLAIM, LOSS OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) ON ACCOUNT OF (i) ANY INJURY, DISEASE OR DEATH OF PERSONS (INCLUDING THE CITY'S CONTRACTORS) OR DAMAGE TO PROPERTY (INCLUDING THE CITY'S) ARISING OUT OF THE CITY'S LOGGING, TRANSPORTING, LOADING, UNLOADING, STORAGE, UP TO AND INCLUDING THE UNLOADING BY CITY EMPLOYEES AT THE DELIVERY POINT, OR (ii) ARISING AS A RESULT OF ANY CONTAMINATION, RELEASE,

CITY OF BURLESON AND WOODSTONE confidential

SPILL OR DISCHARGE CAUSED BY THE CITY OR ITS EMPLOYEES, AGENTS, CONTRACTORS, LICENSEES, SUBLESSEES, ASSIGNEES, CONCESSIONAIRES, OR AUTHORIZED REPRESENTATIVES.

THIS INDEMNIFICATION INCLUDES ANY AND ALL REASONABLE AND NECESSARY COSTS INCURRED BY WOODSTONE BECAUSE OF ANY INVESTIGATION OF AN ENVIRONMENTAL ACT FOR WHICH AND ONLY TO THE EXTENT THE CITY IS ADJUDICATED RESPONSIBLE THAT REQUIRES ANY CLEANUP, REMEDIATION, REMOVAL, OR RESTORATION MANDATED BY FEDERAL, STATE OR LOCAL AGENCY OR POLITICAL SUBDIVISION.

THIS INDEMNIFICATION SPECIFICALLY DOES NOT INCLUDE ANY ENVIRONMENTAL MATTER EXISTING AT THE DELIVERY POINT AT THE TIME THIS AGREEMENT IS FIRST SIGNED OR DUE TO THE ACTS OR OMISSIONS OF WOODSTONE OR ANY THIRD PARTY NOT SPECIFICALLY AUTHORIZED BY THE CITY TO DEPOSIT SUCH SUBSTANCE AT THE DEPOSIT SITE.

The indemnity obligations under this Section 7 will survive termination of this Agreement.

6. **Choice of Law.** The Agreement is made in, and shall be governed and controlled in all respects by the laws of the State of Texas, USA and all disputes, including interpretation, enforceability, validity, and construction, shall be determined under the law of the State of Texas, without regard to any conflict of law provisions.

7. **Dispute Resolutions.** In the event of any dispute between the parties relating to or arising out of any aspect of this relationship, representatives of the parties with decision-making authority shall meet in good faith effort to resolve the dispute. If within thirty (30) days after such meeting or such longer period as agreed to by the parties in writing, the parties have not resolved the dispute, either party may commence litigation.

The Parties submit to the exclusive jurisdiction and venue of the State District Court serving Tarrant or Johnson County, Texas.

8. **Waiver.** A party's failure to exercise a right or remedy or a party's acceptance of a partial or delinquent payment shall not operate as a waiver of any of their rights or the other party's obligations under the Agreement and shall not

CITY OF BURLESON AND WOODSTONE confidential

constitute a waiver of such party's right to declare an immediate or a subsequent default.

9. **Severability.** If one or more of the provisions of this Agreement shall be found, by a court with jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of this Agreement. The parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the economic objectives of the illegal, invalid or unenforceable provision.

10. **Integration.** The Agreement constitutes the entire understanding between the parties with respect to the subject matter of the Agreement and supersedes any prior discussions, negotiations, agreements, memoranda of understanding and the like. Modifications to the Agreement may be made only in writing and signed by each party.

11. **Assignments.** This agreement may be assigned by Woodstone with the written consent of the City, provided that the party to whom the Agreement is assigned agrees in writing to be bound by all of the terms and conditions of the Agreement.

12. **Attorney Fees and Costs.** If either Party brings an action or proceeding to enforce the terms of this Agreement or declare rights hereunder, the prevailing Party in any such proceeding, trial or appeal, shall be entitled to its reasonable attorney's fees and costs to be paid by the losing party.

13. **Dollars.** All references to monetary amounts shall be in U.S. Dollars.

14. **Agreement Preparation.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Agreement was negotiated, prepared, drafted or executed.

15. **Notices.** All notices and other communications given pursuant to or in connection with this Agreement shall be given in writing and shall be personally delivered, mailed or sent by facsimile transmission to the intended recipient at the address specified below for such recipient or, as to either Party, at such other address

CITY OF BURLESON AND WOODSTONE confidential

as shall be designated by such Party in a notice to the other Party. If personally delivered to the address herein provided, a notice shall be deemed to have been received upon delivery or if delivered after regular business hours, it shall be deemed to have been received on the following business Day. If mailed to the address herein provided, a notice shall be deemed to have been received five (5) business Days after the mailing thereof, provided that a notice shall not be effective if mailed during any period of mail service disruption or threatened disruption by strike or lockout. If sent by electronic means or facsimile transmission to the address herein provided, a notice shall be effective upon confirmed receipt.

The City: CITY OF BURLESON  
141 W. Renfro St.  
Burleson, Texas 76028  
Attn: Rey Gonzales  
Telephone: 817-447-5410 ext. 271  
Facsimile: 817-447-9989  
E-mail: rgonzales@burlesontx.com

Woodstone: SMS Woodstone, Inc.  
PO BOX 516  
Burleson, TX 76097  
Attn: Tom Steele  
Telephone: 817-235-7035  
Facsimile: 817-563-9311  
E-mail: smswoodstone@gmail.com

17. A Party shall be entitled to change its address for service hereunder by providing the other Party with not less than thirty (30) days prior written notice of such address change.

THE CITY OF BURLESON:

SMS WOODSTONE, INC.

\_\_\_\_\_

\_\_\_\_\_

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

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

Print Name: Curtis E. Hawk

Print Name: Tom Steele

Title: City Manager

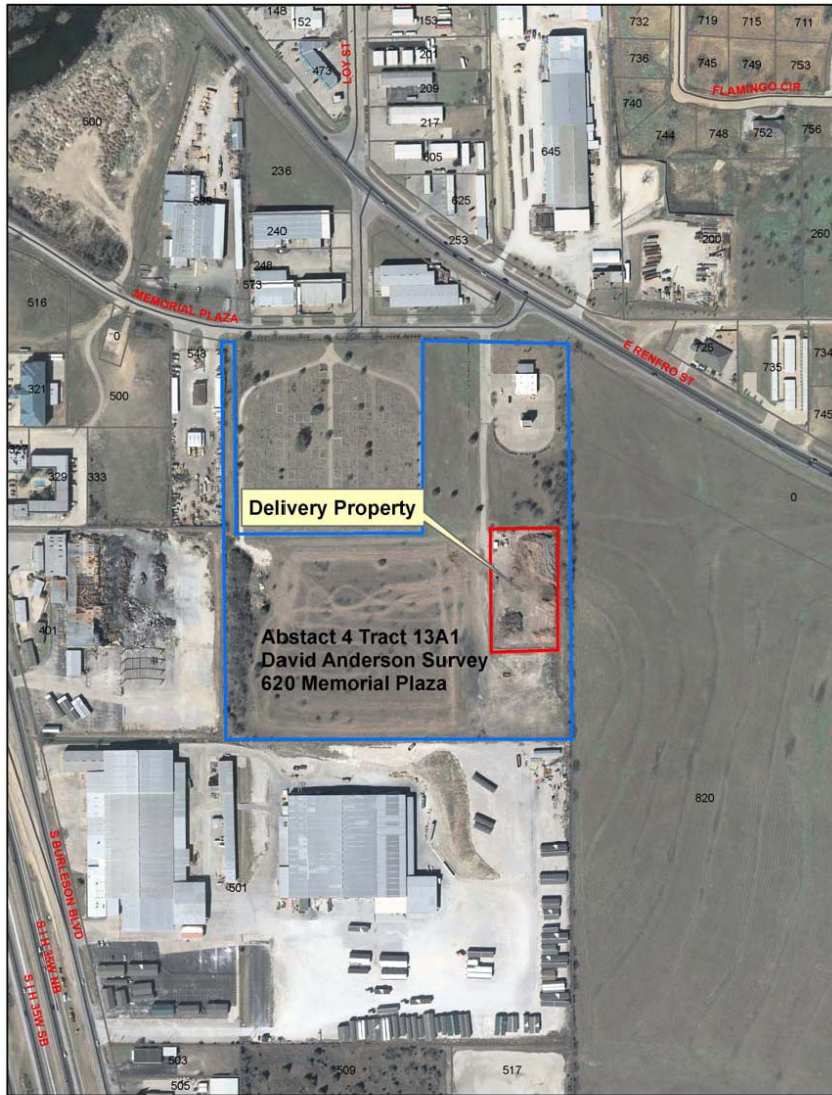
Title: \_\_\_\_\_

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

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

CITY OF BURLESON AND WOODSTONE confidential

EXHIBIT "A"  
LEGAL DESCRIPTION OF DELIVERY PROPERTY



CITY OF BURLESON AND WOODSTONE confidential

**MULCHING OF BRUSH, TREE LIMBS AND YARD WASTE RFP TABULATION**

<b>VENDOR</b>	<b>GRIND AND HAUL</b>	<b>LEAVE ON SITE</b>
		<b>2" x 3" GRIND</b>
SMS Woodstone	\$0.50	\$0.50
GWG Wood Group, Inc.	\$1.25	\$1.60
Reo Overall, Inc.	\$3.75	\$3.75
Horton Tree Service	\$6.00	\$6.00
Fort Worth Excavating, Inc.	\$10.00	\$2.00
Leonard Brothers, LLC	\$15.95	\$1.65

Estimated 40,000 cubic yards of loose brush/yard waste for mulching per year.