

**FIRST AMENDMENT TO AGREEMENT  
BETWEEN THE  
CITY OF CORPUS CHRISTI  
AND  
BFI WASTE SERVICES OF TEXAS, LP**

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF NUECES       §**

This first amendment ("First Amendment") to the Agreement executed between the City and BFI Waste Services of Texas, LP ("Contractor"), on October 7, 2010, for services which began on January 31, 2011, is made effective for all purposes as of May 1, 2017, unless otherwise specifically stated in this First Amendment.

WHEREAS, the City and Contractor desire to modify the terms and conditions of the Agreement as set out below for the remaining Initial Term of the Agreement; and

WHEREAS, the parties agree to execute this instrument and proceed subject to the following terms, conditions and covenants.

1. **Incorporation of Preamble.** The preamble provisions set out above in this First Amendment are incorporated by reference into the body of this document and constitute additional provisions under the Agreement.
2. **Effective Date.** This First Amendment, following final approval by the City's City Council and execution by both parties, is ratified by both parties to take effect as of May 1, 2017.
3. **Effect of First Amendment.** This First Amendment modifies, supplements, and expands the provisions, terms, and conditions of the existing Agreement (including its exhibits) between the City and Contractor and the duties and responsibilities undertaken by each, as is necessary and mutually desired to effectuate the purposes and plans of the parties. The parties acknowledge and agree that all terms, conditions, and covenants of the Agreement not changed by execution of this First Amendment continue in full force and effect. The parties further agree that any ambiguities or conflicts between or among the documents may not be construed against the City as drafter. In the event of a conflict between or among the documents addressing the same matter, the parties agree that the more stringent provision controls.
4. **Definitions; Usage.** All words and phrases not defined in this First Amendment or modified herein retain the definitions contained in the Agreement. For brevity in the remainder of this document, any reference to the Agreement is deemed to collectively include this First Amendment, and all exhibits and documents attached to, referenced, or incorporated by reference into those instruments and which are the subjects of the Agreement relationship between the parties.
5. **Cessation of Trailer Use.** Section 1 of the Agreement, entitled "Services", is modified as follows:
  - A. Subsection (d), entitled "Trailers", is deleted in its entirety, including the contents of Exhibit B of the Agreement, such modification of the Agreement to be made effective

as of July 1, 2017, provided, the Contractor has complied with the provisions in the remainder of this paragraph and within the stated times. Contractor shall establish a transition schedule with the Contract Administrator (for the anticipated discontinued use of the trailers) not later than 14 days following execution of this First Amendment, such transition plan providing for cessation of the Contractor-operated City-wide drop-off sites and physical return of the trailers by the Contractor to the City's Cefé Valenzuela Landfill location on July 1, 2017. Contractor shall undertake to effectively assist City staff in communicating the Contractor's transition plan to citizens utilizing the trailers between May 1, 2017, and June 30, 2017. Contractor shall also undertake to effectively assist City staff in communicating the availability and hours and days of operation of the Contractor's Designated Facility for the delivery and acceptance of residential recyclable materials by citizens at no charge on and after the execution of this First Amendment and continuing after June 30, 2017, until such time the Agreement is either terminated or ceases to be in force between the parties.

- B. A new subsection (d-1) is added to read as follows:

"Notwithstanding anything to the contrary in Exhibit A of the Agreement, Contractor shall produce a quarterly minimum (net of residue) of 2,400 tons of marketable materials."

**6. CPI Increase; Floor and Ceiling Rebates.** Section 3 of the Agreement, entitled "Fees", is modified as follows:

- A. Subsection (a), delineating the CPI increase and its application, is suspended and has no force and effect for the remainder of the Initial Term of the Agreement.
- B. Subsection (d), delineating the Floor and Ceiling commodity sales rebates, their application, and calculation of same, is deleted in its entirety and replaced with the following language:

"(d) Rebates. Notwithstanding anything to the contrary in Exhibit A of the Agreement, the Contractor shall be obligated to calculate and pay quarterly rebates to the City at the rate of 85% of the actual sales price received by the Contractor for the marketable commodities."

- C. A new subsection (f) is added to read as follows:

"(f) Processing Fee. The processing fee for all single-stream materials delivered by the City to the SSMRF is increased from \$74.70 to \$90.00 per ton."

**7. Limited Continuation of Floor/Ceiling Rebates for Measurement and Calculation Purposes Only.** For purposes of the calculation of payments due to the City for all marketable commodities sold prior to May 1, 2017, but for which rebates have not yet been remitted to the City as of the effective date of this First Amendment, the parties mutually agree that the Floor and Ceiling commodity sales rebate values and the application of the same are preserved and expressly made applicable to the parties until such time as the payments have been remitted to the City, after which such Floor and Ceiling commodity sales rebate values and application of same will finally cease in force and effect for all purposes under the Agreement.

8. **Fiscal Year.** Section 7 of the Agreement, pertaining to the ending date of the City's fiscal year, is modified as followed: July 31 is deleted and replaced with September 30.

9. **Duplicate Counterparts.** This First Amendment may be executed in any manner as duplicate counterparts, each of which is deemed to be an original of this instrument for all purposes.

10. **Entire Agreement.** In addition to the existing Agreement, including any exhibits attached or incorporated by reference, this First Amendment contains the entire understanding and mutual agreement of the parties, and no other agreements, assurances, covenants (express or implied), or other terms and conditions of any kind exist between the parties with regard to the Agreement and this First Amendment.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Rebecca Huerta, City Secretary

\_\_\_\_\_  
Margie C. Rose, City Manager

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

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

Approved as to legal form: \_\_\_\_\_, 2017

\_\_\_\_\_  
Elizabeth Hundley  
Assistant City Attorney  
for the City Attorney

**BFI WASTE SERVICES OF TEXAS, LP**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date