

DISPOSAL AGREEMENT

THIS DISPOSAL AGREEMENT (the “Agreement”), is made and entered into this 22nd day of February 2021, (“Effective Date”) by and between the between the City of Mission, Texas (the “City”), and BFI Waste Services of Texas, LP, d/b/a Republic Services of Rio Grande Valley (the “Contractor”).

Recitals

A. The City desires to procure disposal services for the disposal of Municipal Solid Waste, including Bulky Waste and Yard Waste, collected in the City; and

B. Contractor owns and operates a landfill located at 23485 North Moorefield, La Gloria, Texas (the “Landfill”) and is willing to dispose of the City’s Municipal Solid Waste, including Bulky Waste and Yard Waste at the Landfill, subject to the terms and conditions set forth below.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree to the following terms and conditions:

1. Delivery of Acceptable Waste. City, either itself or by and through its hauler(s), shall deliver Acceptable Waste (as defined below) to the Landfill. The Landfill will be the exclusive disposal facility for the Acceptable Waste during the term of this Agreement.

2. Delivery Procedures; Operation of the Landfill.

(a) Acceptance of Acceptable Waste. Contractor shall have the right in its sole discretion to reject delivery of any waste offered for acceptance by City that does not constitute Acceptable Waste. “Acceptable Waste” means all Municipal Solid Waste collected by the City or its haulers, including Bulky Waste and Yard Waste, that is authorized to be disposed of at the Landfill under then applicable federal, state and local laws, regulations, ordinances, rules, permits, licenses, and governmental orders or directives (collectively “Applicable Laws”) and that is not Unacceptable Waste (as defined below). For purposes of this Agreement, the following definitions apply:

(i) Municipal Solid Waste means useless, unwanted or discarded nonhazardous materials (trash or garbage) with insufficient liquid content to be free-flowing that result from residential, commercial, governmental and community operations. Municipal Solid Waste does not include any Unacceptable Waste.

(ii) Bulky Waste means stoves, refrigerators (with all CFC and other refrigerants removed), water tanks, washing machines, furniture and other similar items with weights and/or volumes greater than those allowed for the waste container supplied.

(iii) Yard Waste means grass, leaves, flowers, stalks, stems, tree trimmings, branches, and tree trunks not to exceed 8 feet in length.

(b) Operation of the Landfill/Procedures. Notwithstanding anything in this Agreement to the contrary, Contractor shall have the right, in its sole discretion, to close the Landfill, in whole or in part, either temporarily or permanently, at any time for any reason. Upon any such permanent closure, Contractor shall have the right to terminate this Agreement. City’s delivery of Acceptable Waste

to the Landfill, which shall occur only during the Landfill's posted hours, shall be governed by the procedures applicable generally to customers utilizing the Landfill as Contractor may modify such procedures from time to time.

(c) City's Compliance with Applicable Laws. City shall collect, transport and exclusively deliver waste to the Landfill in compliance with all Applicable Laws and the procedures referenced in Section 2(b).

(d) Title to Waste. City represents and warrants to Contractor that either City or its City shall hold clear title, free of all liens, claims and encumbrances, to the waste delivered by City to the Landfill. Title to, and risk of loss and responsibility for, Acceptable Waste delivered to the Landfill by City shall pass at the time such Acceptable Waste is removed from the delivery vehicle at the Landfill. Title to Unacceptable Waste shall remain with City or its City and shall never be deemed to pass to Contractor.

3. Term. Unless sooner terminated pursuant to Section 6, this Agreement shall commence as of the Effective Date and shall remain in full force and effect for a period of ten (10) years. Upon expiration or termination of this Agreement, the obligations of City to deliver and of Contractor to accept Acceptable Waste shall terminate; provided, however, that all other rights and obligations of the parties under this Agreement (including those with respect to payment and indemnification) shall survive termination.

4. Disposal Fees.

(a) Fees. City shall pay Contractor a disposal fee (the "Disposal Fee"), as set forth in Exhibit A, for all Acceptable Waste City delivers to the Landfill. In addition to the Disposal Fee, City shall pay administrative fees as Contractor may need to impose as per changes allowed by Applicable Law. The initial fee amounts for administrative fees are set forth on the cover of this Agreement.

(b) Payment; Deposit. Contractor shall transmit an itemized invoice to City of all Disposal Fees and other charges under this Agreement on a periodic basis as indicated on the cover page of this Agreement. City shall pay all invoices within 30 days after receipt of invoice. If City does not make payment by such date, City shall pay a late payment fee in an amount of 1.5% per month on the amount past due. City also shall pay a fee of \$50 (which Contractor may increase from time to time by notice to City) for each check submitted by City that is an insufficient funds check or is returned or dishonored. If the City decides to pay with a credit card, Contractor may add a 3.5% processing fee.

(c) CPI Adjustment. In addition to the adjustments described in Section 4(c), the Disposal Fee shall be increased on the first anniversary of this Agreement and annually thereafter in an amount equal to the percentage increases in the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services) U.S. City Average, as published by United States Department of Labor, Bureau of Statistics (the "CPI"). Rates will be increased using the most recently available trailing 12 months average CPI compared to the 12 months preceding. No decreases nor increases shall be made to the rates for service if the CPI decreases. If the CPI ceases to be available, the parties shall use the most closely comparable index then available. No increase under this Section 4(c) shall exceed 2%.

5. Unacceptable Waste.

(a) Delivery of Unacceptable Waste. City agrees that it shall not deliver any Unacceptable Waste to the Landfill. If City delivers waste that contains both Acceptable Waste and Unacceptable Waste, the entire delivery shall constitute Unacceptable Waste if the Unacceptable Waste cannot be separated from the Acceptable Waste through the reasonable efforts of Contractor, as City's agent to cause such separation, with the cost of such separation to be paid by City.

(b) Weighing and Inspection of Waste by Contractor. Contractor shall weigh all Acceptable Waste at the Landfill and the weight so determined shall be final and conclusive on both City and Contractor. Contractor shall have the right, but not the obligation, to inspect any of City's trucks to determine whether the waste delivered is Acceptable Waste or Unacceptable Waste. City acknowledges and agrees that any failure by Contractor to perform any such inspection or to detect Unacceptable Waste despite such inspection shall in no way relieve City from its obligation to deliver only Acceptable Waste or from its other obligations under this Section 5.

(c) Rejection of Unacceptable Waste. If City delivers Unacceptable Waste to the Landfill, Contractor may, in its sole discretion: (i) reject such Unacceptable Waste at City's expense; or (ii) if Contractor does not discover such Unacceptable Waste in time to reject and reload such Unacceptable Waste, after giving City telephonic notice thereof and a reasonable opportunity to dispose of such Unacceptable Waste, Contractor may, as City's agent, dispose of such Unacceptable Waste at a location authorized to accept such Unacceptable Waste in accordance with all Applicable Laws and charge City all direct and indirect costs incurred due to handling, delivery and disposal of such Unacceptable Waste, unless City otherwise elects to arrange for disposal of the Unacceptable Waste. If City elects to dispose of such Unacceptable Waste, it shall do so within such time period as Contractor reasonably deems necessary or appropriate in connection with the operation of the Landfill, including the preservation of the health and safety of its employees. If after electing to do so City does not dispose of the Unacceptable Waste within such time period, Contractor may dispose of such Unacceptable Waste as City's agent, without further notice to City, and City shall pay the direct and indirect costs set forth above. Notwithstanding the foregoing, no notice shall be required by Contractor to City for Contractor to dispose of Unacceptable Waste as City's agent in emergency situations where in Contractor's reasonable judgment a delay in such disposal could constitute a hazard to the Landfill or any person on, about or near the premises.

(d) Definition of Unacceptable Waste. For the purposes of this Agreement, "Unacceptable Waste" means: (i) any material that is not Acceptable Waste; (ii) any material that by reason of its composition, characteristics or quantity is defined as a "hazardous material," "hazardous waste," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "toxic substance," "toxic waste," "toxic pollutant," "contaminant," "pollutant," "infectious waste," "medical waste," "radioactive waste," or "sewage sludge" under any Applicable Law; (iii) any material that requires other than normal handling, storage, management, transfer or disposal; or (iv) any other material that may present a substantial endangerment to public health or safety, may cause applicable air quality or water effluent standards to be violated by the normal operation of the Landfill, or because of its size, durability or composition cannot be disposed of at the Landfill or has a reasonable possibility of otherwise adversely affecting the operation or useful life of the Landfill.

6. Default.

(a) Events of Default. Each of the following shall be an event of default by City under this Agreement: (i) City fails to pay any amount due as and when the same becomes due under this Agreement; or (ii) City fails to perform any other material term, covenant or agreement contained in this Agreement on its part to be performed and such failure continues for a period of 30 days after written notice to City specifying the nature of such failure and requesting that it be remedied.

(b) Remedies on Default. Whenever any event of default by City shall have occurred and be continuing, Contractor shall have the following rights and remedies, which shall be in addition to any other remedies provided by Applicable Law or this Agreement: (i) upon the end of any applicable grace period in this Section 6, Contractor shall have the option to immediately terminate this Agreement unless during such period City has taken remedial steps the effect of which would be to enable City to cure such event of default within an additional 15 day period following the expiration of such grace period; and

(ii) if City is then in default, Contractor shall have the option, without terminating this Agreement, to stop accepting Acceptable Waste delivered by City until such default is cured or this Agreement is terminated. If Contractor stops accepting Acceptable Waste, City shall pay Contractor a service interruption fee in an amount determined by Contractor in its discretion up to the maximum amount allowed by Applicable Law.

7. Indemnification. City shall indemnify, defend (upon request by Contractor) and hold harmless Contractor and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns (the "Contractor Indemnified Parties") from and against any and all liabilities, losses, assessments, fines, penalties, forfeitures, damages, costs, expenses and disbursements, including reasonable legal fees, expert witness fees, litigation related expenses, and court costs in any litigation, investigation or proceeding (collectively, "Losses"), whether arising out of a claim or loss of or damage to property or injury to or death of any person, including any Indemnified Party, or otherwise, caused by or arising out of (a) City's breach of this Agreement, (b) City's negligence or willful misconduct, or (c) City's delivery of Unacceptable Waste to the Landfill.

8. Insurance. During the term of this Agreement, City shall maintain the following insurance coverages:

Workers' Compensation:

Coverage A	Statutory
Coverage B – Employer's Liability	\$1,000,000 each Bodily Injury by Accident
	\$1,000,000 policy limit Bodily Injury by Disease
	\$1,000,000 each occurrence Bodily Injury by Disease

Automobile Liability:

Bodily Injury/Property Damage	\$2,000,000
Combined – Single Limit and leased vehicles (including trailers)	Coverage applies to all owned, non-owned, hired

Commercial General Liability:

Bodily Injury/Property Damage	\$2,000,000 each occurrence
	\$3,000,000 general aggregate

<u>Contractor's Pollution Liability:</u>	\$1,000,000
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The insurance carriers providing the coverage required by this Section 8 shall be rated at least A-VIII by A.M. Best. City shall deliver the Certificates of Insurance evidencing the foregoing policies to Contractor before City delivers any waste to the Landfill pursuant to this Agreement. In addition, the (i) Commercial General Liability (including the Umbrella/Excess policy) policy must include Contractual Liability coverage specifically covering City's indemnification of Company, and (ii) The Commercial General Liability, Automobile Liability and the Umbrella/Excess Liability policies must be written on an "occurrence form". The Certificates (ACORD form) and the insurance policies required by this Section 8 shall contain a provision that provides that the insurance coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to Contractor. With the exception of the workers' compensation policy, Contractor and the Contractor Indemnified Parties shall be shown as additional insureds under all of the insurance policies required by this Section 8. The policies required by this Section 8 shall be primary and non-contributory with respect to Contractor and the Contractor Indemnified Parties, and the insurance providers shall agree to waive their rights of subrogation against Contractor and the Contractor Indemnified Parties.

9. General.

(a) Independent Contractor. City and Contractor shall perform their obligations under this Agreement as independent contractors. Neither party nor any of its employees, agents or subcontractors shall be, purport to be, or be deemed, the agent of the other party.

(b) Assignment; Binding Effect. City may not assign this Agreement without Contractor's prior written consent, which Contractor may grant or withhold in its sole discretion. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assignees.

(c) Entire Agreement. This Agreement supersedes all prior agreements, written or oral, with respect to the subject matter of this Agreement. Only a written instrument signed by both parties hereto may modify this Agreement.

(d) Severability. If any one or more of the provisions contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect.

(e) Waiver. No delay or omission by a party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by a party on any occasion is effective only on that occasion and not any other.

(f) Waiver of Jury Trial; Attorneys' Fees. By execution and delivery of this Agreement, each of the parties knowingly, voluntarily and irrevocably: (i) waives any right to trial by jury; and (ii) agrees that any dispute arising out of this Agreement shall be decided by court trial without a jury. If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

IN WITNESS HEREOF, the parties have entered into this Agreement as of the Effective Date above.

City of Mission, Texas
A municipal corporation of Hidalgo County, Texas

BY: _____

Dr. Armando O'cana, Mayor

BFI Waste Services of Texas, LP

BY: Allied Waste Landfill Holdings, Inc., its General Partner

BY: _____

_____, General Manager

Exhibit A

Pricing

Item	Description	Rate/Ton
1	MSW Tonnage Rate	\$21.00
2	Brush/Bulk Tonnage Rate	\$19.87
3	Chips and Clean Brush Tonnage Rate	\$16.56