

**INTERLOCAL AGREEMENT
FOR
MODIFIED LANDFILL DISPOSAL RATE**

This Interlocal Agreement for Modified Landfill Disposal Rate ("Contract") is made by and between the City of Denton, a Texas home-rule municipality (the "City"), and Wise County, a political subdivision of the State of Texas, with its principal address at 101 N. Trinity, Decatur, Texas 76234 ("Contractor"). The City and Wise County are collectively referred to hereafter as the "Parties" or individually as a "Party".

RECITALS:

WHEREAS, City desires that the City of Denton Landfill ("Landfill") receive predictable tonnages of solid waste for both revenue and management purposes; and

WHEREAS, Contractor is willing to guarantee delivery of a specified annual tonnage of solid waste in consideration of a discounted disposal charge; and

WHEREAS, this Contract has been authorized by the governing bodies of the City of Denton and Wise County; and

WHEREAS, the Interlocal Cooperation Act, contained in the Texas Government Code Chapter 791 authorizes units of local government to contract with one or more units of local government to perform governmental functions and services; and

WHEREAS, both parties have agreed that this Contract is in the public interest and is mutually advantageous to both parties to enter this Contract.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this contract, City and Contractor agree to the following terms and conditions:

1. Administration. This Contract shall be administered on behalf of City of Denton by its Director of Solid Waste or the Director's designee (hereinafter called the "Director"), and on behalf of Contractor by its duly authorized officer or employee.

2. **Delivery of Acceptable Solid Waste.** Contractor agrees that it will pay to deliver to the Landfill Acceptable Solid Waste in the following tonnage (“Annual Tonnage”) for each year of the Contract and City agrees to accept all such Acceptable Solid Waste at the Landfill:

Contract Year	Annual Tonnage
2022-2023	4,000 tons
2023-2024	4,000 tons

3. **Additional Delivery of Acceptable Solid Waste.** Contractor understands and agrees that any volume of delivered acceptable solid waste in excess of the Annual Tonnage will be paid at the Non-Denton Residents/Businesses rate in the Utilities Rate Ordinance, as amended. A rate ordinance is approved annually by the Denton City Council.
4. **Reporting of Material Diversion.** Contractor understands that City requires quarterly information from Contractor detailing diversion activities conducted by Contractor. This would include tonnages of materials delivered to a Materials Recovery Facility (“MRF”), compost facility, or any other type of re-use or recycling facility. Contractor shall provide to the City on a quarterly basis, (with quarter 1 being October – December, 2022 with quarters 2, 3 and 4 being the following 3 months respectively) information detailing the gross and net recycling tonnages delivered, and a list of material diverted with tonnages.
5. **Contract Year** means any period during the contract beginning on October 1 and ending on September 30 of the following year.
6. **Acceptable Solid Waste** means Acceptable Solid Waste means all wet or dry Solid Waste that is authorized under State permit MSW 1590B to be disposed of at the Landfill under applicable federal, state, and local laws, regulations, ordinances, rules, permits, licenses, and governmental orders or directives, and that is not Unacceptable Solid Waste (as defined in Section 11 below). Acceptable Solid Waste does not include sludge, special waste, or material of citizens served by other municipalities or corporations. “Solid Waste” as used herein shall have the same meaning as Municipal Solid Waste set forth in Subchapter A, Section 361.003(20) of the Texas Health and Safety Code (also known as the Texas Solid Waste Disposal Act).
7. **Delivery Procedures; Operation of the Landfill.**
- a. **Operation of the Landfill; Procedures.** The delivery of Acceptable Solid Waste to the Landfill, which shall occur only during the Landfill’s posted hours, shall be governed by the procedures applicable to haulers utilizing the Landfill. Contractor shall comply with all Landfill procedures established by City ordinance and promulgated by the Director in the disposal of Acceptable Solid Waste, as same may be amended from time to time. Notwithstanding anything in this Contract to the contrary, City shall have the right, in its sole discretion, to close its Landfill, in whole or in part, either temporarily or permanently, at any time for any reason. Upon any such permanent closure, this Contract shall be terminated by City as described in Section 18. Notwithstanding anything contained herein to the contrary, any unscheduled closure of the Landfill of more than two (2) days

by City shall result in an equitable reduction in the Guaranteed Annual Tonnage owed by Contractor if requested in writing by Contractor. In addition, if City closes the Landfill for more than thirty (30) days during any three (3) month period, Contractor shall be entitled to terminate this Contract by delivering such termination in writing to the Director of Solid Waste with a copy to the City Manager. If Contractor chooses to terminate due to such closure, the obligations of both parties to deliver and to accept Acceptable Solid Waste shall terminate (including, without limitation, Contractor's obligation to provide the Guaranteed Annual Tonnage and the City's obligation to accept the tonnage at the Discount Disposal Fee rate).

- b. Compliance with Applicable Laws. This Contract is entered subject to and controlled by the Charter and ordinances of the City of Denton and all applicable laws, rules, and regulations of the State of Texas and the United States of America. Contractor and City shall, during the performance of this Contract, comply with all applicable City codes, ordinances, and regulations, as amended, and all applicable State and Federal laws, rules, and regulations, as amended.
 - c. Title to Waste. Title to and risk of loss and responsibility for Acceptable Solid Waste delivered to the Landfill shall pass at the time such Acceptable Solid Waste is removed from the delivery vehicle at the landfill. Title to Unacceptable Solid Waste shall remain with Contractor or its customer and shall never be deemed to pass to the City. City shall have the right to reject Solid Waste determined to be Unacceptable Solid Waste at any time, and Contractor shall be required to immediately pick up and properly dispose at its own expense, in accordance with Subsection 11(c) of this contract, Solid Waste determined by the Director to be Unacceptable Solid Waste.
8. Term. Unless sooner terminated pursuant to Section 17, this Contract shall be for a term of two (2) years, commencing on October 1, 2022 (the "Contract Start Date") and terminating on September 30, 2024. Upon termination of this Contract, the obligations of both parties to deliver and accept Acceptable Solid Waste shall terminate; provided, however, that all other rights and obligation of the parties under this Contract which by their nature are intended to survive (including those with respect to payment and indemnification) shall survive termination.

9. Disposal Fees and Payments.

- a. Fees. In consideration of City's permission of Acceptable Solid Waste under this Contract, Contractor shall pay thirty-five dollars (\$35.00) per ton. Contractor agrees that the Discount Disposal Fee may be increased on October 1 of each calendar year beginning on October 1, 2023. The percentage increase will be determined by the Director using the Consumer Price Index for All Urban Consumers (CPI-U) for the South Region for All Items, published by the United States Department of Labor, Bureau of Labor Statistics. Any increase in the Discount Disposal Fee shall not exceed five percent (5%) in any single calendar year. Any Additional Acceptable Tonnage delivered to the Landfill will be charged the Non-Denton Resident/Business rate, as established by the Utility Rate Ordinance, in effect at the time of disposal.
- b. Payment. Contractor shall pay the Discount Disposal Fee on a monthly basis for Acceptable Solid Waste delivered to Landfill. The monthly bill shall be paid no later than thirty (30) days after receipt of a monthly invoice from the Director during the term of the Contract. If Contractor delivers its Annual Tonnage before the end of the one-year period, additional Acceptable Solid Waste delivered to the landfill shall be charged the Non-Resident/Business Gate Rate set by the then current City of Denton Solid Waste Rate Ordinance.
- c. Taxes and Other Charges. In addition to the Discount Disposal Fee, Contractor shall pay all other federal, state, local, or other taxes, fees, surcharges, or similar charges related to the acceptance or disposal of Acceptable Solid Waste or related to the operations or activities of the Landfill that imposed by law, ordinance, regulation, agreement with a governmental authority, governmental audit, or otherwise.
- d. Security Deposit. Upon execution of this Contract, Contractor shall provide a security deposit in an amount equal to one-sixth (1/6) of the annual amount under this Contract. The Director may approve a lesser deposit if Contractor receives an acceptable credit rating from a credit source available to the City. The cost to obtain the credit rating will be charged to the Contractor and will not exceed one hundred dollars (\$100.00). The security deposit may also be waived or reduced based on recent payment history of the Contractor. The security deposit may take the form of cash, a performance bond issued by a corporate surety or sureties licensed to issue bonds in the State of Texas or otherwise acceptable to City, or an unconditional, irrevocable standby letter of credit issued by and drawable at a financial institution located in Denton County, Texas. If other than cash, the form of the security deposit shall be approved by the Director and approved as to legal form. For multi-year contract, the security deposit will be reviewed annually to reflect an increase or decrease in the full Disposal Rate, and the amount of the security deposit will be increased or decreased to reflect the change.
- e. Remedies in the Event of Default. If Contractor, after thirty (30) days advance written notice and opportunity to cure from City, fails to make payment of amounts due under this Contract or breaches any term, condition, or covenant of this Contract, the Director may exercise any or all of the following remedies, without waiving any other remedies available to City at law or in equity: (1) suspend delivery of solid waste to the Landfill by Contractor; (2) terminate this Contract for default as provided in Section 15; or (3) draw

upon the security deposit and require Contractor to furnish a replacement security deposit as provided in Subsection (d) above, except that the Director may require a greater amount of security than provided for in Subsection (d) in order to provide City with adequate assurance of performance by Contractor.

10. Liability and Insurance; Force Majeure.

- a. During the term of this Contract, Contractor shall procure, pay for, and maintain at least the minimum insurance coverages described in Exhibit A, attached to and made part of this Contract. Approval, disapproval, or failure to act by City regarding any insurance supplied by Contractor or its subcontractors shall not relieve Contractor of full responsibility or liability for damages, errors, omissions, or accidents as set forth in this Contract. The bankruptcy or insolvency of Contractor's insurer or any denial of liability by Contractor's insurer shall not exonerate Contractor from the liability or responsibility of Contractor set forth in this Contract.

- b. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract, except for any obligations to make payments to the other party hereunder, when and to the extent such party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other potential disasters or catastrophes, such as epidemics, pandemics, or quarantines, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or action; (e) embargoes, or blockades in effect on or after the date of this Contract; and (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) shortage of adequate power or transportation facilities; and (i) any other similar events or circumstances beyond the reasonable control of the Impacted Party. (b) The Impacted Party shall give notice within 10 days of the Force Majeure Event to the other party, stating the period of time the Force Majeure Event is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 consecutive days following written notice given by it under this Section 10, either party/the other party may thereafter terminate this Contract upon 45 days' written notice.

11. Unacceptable Solid Waste.

- a. For the purposes of this Contract, "Unacceptable Solid Waste" means: (i) any material that is not Acceptable Solid Waste; (ii) any material that by reason of its composition,

characteristics, or quality is defined as a "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 materials 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.

- b. Contractor agrees that it shall not deliver any Unacceptable Solid Waste to the City's Landfill. If Contractor delivers waste that contains both Acceptable Solid Waste and Unacceptable Solid Waste, the entire delivery shall constitute Unacceptable Solid Waste if the Unacceptable Solid Waste cannot be separated from the Acceptable Solid Waste through the reasonable efforts of City, with the cost of such separation to be paid by Contractor. City shall have the right, but not the obligation, to inspect any of Contractor's trucks to determine whether the waste delivered is Acceptable Solid Waste or Unacceptable Solid Waste. Any failure by City to perform any such inspection or to detect Unacceptable Solid Waste despite such inspection shall in no way relieve Contractor from its obligation to deliver only Acceptable Solid Waste or from its other obligations under this Section, or to retrieve such Unacceptable Solid Waste as required under Subsection 7(c).
- c. If Contractor delivers Unacceptable Solid Waste to City's Landfill, City may, in its sole discretion: (i) reject such Unacceptable Solid Waste at Contractor's sole expense; or (ii) if City does not discover such Unacceptable Solid Waste in time to reject and reload such Unacceptable Solid Waste, inform Contractor by telephone of the problem and require pickup of the Unacceptable Solid Waste within twenty-four (24) hours, unless the Unacceptable Solid Waste is deemed by City to be a threat to the health and safety of its employees or the general public, in which case Contractor shall respond and remove the Unacceptable Solid Waste immediately. If Contractor fails or refuses to timely remove or properly dispose of such Unacceptable Solid Waste at a location authorized to accept such Unacceptable Solid Waste in accordance with all applicable laws, ordinances, and regulations and to charge Contractor all direct and indirect costs incurred due to the removing, handling, transporting, and disposing of such Unacceptable Solid Waste. Notwithstanding the foregoing, no notice to Contractor shall be required for City to dispose of Unacceptable Solid Waste at the Contractor's sole expense in emergency situations where, in the Director's judgement, a delay in such disposal could constitute a hazard to the landfill or any person on, about, or near the Landfill premises.

12. Environmental Compliance. Contractor and City shall comply with all federal, state, and local environmental laws and regulations, including, but not limited to, the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA), and the Clean Air Act (CAA) in their performance under this Contract. Contractor shall ensure that its agents, subcontractors, and employees have received training or information appropriate to the

environmental aspects and impacts of their activities in connection with performance of this Contract. Contractor and City shall ensure that any spills or other releases of materials into the environment that may result from performance under this Contract are responded to and reported adequately and in compliance with applicable environmental laws.

13. **Notices.** Except as otherwise provided in Section 14, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

Brian Boerner
Director of Solid Waste
City of Denton
1527 S. Mayhill Rd.
Denton TX 76208

If intended for Contractor, to:

Joey Highfill
P.O. Box 899
2901 S. FM 51 Bldg. 100
Decatur, Texas 76234

14. **Assignment.** Contractor shall not sell, assign, transfer, or convey this Contract, in whole or in part.
15. **Independent Contractor.** Contractor's status shall be that of an independent contractor and not an agent, servant, employee, or representative of City in the performance of the Services. Contractor shall exercise independent judgement in performing its obligations under this Contract and is solely responsible for setting working hours, scheduling, or prioritizing and determining how its obligations under this Contract are to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance, and worker's compensation, which City provides its employees.
16. **Indemnity; Liability.**

a. _____ TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, CONTRACTOR AGREES TO DEFEND, INDEMNIFY, AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS,

JUDGEMENTS, COSTS, FINES, PENALTIES, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, VIOLATIONS OF STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM NEGLIGENCE, WRONGFUL ACT, OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF CONTRACTOR AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OR THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.


b. Wise County agrees to be responsible for the liabilities arising out of Wise County's conduct, and the conduct of Wise County's officers, employees and agents.

17. **Termination.** This agreement may be terminated in whole, or in part, by the City or the Contractor upon thirty (30) days written notice to the other party. In the event of termination, Contractor shall pay all contract fees for Solid Waste delivered to City's landfill up to and including the date of termination.
18. **Venue.** The obligations of the parties to this Contract shall be performable in Denton County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Denton County, Texas.
19. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.
20. **Legal Construction.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.
21. **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

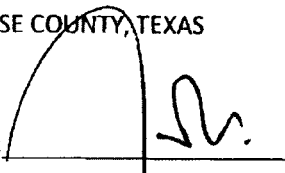
22. Captions. The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.
23. Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this Contract, their assigns.
24. Entire Agreement: No Oral Modifications. This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.
25. Non-appropriation. The Contractor's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Wise County Commissioners Court. Should the funds not be appropriated for Contract Year 2023-2024, Contractor may terminate this Contract with respect to those payments for which such funds are not appropriated. Wise County will give City thirty (30) days' written notice of such termination. All obligations of Wise County to make payments after the termination date will cease.

Executed this the 6th day of December, 2022 by City, signing by and through its City Manager, duly authorized to execute same by Ordinance 22-2023 approved on December 6, 2022.

CITY OF DENTON, TEXAS

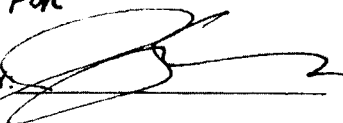
BY: 
SARA HENSLEY, CITY MANAGER

WISE COUNTY, TEXAS

BY: 
J.D. CLARK, COUNTY JUDGE

ATTEST:

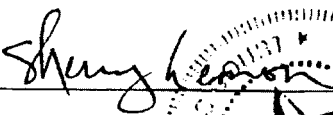
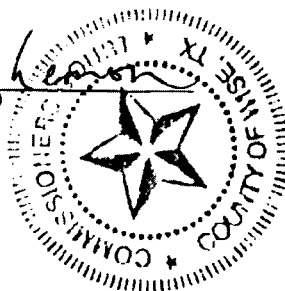
ROSA RIOS, CITY SECRETARY

FOR
BY: 



ATTEST:

SHERRY LEMON, COUNTY CLERK

BY: 


APPROVED AS TO LEGAL FORM:

CITY ATTORNEY

Susan
Keller

Digitally signed
by Susan Keller
Date: 2022.11.17
16:00:02 -06'00'

APPROVED AS TO LEGAL FORM:

COUNTY ATTORNEY



