

AGREEMENT

THIS AGREEMENT made and entered into in this _____ day of _____, 2013 by and between the City of Corpus Christi, hereinafter referred to as "City", and the owners of the Gulley-Hurst Type IV Landfill, MSW Corpus Christi Landfill, Ltd., a Texas limited partnership and Gulley-Hurst LLC, a Texas limited liability company, hereinafter referred to as "Contractors";

RECITALS

A. City and Contractors desire to enter into an agreement pursuant to which Contractors will provide services (as defined below) to City at the Gulley-Hurst Type IV Landfill (as defined below) in accordance with the terms and subject to the conditions of this Agreement; and

B. City has determined that the provision of such Services by Contractors to City are in the vital and best interests of City and the health, safety and welfare of its residents and in the accordance with public purposes and provisions of applicable federal, state, county, and local laws and ordinances.

NOW, THEREFORE, for and in consideration of the mutual promises contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge the parties hereby covenant and agree as follows:

ARTICLE I.

1.01 **Defined Terms.** Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.01.

"Affiliate" of a Person means any other Person controlling, controlled by or under common control with such Person.

"Agreement" means this Agreement and all the Exhibits to this Agreement.

"Business Day" means any day other than Saturday or Sunday or a Holiday.

"Bulky Items" means the following large items that have been specifically authorized for collection of specified days under section 21-14 of the Corpus Christi Code of Ordinances: indoor and outdoor furniture, mattresses and box springs, carpet, swing sets, plastic swimming pools, large toys, bicycles, fish aquariums, and large household appliances, and incidental construction and demolition materials as defined in section 21-1 of the Corpus Christi Code of Ordinances, that may be included in loads of materials collected by Solid Waste Operations during the collection of Bulky Items.

"Brush" means tree and shrub limbs and trimmings, which are less than three (3) inches in diameter, grass clippings, weeds, leaves, and mulch.

"Heavy Brush" means tree and shrub limbs and trimmings, which are greater than three (3) inches in diameter, tree trunks, root balls, and other large plant matter.

"City" means City of Corpus Christi, a Texas home rule municipal corporation.

"City Indemnified Parties" means City and its officers, representatives, employees or agent.

"City's Responsibilities" means all of City's obligations pursuant to Section 2.03.

"Construction or Demolition Waste" means waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

"Contract Year" means rolling twelve (12) month periods measured initially from the Effective Date to the first anniversary of the Effective Date and thereafter to each subsequent anniversary of the Effective Date.

"Cubic Yard" means the volume as determined by the size of the container, trailer or vehicle used to transport solid waste as evidenced by a tag issued by the manufacturer or if such is not available the actual size of the container, trailer or vehicle as measured by Contractors. If City and Contractors cannot agree on the measurement, the term means twenty-seven cubic feet or 46,656 cubic inches.

"Director" means City's Director of Solid Waste Operations or an individual designated by the Director of Solid Waste Operations.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any Type IV solid waste ("whether containerized or uncontainerized") into or on any land or water so that the Type IV solid waste or any constituent of the Type IV solid waste may enter the environment to be emitted into the air or discharged into any waters, including groundwaters.

"Effective Date" means the effective as of date set forth in the introductory paragraph of this Agreement.

"Environment" or **"Environmental"** means matters relating to surface waters, groundwaters, soil, subsurface strata and ambient air.

"Environmental Laws" means any Law and any judicial or administrative interpretation of a Law, including any judicial or administrative order, consent decree or judgment, relating to the Environment, health, safety or Hazardous Materials, including the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; the Hazardous Materials Transportation Act; the Clean Water Act; the Toxic Substances Control Act; the Clean Air Act; the Safe Drinking Water Act; the Atomic Energy Act; the Federal Insecticide, Fungicide and Rodenticide Act; and the Federal Food, Drug and Cosmetic Act; and the state or local equivalents of these Laws.

"Fee" means the amount of money agreed upon by the parties, for all waste received at the Landfill, measured in cubic yards, as adjusted pursuant to this Agreement, as described on Exhibit A attached hereto.

"Governmental Authority" means any federal, state or local government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

"Handled" means owned, leased, had an interest in, collected, generated, transported, stored, recycled, reclaimed, processed, disposed of, or contracted for the disposal of.

"Hazardous Materials" means: (a) petroleum and petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain polychlorinated biphenyls, and radon gas; or (b) any other chemicals, materials or substances defined as or included in the definition of "hazardous materials," "hazardous wastes," "hazardous substances," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic wastes," "toxic pollutants," "contaminants," "pollutants," "infectious wastes," "medical wastes," "radioactive wastes," "sewage sludges" or words of similar import under any applicable Law.

"Holiday" means any day designated as a holiday by the City of Corpus Christi.

"Insurance Representative" means any management employee of the insurance company which insures Contractors.

"Landfill" means Gulley-Hurst Type IV Landfill located in Corpus Christi, Texas.

"Law" means any federal, state or local statute, law, ordinance, regulation, rule, code, governmental order, requirement or rule of common law, including any Environmental Law.

"Losses" means claims, costs, losses, liabilities, damages, injuries, fines, penalties, assessments and expenses, including reasonable attorneys' fees, all litigation expenses, and court costs.

"Municipal Solid Waste System Service Charge" means a fee, imposed by the City and collected by Contractors, charged with respect to any waste delivered to the Landfill. City will provide Contractors with written instructions as to the amount of the Municipal Solid Waste System Service Charge during the term of this Agreement.

"Permit" means Contractors' operating permit(s) for the Landfill.

"Person" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization, Governmental Authority or other entity.

"Plan" means the Landfill's Site Operating Plan.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing or otherwise releasing into, upon or under any land, water or air or otherwise entering into the Environment.

"Services" means all of Contractors' obligations pursuant to Section 2.02.

"TCEQ" means the Texas Commission on Environmental Quality, and any of its predecessor or successor agencies, including the Texas Water Commission and Texas Natural Resource Conservation Commission.

"Term" has the meaning set forth in Section 2.05.

"Type IV Waste" means Brush, Bulky Items, Construction and Demolition Waste, and Heavy Brush.

"Waste Acceptance Hours" means Monday through Friday 8:00 am. to 5:00 p.m., but excluding any Holiday, or such other time periods totaling 45 hours per week as may be mutually agreed by the parties from time to time.

1.02 Interpretations.

- (a) **Captions.** The captions in this Agreement are inserted for convenience only, and shall not constitute a part of this Agreement or be used to construe or Interpret any of its provisions.
- (b) **Include.** The term "include" and similar terms shall be construed as if followed by the phrase "without limitation."
- (c) **Time for Performance.** Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Sunday or Holiday, such time for performance shall be extended to the next Business Day. Otherwise, all references herein to "days" shall mean calendar days.
- (d) **Construction of Agreement.** The parties have participated jointly in negotiating and drafting this Agreement. If a question of interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.
- (e) **Laws.** Any reference to any Law shall be deemed to refer to the Law, as amended, and to all rules and regulations promulgated thereunder, as amended, unless the context requires otherwise.

ARTICLE II

LANDFILL SERVICES, CITY'S RESPONSIBILITIES AND TERM

2.01 Non-Exclusive Right to Provide Services. City hereby grants to Contractors a non-exclusive right to provide the Services during the Term, except when mutually agreed upon by the parties.

2.02 Services Provided by Contractors.

- (a) **Services.** Contractors shall accept all waste, including Bulky Items, Brush, Construction or Demolition Waste and Heavy Brush, that may legally be disposed of in a Type IV Landfill delivered by the City of Corpus Christi or licensed haulers. Contractors are not bound to accept any waste not permitted under TCEQ Permit 2349

issued for operation of the Landfill.

- (b) **Location of Services.** Contractors shall provide the Services at the Gulley-Hurst Type IV Landfill, located at 1435 Country Road 26, Corpus Christi, Texas 78415.
- (c) **Storms and Other Disasters.** The Services do not include any increased volume resulting from a flood, hurricane or other act of God over which both parties have no control that is subject to the force majeure provisions of Section 7.05.
- (d) **Complaints.** Contractors shall give all City complaints prompt and courteous attention. Contractors shall investigate all complaints and if the allegations are verified, take reasonable means to correct the complaint within 48 hours after the complaint is received. The reasonableness of the means to correct the complaint will be determined in the reasonable discretion of the Director.
- (e) **Reports.** Contractors shall deliver to City a written report regarding airspace volume calculations for the Landfill on an annual basis for each calendar year (or partial calendar year) during the term of this Agreement. The first report shall be submitted on or before January 31, 2014, and reports for each subsequent year shall be submitted on or before January of each year.
- (f) **Collection of the Municipal Solid Waste System Service Charge.** The collection and remittance of the Municipal Solid Waste System Service Charge shall be governed by "Exhibit B".
- (g) **Charges to Customers.** Nothing in this Agreement shall be construed in any way to restrict the rights of Contractors to establish its charges for tipping fees and other services provided to its customers other than the City.

2.03 City's Responsibilities. City shall provide at its expense all labor, supervision, materials, supplies, equipment and resources to perform obligations that include the following with respect to the Landfill:

- (a) City shall provide Contractors with City's insurance information.
- (b) City shall cause City employees to conduct themselves in a professional manner while on the Contractors' premises and follow orders of Contractors' employees.
- (c) City shall designate the Contractors' landfill as a disposal site operated by the City's Solid Waste department for the purposes of Section 21-47 of the City's Code of Ordinances.
- (d) City shall deliver to Contractors' Landfill a minimum of 231,500 Cubic Yards of Type IV solid waste ("Minimum Required Disposal") during each Contract Year during the term of this Agreement.
- (e) In the event that City has reason to believe that it will deliver less than 425,000 tons of solid waste to the City's own Cefe Valenzuela landfill, the Contractors and the City shall renegotiate Section 2.03 of this contract. If an agreement cannot be reached, the parties shall attend mediation as prescribed in Section 8.11 (a).

2.04 Compliance with Permit, Law, Etc.

- (a) **Compliance with Laws and Plan.** Contractors are responsible for ensuring that the use and operation of the Landfill complies with all applicable Laws and shall perform the Services in accordance with applicable Laws and the Plan.
- (b) **TCEQ Fees.** Contractors shall be responsible for the payment of all existing fees required by the TCEQ to operate the Landfill.

2.05 Term. Unless earlier terminated pursuant to the provisions of this Agreement, the term of this Agreement (the "Term") commences on the Effective Date and continues for a period of 10 years after the Effective Date. Parties may renew this Agreement for an additional 10 years (which if so renewed shall be deemed part of the "Term") on the same terms and conditions as set out in this Agreement. To exercise its renewal option, City must give Contractors written notice of renewal at least six months before the last day of the initial Term. Contractors shall have the right, upon 30 days' advance written notice to City at any time during the Term of this Agreement, to terminate this Agreement.

2.06 City's Rights.

- (a) **Phone Numbers.** Contractors shall provide City a current list of names and phone numbers for use by City in the event of an emergency.
- (b) **Examination of Books and Records.**
 - (1) City reserves the right to examine or cause to be examined, at any reasonable time upon reasonable request (but in no event more often than quarterly during the Term of this Agreement, the books, papers and records of Contractors solely to the extent they relate to verifying Contractors' compliance with the terms of this Agreement.
 - (2) If City needs copies of any such records it has reviewed, before any copy of a Contractors record is removed from Contractors offices, Contractors shall have the right to review the copy to determine if the copy contains any privileged commercial information, and to mark each sheet of paper that contains any privileged commercial information with a notation that it contains proprietary information that should not be made available to the public.
 - (3) All copies with the proprietary information notation will be treated by City as privileged commercial information under Section 552.110 of the Texas Public Information Act, Chapter 552, Texas Government Code.
 - (4) If a request is received for the information, the request and information will be forwarded to the Attorney General for a determination under Section 552.301 of the Act.
 - (5) The City will withhold the information from the requester under Section 552.305 of the Act, until after the Attorney General's decision is received.

(6) The City shall not release any information unless directed to do so by the Attorney General.

(7) Any officer or authorized employee of City may enter upon the Landfill with notice at any time, for any purpose incidental to City's retained rights of and in the Landfill; provided, however, that any such entry shall not interfere with the Services.

ARTICLE III.

FEES

3.01 Fees.

(a) Generally. During the Term, City shall pay Contractors the Fee for all waste received at the Landfill.

(i) For purposes of determining the amount due Contractors from City, Contractors shall provide City with a detailed listing of all transactions at the Landfill within five Business Days after the end of each calendar month, with such listing being sufficient to show the monthly Cubic Yardage upon which the Fee for the month is based, as well as a total of the Municipal Solid Waste System Service Charge collected. Contractors shall provide City with a bill based on such listing within five Business Days. Fee payments shall be made by the City to the Contractors by the last Business Day of the month following the calendar month in which the waste was received at the Landfill. After reasonable advance notice given to Contractors, Contractors shall permit City's designated representatives to have access to the Landfill records, during Waste Acceptance Hours and at City's expense, for inspection and copying of Contractors books and records pertaining to the determination of the yardage in question.

3.02 Annual Adjustment of Fee. The Fee shall be increased or decreased annually, commencing on October 1, 2014 and on that same date for each subsequent year during the term of this Agreement, by the greater of the percentage increase or decrease, if any, in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, All Items, for urban wage earners and clerical workers for the South Urban area. The base month for such calculations (the denominator in the calculation) shall be June 2013, and adjustments shall be based on the index published for June of each year (the numerator in the calculation), with the rate adjustment to be effective as of October 1 of each year.

3.03 Adjustment of Fee for Change in Laws, Permit or Plan. Contractors shall have the right to increase the Fee from time to time to cover any increase in its costs to provide the Services as a result of a change in the insurance requirements imposed by this Agreement, in any applicable Laws, in the Permit or in the Plan and not resulting from Contractors' negligence. Any such increase shall be effective upon one month's written notice by Contractors to City, unless City objects in writing to such increase, (with City not to unreasonably object), subject to City Council annual funding.

3.04 Percentage of Municipal Solid Waste System Service Charge. During the Term, Contractors agrees to collect the Municipal Solid Waste System Service Charges assessed by the City's Code of Ordinances on loads of Type IV solid waste delivered to the Landfill by commercial haulers from customers within the corporate limits of the City as provided in Exhibit B attached. City agrees to remit a portion of such MSW System Service Charges collected to Contractors as provided on Exhibit B in consideration of Contractors'

providing the capacity for solid waste disposal under this Agreement. City agrees that for the term of this Agreement Landfill shall be considered the same as any other disposal facility operated by City for the purposes of assessment of the Municipal Solid Waste System Service Charge.

ARTICLE IV.
ASSIGNMENT

4.01 Assignment. Contractors may assign this Agreement or any portion thereof upon first obtaining the prior written consent of City acting through its City Council, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Contractors (i) Contractors may, without notice to or consent of City, assign this Contract to any purchaser of all or a portion of the Landfill, and (ii) Contractors may, without notice to or consent of City, collaterally assign the Agreement to any lender to Contractors or any of its Affiliates. City may, upon written notice to Contractors but without Contractors' prior written consent, assign all or any portion of this Agreement for any lawful purpose; provided, however, that such assignment shall not relieve City of any obligation under this Agreement without the consent of Contractors.

4.02 Release of Contractors' Liability. If an assignment of this Agreement shall be made by Contractors or any successor of Contractors, the assignee shall be subject to the same terms and conditions contained in this Agreement, and Contractors or any successor herein so assigning and conveying shall thereafter be forever released and discharged from this Agreement and from the agreements and covenants contained in this Agreement if the assignee covenants to assume all obligations and duties of Contractors under this Agreement.

ARTICLE V.
INSURANCE; INDEMNITY

5.01 Insurance.

(a) **Generally.** Contractors agree to secure and maintain at Contractors' expense, during the Term, insurance of the type and with the amount of coverage shown on the attached Exhibit C, which is incorporated in this Agreement by reference.

(b) **Certificate of Insurance.** At least ten Business Days prior to the commencement of any Services at the Landfill, Contractors shall furnish an original completed Certificate(s) of Insurance to the Director, which have been completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown on the Certificate(s) of Insurance, and which furnish and contain all required information referenced or indicated on the certificate(s).

- (i) The original certificate(s) must have the agent's signature, including the signer's company affiliation, title, and phone number, and be mailed directly from the agent to the Director.
- (ii) City has no duty to pay or perform under this Agreement until the certificate(s) have been delivered to the Director, and no officer or employee, other than City's Risk Manager or City Manager, have authority to waive this requirement.

(c) City reserves the right to review the insurance requirements of this Section during the effective period of this Agreement and any extension or renewal of this Agreement and to modify insurance coverage requirements and their limits when deemed necessary and prudent by the Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement.

(d) Contractors' financial integrity is of interest to City, therefore, subject to Contractors' right to maintain reasonable deductibles in such amounts as are approved by City's Risk Manager, Contractors shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension of this Agreement, at Contractors' sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to City.

(e) Contractors agree that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- (i) Show City (City, for this purpose, is defined as the municipal corporation, its elected officials, officers, directors, employees, agents, and representatives) as additional insureds (as the interests of each insured may appear), as to all applicable coverages with respects to operations and activities of, or on behalf of, the named insured performed under Agreement with City, for the commercial general liability coverage.
- (ii) Contractors' insurance must be deemed primary with respect to any insurance or self insurance carried by City for liability arising out of operations under the Agreement with City.
- (iii) Workers' compensation and employers' liability policy must provide a waiver of subrogation in favor of City except for the sole negligence of City.
- (iv) Contractors shall cause Contractors' Insurance Representative shall notify City, in writing, in the event of any notice of cancellation, non-renewal, or material change in coverage.
 - (A) The written notice of any notice of cancellation or non-renewal must be given not less than thirty (30) days prior to the cancellation or non-renewal.
 - (B) The written notice of any cancellation due to non-payment of premiums must be given not less than ten (10) days prior to the cancellation for nonpayment of premiums.
 - (C) The written notice for cancellation due to non-payment of premiums must be accompanied by a replacement Certificate of Insurance or Reinstatement Notice of Coverage.
 - (D) All written notices under this subsection shall be given to

the City at the following address:

City of Corpus Christi
Director, Solid Waste Operations
2525 Hygeia Street
Corpus Christi, Texas 78415

(f) If Contractors fail to maintain the insurance coverage required by this Section and Exhibit C, or fails to secure and maintain the required endorsements, City may obtain such insurance, and deduct and retain the amount of the premiums for the insurance from any sums due under the Agreement.

(i) However, procuring of insurance by City is an alternative to other remedies City may have, and is not the exclusive remedy for failure of Contractors to maintain the insurance or secure an endorsement.

(ii) In addition to any other remedies available, City may require Contractors to stop Services under this Agreement, or to withhold any payments) which become due and payable to Contractors under this Agreement, until Contractors demonstrates compliance with the requirements of this Section.

(h) Nothing in this Section may be construed as limiting in any way the extent to which Contractors may be held responsible for payments of damages to persons or property resulting from Contractors or its subcontractors' performance of the Services under this Agreement.

(i) City may declare Contractors in default of this Agreement if more than 30 days have elapsed since original date of requested insurance documents and Contractors has not delivered the requested insurance documents to City.

(j) If Contractors' workers' compensation insurance coverage for its employees working at the Landfill is terminated or cancelled for any reason, and replacement worker's compensation insurance coverage meeting the requirements of this Agreement is not in effect on the effective date of cancellation of the worker's compensation insurance coverage to be replaced, then any Contractors employee not covered by the required worker's compensation insurance coverage may not perform any Services at the Landfill.

(k) In accordance with other requirements of this Agreement, Contractors may not permit subcontractors or others to work at the Landfill, unless all individuals working at the Landfill are covered by worker's compensation insurance and unless the required documentation of such coverage has been provided to Contractors and the Director.

(l) In the event of an accident resulting from the Services or occurring on the portion of the Landfill on which Contractors is providing the Services, Contractors shall:

(A) Promptly provide the City with a brief description of the accident, including the date of the accident and the persons involved; and

(B) Furnish the City with copies of all non-confidential reports to any independent third parties relating to the accident at the same time that such reports are forwarded to such independent third parties. Independent third parties shall not include Contractors or its Affiliates' employees, agents,

insurers, attorneys or other representatives, and in no event shall Contractors be obligated to provide any internal report, any report that is privileged or constitutes attorney work product, or any report that is not forwarded to an independent third party. It shall be Contractors' primary responsibility for immediately notifying the carriers of any or all insurance under this Agreement in the event of a known loss or claim presented to Contractors by the City or a third party and resulting from the Services or occurring on the portion of the Landfill on which Contractors is providing the Services.

(m) In the event of an accident resulting from the City's Responsibilities or occurring on the portion of the Landfill on which the City is performing the City's Responsibilities, the City shall:

(A) Promptly provide Contractors with a brief description of the accident, including the date of the accident and the persons involved; and

(B) Furnish Contractors with copies of all non-confidential reports to any independent third parties relating to the accident at the same time that such reports are forwarded to such independent third parties. Independent third parties shall not include the City or its employees, agents, insurers, attorneys or other representatives, and in no event shall the City be obligated to provide any internal report, any report that is privileged or constitutes attorney work product, or any report that is not forwarded to an independent third party. It shall be the City's primary responsibility for immediately notifying the carriers of any or all insurance under this Agreement in the event of a known loss or claim presented to the City by Contractors or a third and resulting from the City's Responsibilities or occurring on the portion of the Landfill on which the City is performing the City's Responsibilities.

(n) Contractors shall obtain an endorsement to the applicable insurance policy, signed by the insurer, stating:

"In the event of cancellation, each insurer covenants to mail prior written notice of cancellation to:

- "1. Name: City of Corpus Christi
Director, Solid Waste Operations
- "2. Address: 2525 Hygeia Street
Corpus Christi, Texas 78415
- "3. Number of days advance notice: 30"

(o) At least ten Business Days prior to the commencement of any Services at the Landfill under this Agreement, Contractors shall provide the Director with a certificate of insurance certifying that Contractors provides worker's compensation insurance coverage for all employees of Contractors employed at the Landfill under this Agreement.

(p) Contractors shall obtain an endorsement to the applicable insurance policy, signed by the insurer, stating that City is an additional insured under the insurance policy. The City need not be named as additional insured on worker's compensation coverage.

5.02 Indemnification.

(a) Contractors agree to indemnify, defend and hold the City Indemnified Parties harmless from and against any and all Losses (and Contractors shall bear the cost of one firm of attorneys selected by Contractors, but reasonably satisfactory to the City Attorney, in connection with such defense) paid, incurred or suffered by City Indemnified Parties to the extent resulting from or incident to, arising out of, caused by, or in any way connected with, either proximately or remotely, wholly or in part:

(i) Contractors' performance under this Agreement;

(ii) Contractors' use of the Landfill and any and all activities associated with Contractors' use of the Landfill under this Agreement;

(iii) The violation by Contractors, its officers, employees, agents, or representatives of any Law pertaining, directly or indirectly, to this Agreement;

(iv) The exercise by Contractors of its rights under this Agreement;

(v) Any intentional or negligent act or omission act or omission on the part of Contractors, its officers, employees, agents, or representatives pertaining to this Agreement; or

(vi) Any breach of the representations, warranties or covenants of Contractors in this Agreement.

The obligation to defend includes the obligation to investigate and settle or otherwise dispose of third party claims.

(b) Notwithstanding the foregoing, however, City acknowledges and agrees that Contractors shall have no responsibility or liability with respect to:

(i) Any Release or Handling of Hazardous Materials or violation of Environmental Laws (other than those caused by the negligent act or omission of Contractors,); or Any Environmental condition existing at, on, under or above the Landfill (including those relating to soil and groundwater contamination, on-site waste placement, air emissions, etc.), except to the extent caused by the intentional or negligent act or omission of Contractors.

ARTICLE VI.

REPRESENTATIONS, WARRANTIES AND COVENANTS

6.01 Representations, Warranties and Covenants of Contractors. Contractors make the following representations, warranties and covenants to, with and for the benefit of City, its successors and assigns:

(a) Contractors are a limited partnership and a limited liability company, respectively, duly organized and validly existing under the Laws of the state of its organization with full legal right, power, and authority to enter into and perform its obligations under this Agreement.

(b) No approval, authorization, order or consent of, or declaration, registration or filing with, any

Governmental Authority is required for the valid execution, delivery and performance of this Agreement by Contractors, except such as have been duly obtained or made.

(c) No encumbrance with respect to Environmental liability has been imposed against Contractors or the Landfill under any Environmental Law or other applicable Law, and no facts or circumstances exist which would give rise to the same. Further, no portion of the Landfill is listed on the CERCLIS list or the National Priorities List of Hazardous Waste Sites or any other similar list maintained by any Governmental Authority, and Contractors: (i) are not listed as a potentially responsible party with respect to the Landfill or as a result of the operation by any Person of the Landfill under any Environmental Law or other applicable Law; (ii) have not received a notice of such listing; and (iii) have no knowledge of any facts or circumstances which could give rise to such a listing.

(d) The Landfill is fully licensed, permitted and authorized to carry on its current and contemplated business under the Permit, all Environmental Laws and all applicable Laws (including zoning and land use requirements). Contractors have furnished City with a true and complete copy of the Permit, Permit applications, and subsequent amendments to the Permit. All records and correspondence between Contractors and the Texas Department of Health and the TCEQ are of public record and available in Austin, Texas.

(e) Contractors know of no reason that might be the basis for the revocation or suspension of any of the Permit or any of the Landfill's other permits, licenses, zoning variances or other approvals.

(f) No action is pending or, to the best of Contractor's knowledge, threatened, against Contractors or any other Person relating to the Landfill or the transactions contemplated by this Agreement, at Law or in equity. Contractors have not received notice of any of the above, and, to the best of Contractors' knowledge, no facts or circumstances exist which would give rise to any of the foregoing.

(g) Contractors have adopted a Drug Free Workplace and drug testing policy that applies to Contractors' employees at the Landfill.

6.02 Representations, Warranties and Covenants of City. City makes the following representations, warranties and covenants to, with and for the benefit of City, its successors and assigns:

(a) City is a home rule municipal corporation duly organized and validly existing under the Laws of the State of Texas with full legal right, power, and authority to enter into and perform its obligations under this Agreement.

(b) City has fully authorized the execution and delivery of this Agreement and has duly executed and delivered this Agreement. This Agreement constitutes legal, valid and binding obligations of City, enforceable against City in accordance with its terms.

(c) No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution, delivery and performance of this Agreement by City, except such as have been duly obtained or made.

- (d) City shall not use the Landfill for any purpose other than utilizing the Services or as otherwise contemplated in this Agreement without City Manager's prior written approval.
- (e) City shall not exhibit, inscribe, paint, erect, or affix any sign at, on, or about the Landfill without Contractors prior written approval. Contractors may require City to remove, repaint, or repair any signs allowed within one month after Contractors' written demand to do so.

ARTICLE VII.
DEFAULT

7.01 Default by City. Any one or more of the following events shall constitute an Event of Default by City under this Agreement:

- (a) City files for protection under the US Bankruptcy Code and fails to make payments when due to Contractors; or
- (b) Any material representation or warranty made by City to Contractors herein is false, incorrect or misleading.
- (c) City fails to perform any material covenant or obligation of City under this Agreement.

7.02 Contractors' Remedies. Upon or after the occurrence of any Event of Default specified in Section 7.01, Contractors may, at their option, do any or all or any combination of the following:

- (a) Perform at City's expense any such act required to be performed by City under the Agreement and any amounts advanced by Contractors for such purposes shall be due from City to Contractors within one month after notice by Contractors to City of any such payment, with interest at the prime interest rate on the date of the default from the date of payment thereof by Contractors until repayment thereof to Contractors by City.
- (b) Terminate this Agreement.
- (c) Pursue against City any remedy available at Law or in equity.

7.03 Default by Contractors. Any one or more of the following events shall constitute an Event of Default by Contractors under this Agreement:

- (a) Contractors fail to commence the Services within three months after the Effective Date;
- (b) Contractors fail to maintain the insurance required by Section 6.01;
- (c) Contractors files for protection under the US Bankruptcy Code and fails to make payments when due to City;
- (d) Any material representation or warranty made by Contractors to City herein is false, incorrect or misleading; or

- (e) Any material failure by Contractors to provide the Services, which failure continues for five (5) days following receipt by Contractors of a notice of such failure from City.

7.04 City's Remedies. Upon or after the occurrence of any Event of Default specified in Section 7.03, City may, at its option, do any or all or any combination of the following:

- (a) Terminate this Agreement,
- (b) Pursue against Contractors any remedy (other than termination of this Agreement) available at Law or in equity.

7.05 Force Majeure. No party to this Agreement shall be liable for delays or failures in performance due to any cause beyond their control, including any delays or failures in performance caused by strikes, lockouts, fires, acts of God or the public enemy, common carrier, severe inclement weather, terrorist acts, riots or interference by civil or military authorities. The delays or failures to perform extend the period of performance until these exigencies have been removed. Contractors shall inform City in writing of proof of the force majeure within ten Business Days or otherwise waive this right as a defense.

ARTICLE VIII.
MISCELLANEOUS

8.01 Title to Landfill. The City has no possessory or other right, title, interest or estate in the Landfill other than the rights granted to it under this Agreement, and the City shall in no event be deemed to have any ownership, leasehold or possessory right in or control over the Landfill. The City acknowledges that: (i) Contractors do not warrant Contractors' title to the Landfill; and (ii) this Agreement and the rights and privileges granted to both parties under this Agreement are subject to all covenants, conditions, restrictions, and exceptions of record or apparent;

8.02 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Texas.

8.03 Severability.

(a) If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future Law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the Law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

(b) To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future Law effective during the Term, then the remainder of

this Agreement is not affected by the Law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

8.04 Amendment. This Agreement may not be amended except by a written instrument executed by each party to this Agreement acting through a person authorized to sign agreements on behalf of such party (which, in the case of City, shall be the Director or City Manager).

8.05 Notices. All notices or other communications required or permitted under this Agreement by either party must be in writing and must be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, by overnight courier, prepaid, or by delivering the same in person to such party, addressed as follows:

To City: The City of Corpus Christi
Director of Solid Waste Operations
2525 Hygeia Street
Corpus Christi, Texas 78415

To Contractors: C/O Blue Door Properties Limited, Inc.
410 Pierce Street, Suite 332,
Houston, TX 77002

Gulley-Hurst, L.L.C.,
6421 Saratoga Boulevard.
Building Number 101
Corpus Christi, Texas 78414

Notice shall be deemed given and effective the day personally delivered, the Business Day after it is given to the overnight courier, subject to signature verification, and two Business Days after deposit in the U.S. mail of a writing addressed and sent as provided above. Either party may change the address for notice by notifying the other party of such change in accordance with this Section.

8.06 Waiver. No delay of or omission in the exercise of any right, power or remedy accruing to either party as a result of any breach or default by the other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

8.07 Entire Agreement. This Agreement is the final, complete and exclusive statement of the agreement between the parties with relation to the subject matter of this Agreement. There are no oral representations, understandings or agreements covering the same subject matter as this Agreement. This Agreement supersedes and cannot be varied, contradicted or supplemented by evidence of, any prior or contemporaneous discussions, correspondence, or oral or written agreements or arrangements of any kind.

8.08 Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

8.09 Further Assurance. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

8.10 Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any Person, including the public, as a third party beneficiary, under any Laws or otherwise.

8.11 Dispute Resolution.

(a) **Mediation.** If a dispute arises out of or relates to this Agreement, the relationships that result from this Agreement, the breach of this Agreement or the validity or application of any of the provisions of this Section 8.11, and, if the dispute cannot be settled through negotiation, the parties agree to submit the dispute to mediation prior to commencing litigation. The parties will attempt in good faith to agree on a neutral mediator to resolve the dispute. The mediation will follow the procedures set forth in the American Arbitration Association Commercial Mediation Rules. If the parties cannot agree on a mediator within 20 days after mediation has been demanded, they will submit the dispute for mediation to be administered by the American Arbitration Association under the Commercial Mediation Rules before resorting to litigation. Neither party may commence or pursue arbitration until this non-binding mediation has been conducted and concluded. The parties agree that, upon initiating mediation, they will agree with the mediator on a time at least five days before the mediation to submit and exchange with one another detailed position papers. The position papers shall include a factual recitation of the dispute, each party's position on the facts and the law, the party's assessment of the likely outcome and its/their position on settlement. Each party will bear its own expenses incurred (including attorneys' fees) in connection with the mediation, and will equally share the mediator's fees and expenses.

(b) **Waiver of Sovereign Immunity.** City waives any sovereign immunity it may have with respect to this Agreement, including any arbitration relating to a breach of this Agreement.

8.12 No Brokers. City represents and warrants to Contractors and Contractors represent to City that the warranting party has had no dealings with any broker, agent or other Person so as to entitle such Person to a commission or fee in connection with the transactions contemplated by this Agreement. If for any reason a commission or fee becomes or is claimed to be due with respect to dealings by City, City shall indemnify and hold harmless Contractors from all Losses relating to such claim. If for any reason a commission or fee becomes or is claimed to be due with respect to dealings by Contractors, Contractors shall indemnify and hold harmless City from all Losses relating to such claim.

8.13 Estoppel. From time to time within 20 days after request therefore by either of the parties, City or Contractors shall deliver to the other party a certificate stating: (a) whether or not this Agreement is in full force and effect; (b) whether or not this Agreement has been modified or amended in any way and attaching a copy of such modification or amendment; (c) whether or not there are any existing defaults under this Agreement to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any; (d) the status of payments required by this Agreement; and (e) any other facts regarding the operation of the Agreement that the other party may reasonably request.


8.14 Survival. Termination or expiration of this Agreement for any reason does not release either party from any liabilities or obligations under this Agreement that: (a) the parties have expressly agreed survive any the termination or expiration; (b) remain to be performed; or (c) by their nature would be intended to be applicable following the

termination or expiration of this Agreement.


8.15 Binding Effect. This Agreement shall be binding upon and inure to the benefit of, to the extent provided herein, City and Contractors and all parties having or acquiring or claiming through City and Contractors any right, title or interest in or to any portion of, or interest or estate in, the Landfill and all covenants, agreements, conditions and undertakings in this Agreement shall be construed as covenants running with the Landfill site. Notwithstanding the foregoing, however, Contractors acknowledges and agrees that this Agreement is not binding on City until properly authorized by City's City Council and executed by the Director or City Manager.

EXECUTED this the ___ day of _____, 20___, by City, signing by and through its City Manager, approved on _____, and by Contractors, acting through its duly authorized official.

APPROVED AS TO FORM:

BY 
Douglas K. DeFratus
Assistant City Attorney

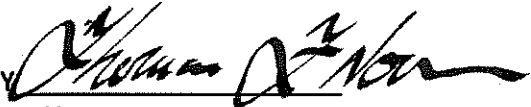
GULLEY-HURST, L.L.C.

BY 
R. Bryan Gulley
Manager



MSW CORPUS CHRISTI LANDFILL,
LTD.

By: Blue Door Properties Limited, Inc.
Its' General Partner

BY 
Tom Noons
President

CITY OF CORPUS CHRISTI

BY _____
Ron Olson
City Manager

EXHIBIT A

Fee Provisions

During Waste Acceptance Hours, the Fee paid to Contractors by the City shall be \$1.60 per Cubic Yard of Heavy Brush, Brush, and Bulky Items as defined In Article 1., 1.01, delivered to the Landfill.

On Saturdays, Sundays and Holidays, the Fee paid to Contractors by the City shall be \$2.00 per Cubic Yard of Heavy Brush, Brush, and Bulky Items as defined in Article 1, Section 1.01 delivered to the Landfill.

Regarding any load composed of more than fifty (50) percent Construction or Demolition Waste delivered to the Landfill, the Fee paid to Contractors by the City shall be \$10.00 per Cubic Yard of Construction or Demolition Waste delivered to the Landfill.

If a load delivered by City to the Contractors in a container of 30 yards or less is found to contain more than five percent (5%) Construction and Demolition Waste, mixed with Heavy Brush, Brush, and Bulky Items, the City shall pay a \$15 surcharge in addition to the Fee paid to the Contractors.

If a load delivered by City to the Contractors in a container of more than 30 yards is found to contain more than five percent (5%) Construction and Demolition Waste, mixed with Heavy Brush, Brush, and Bulky Items, the City shall pay a \$30 surcharge in addition to the Fee paid to the Contractors.

Either party may request to revisit the pricing structure set forth in this attachment within first twelve months of execution.

The above Fees do not include any state, federal or other governmental taxes, assessments or regulatory fees applicable to the transport or disposal of Type IV solid waste for which the City is not exempt under applicable law.

EXHIBIT B

Municipal Solid Waste System Service Charge Provisions

Contractors shall collect the City of Corpus Christi's Municipal Solid Waste System Service Charge for waste delivered to the Landfill for all solid waste originating within the City's corporate limits. Contractors shall make reasonable efforts to determine whether or not a load of solid waste originated within the City's corporate limits. All Municipal Solid Waste Service Charges collected shall be remitted to the City of Corpus Christi Solid Waste Operations on the first and fifteenth of every month.

In consideration of the Services provided by Contractors under this Agreement, the City shall remit to Contractors ten percent (10%) of all Municipal Solid Waste System Service Charges collected by Contractors during the previous month on the last Business Day of every month.

EXHIBIT C

**Contractors' Insurance
Information**