

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

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

This first amendment ("First Amendment") to the Waste Disposal Agreement ("Agreement") executed on February 24, 2005, between the City and BFI Waste Services of TX, LP (doing business as Republic Services of Corpus Christi) ("Hauler"), is made effective for all purposes as of September 1, 2019, unless otherwise specifically stated in this First Amendment.

WHEREAS, the City and Hauler desire to modify the terms and conditions of the Agreement, as such terms and conditions are set out below, for the remainder of the 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 and First Amendment.
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 September 1, 2019.
3. **Effect of First Amendment.** This First Amendment modifies, supplements, and expands the provisions, terms, and conditions of the existing Agreement (including the exhibits) between the City and Hauler 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. Unless otherwise specifically indicated in context in this instrument, modified language is presented in legislative style, with deleted language shown to be stricken (example: ~~deleted~~) and new language to take effect shown underlined (example: added). 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 the First Amendment as well as all exhibits and documents attached to, referenced, or incorporated by reference into those instruments and which are the subjects of the Agreement's relationship between the parties.
5. **Change to Term.** Article I, entitled "GENERAL PROVISIONS," Section 1.3, entitled "Term," subsection 1.3.1. is modified to read as follows:

~~"1.3.1. Unless sooner terminated under the terms of this Agreement, this Agreement is in effect until midnight on January 31, 2021 the termination of the Landfill Services Agreement between the City of Corpus Christi and BFI Waste Services of North America, Inc., dated _____, including any extensions of that agreement."~~

6. Change to Guaranteed Tonnage Volume. Article II, entitled "ACCEPTABLE WASTE," Section 2.2, entitled "Guaranteed Tonnage," subsection 2.2.1 is modified as follows, with all remaining subparts of 2.2.1 (namely, subparts 2.2.1.1. and 2.2.1.2.) to remain unchanged and intact:

~~"2.2.1. Commencing on the effective date September 1, 2019, the Hauler guarantees to deliver not less than 150,000 120,000 tons per year ("guaranteed annual tonnage") of jurisdictional waste and acceptable waste collected outside the City's limits to the Landfill, and the City guarantees that it will accept the waste.~~

7. Deletion of Eligible Discount. Article II, Section 2.2, subsection 2.2.3. (which is misidentified in the original Agreement as "2.3.3.") is deleted in its entirety as follows:

~~"2.3.3. If the Hauler increases the Hauler's volume by a minimum of an additional 33% or more over the guaranteed annual tonnage established in Subsection 2.2.1., the Hauler is eligible for a discount off of the per ton tipping fee. Once established the discount will apply from the base year in which the discount was first calculated, and will apply to all succeeding years keeping the base tonnage calculation intact."~~

8. Waiver and Release of Prior Tonnage Shortfall. Article II, entitled "ACCEPTABLE WASTE," Section 2.2, entitled "Guaranteed Tonnage," is modified by adding a new subsection 2.2.4, to read as follows:

"2.2.4. The City hereby waives and releases Hauler from any demands, claims, or causes of action for any actual or alleged shortfall in guaranteed tonnage prior to the Effective Date of this First Amendment."

9. Fees. Article III, entitled "FEES," Section 3.1, entitled "Acceptance Fee for Guaranteed Monthly Tonnage," subsections 3.1.2. and 3.3. only (which latter subsection is misidentified in the original Agreement as "3.3.3.") are deleted in their entireties, with all remaining sections and subsections (namely, subsection 3.1.1 and section 3.2.) to remain unchanged and intact, as follows:

~~"3.1.2. If the hauler requests a change to the agreement to a 100% volume supply agreement as defined in 2.2.1.1., and with the City's approval, the new discounted acceptance rate is seventy two percent (72%) of the published disposal rate."~~

~~"3.3.3. Discount for Increased Tonnage. If the Hauler increases the Hauler's volume by a minimum of an additional 33% or more over the guaranteed annual tonnage established in Subsection 2.2.1., the Hauler is eligible for a 15% discount off of the published disposal rate in that year. The lower tipping fee will be applied retroactively to the additional waste once 33% threshold is reached. Once a new base tonnage is calculated under Section 2.3.3., the City will reduce it's billing to the Hauler at the beginning of each succeeding year."~~

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

11. Entire Agreement. In addition to the existing Agreement and First Amendment, including any exhibits attached to, referenced, 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.

ATTEST:

CITY OF CORPUS CHRISTI

Rebecca Huerta, City Secretary

Peter Zanoni, City Manager

Date: _____

Date: _____

Approved as to legal form: _____, 2019

Elizabeth Hundley
Assistant City Attorney
for the City Attorney

BFI WASTE SERVICES OF TX, LP, by Allied Waste Landfill Holdings, Inc., its General Partner

Signature

Title

Printed Name

Date