

City of Scottsbluff, Nebraska

Monday, July 20, 2020

Regular Meeting

Item Reports4

Council to review and discuss the Contract with Waste Connections to provide waste disposal services to the City.

Staff Contact: Rick Kuckkahn, Interim City Manager

DISPOSAL SERVICE AGREEMENT

This Disposal Service Agreement (this “Agreement”) is entered into this ____ day of _____, 2020, by and between City of Scottsbluff, Nebraska, a municipality organized and existing under the laws of the State of Nebraska with an office at _____ (hereinafter referred to as “Customer”), and Waste Connections of Nebraska, Inc., a Delaware corporation, with an office at 710 Country Club Road, Gering, Nebraska 69341 (hereinafter referred to as “WC of NE”).

ARTICLE I DESIGNATED WASTES

During the term of this Agreement, subject to any periodic quantity or other limitation imposed by applicable federal, state, local or administrative law, rule, regulation, order, consent agreement, ordinance, permit (including, but not limited to, WC of NE’s transfer station operating permit with the Nebraska Department of Environmental Quality (“NDEQ”) or otherwise, WC of NE, during normal hours of operation, shall receive and dispose of all the non-hazardous municipal solid waste and recyclable material (collectively “Solid Waste”) as further set forth on Exhibit A attached hereto and incorporated herein by reference, excluding radioactive, volatile, corrosive, highly flammable, liquid, explosive, biomedical, infectious, biohazardous, pathological, toxic or hazardous material as defined by applicable federal, state or local laws or regulations (“Excluded Waste”), delivered by Customer or its agent to the WC of NE Transfer Station located at 710 Country Club Road, Gering, NE 69341 (the “Transfer Station”), and Customer shall deliver all of the Solid Waste it collects, or contracts with third parties to have collected, to the Transfer Station. Customer shall arrange to use the Transfer Station as its exclusive disposal facility for Solid Waste. The term “hazardous waste” as used herein shall include, but not be limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, and including future amendments thereto, and applicable state and local law.

Where requested by WC of NE, Customer shall, in addition to any labeling, placarding, marking, manifest or other such documentation required by law, provide WC of NE in advance, with a representative sample of the Solid Waste to be disposed at the Transfer Station and a detailed written physical and chemical analysis of the Solid Waste, including a listing of unique chemical characteristics and safety procedures, if any, that would be of material significance to the handling of such Solid Waste (together, a “Waste Profile”). Customer shall promptly furnish to WC of NE any information regarding known, suspected, or planned changes in composition of such Solid Waste, and Customer shall update the applicable Waste Profile accordingly. Customer warrants that all Solid Waste specified in a Waste Profile and delivered to WC of NE shall conform to the description set forth on the Waste Profile. Customer has a continuing obligation to inform WC of NE of any new information, or information not previously provided to WC of NE by Customer, which may affect the acceptability of the waste by WC of NE. Further, Customer shall comply with all WC of NE requests for evidence of Customer’s continuing compliance with the terms of the Agreement including but not limited to the following: (i) providing new, updated waste profiles on the Solid Waste(s) offered for disposal or, (ii) providing appropriate certification that the Solid Waste being offered for disposal is

accurately reflected by the appropriate application or, (iii) re-sample the Solid Waste at Customer's expense if reasonable cause exists as to its acceptability under the terms of this Agreement or, (iv) allow WC of NE to re-sample the Solid Waste if reasonable cause exists as to its acceptability under the terms of this Agreement (and Customer shall be responsible for all costs and expenses associated with such sampling if such waste is determined to be Excluded Waste), or (v) all of the above.

ARTICLE II TITLE

Title to the Solid Waste delivered to the Transfer Station by Customer or Customer's third party contractors shall be transferred to and vest in WC of NE at the time the Solid Waste is fully unloaded at the working face of the Transfer Station and Customer's vehicle has departed such working face. Prior thereto, title to the Solid Waste shall be in, and risks and responsibilities therefore shall be borne by, Customer. Title to Excluded Wastes shall at no time vest or be transferred to WC of NE, and shall at all times remain with Customer.

Notwithstanding the foregoing, in the event that any such Solid Waste is found at any time to be unacceptable waste under WC of NE's municipal solid waste permit with NDEQ, or such Solid Waste is suspected or found to be nonconforming with its description in the applicable Waste Profile, or is otherwise Excluded Waste, WC of NE shall have the right to revoke its acceptance of title to such waste material. Upon any such revocation of acceptance, Customer shall work with WC of NE to reasonably accomplish, at Customer's sole cost and in a timely fashion, the removal from the Transfer Station and/or otherwise lawful disposal of such Solid Waste. If Customer fails to timely cooperate with WC of NE to effect removal of the Excluded Waste or rejected waste material, Customer may arrange for the transportation and disposal of the Excluded Waste or rejected waste at a facility permitted to accept such wastes and Customer shall promptly reimburse Customer for all costs incurred by Customer in connection therewith.

ARTICLE III COMPLIANCE WITH LAWS

WC of NE and Customer shall comply with all applicable administrative, local, state, and federal laws, rules and regulations pertaining to the delivery and disposal of the Solid Waste. Customer shall also comply with work and safety rules, which have been promulgated by WC of NE to govern operations at the Transfer Station. This Agreement provides Customer with a license to enter the Transfer Station for the limited purpose of, and only to the extent necessary for, off-loading Solid Waste at the Transfer Station in the manner directed by WC of NE. Except in an emergency, Customer's personnel shall not leave the immediate vicinity of their vehicle. After off-loading the Solid Waste, Customer's personnel shall promptly leave the Transfer Station. Under no circumstances shall Customer or its personnel engage in any scavenging of waste or other materials at the Transfer Station. WC of NE reserves the right to make and enforce reasonable rules and regulations concerning the operation of the Transfer Station, the conduct of the drivers and others on the Transfer Station premises, quantities and sources of waste, and any other matters necessary or desirable for the safe, legal and efficient operation of the Transfer Station including, but not limited to, speed limits on haul roads imposed by WC of NE, and the wearing of hard hats and other personal protection equipment by all individuals allowed on the

Transfer Station premises. Customer agrees to conform to such rules and regulations as they may be established and amended from time to time. WC of NE may refuse to accept Waste from and shall deny an entrance license to, any of Customer's personnel whom WC of NE believes is under the influence of alcohol or other chemical substances. Customer shall be solely responsible for its employees and subcontractors performing their obligations in a safe manner when at the facility of WC of NE.

WC of NE shall have the right to inspect all vehicles and containers of waste haulers, including Customer's vehicles, in order to determine whether the waste is Solid Waste or Excluded Waste pursuant to this Agreement and all applicable federal, state and local laws, rules and regulations. WC of NE's exercise, or failure to exercise, its rights hereunder shall not operate to relieve Customer of its responsibilities or liability under this Agreement.

ARTICLE IV DISPOSAL RATES

The rates for disposal of the Solid Waste to be paid by Customer under this Agreement are set forth in Exhibit A. The rates in Exhibit A shall be subject to adjustments as set forth in Exhibit A and in this Article IV.

In addition to all rate adjustments provided for in Exhibit A, WC of NE, in its sole direction, may at any time adjust the rates to Exhibit A to fully cover costs arising from, relating to, or associated with (i) increases in WC of NE's fuel costs, (ii) the adoption of new, or changes in existing, federal, state, local or administrative laws, rules, regulations or regulatory requirements or guidelines (including changes in construction or interpretation thereof or changes in the manner of method of enforcement thereof), (iii) revocation, suspension, denial or modification of any permit, license or approval regarding use, operation or closure of the Transfer Station, and/or (iv) other costs or contingencies beyond WC of NE's reasonable control.

WC of NE will, however endeavor to notify Customer of an impending rate adjustment and indicate the reason for said adjustment at least thirty (30) days in advance of its implementation.

ARTICLE V TERM AND TERMINATION

The effective date of this Agreement is _____, 2020 (the "Effective Date"). The term of this Agreement shall run for a period of ten (10) years from the Effective Date, unless sooner terminated by the written consent from both parties, or as a result of an Event of Default, as defined below.

It shall constitute an "Event of Default" under this Agreement if either party breaches this Agreement or defaults in the performance of any of its obligations contained herein, and such breach or default shall continue for a period of thirty (30) days (ten (10) days in the event of nonpayment of amounts due and owing by Customer) after the breaching/defaulting party's receipt of written notice from the other party specifying such breach or default and requiring it to be remedied; provided, however, that if any such breach or default (except the nonpayment of amounts due and owing by Customer) cannot with due diligence be remedied by the breaching/defaulting party within such thirty (30) days, and such party commences to remedy

such breach or default within such thirty (30) day period and thereafter prosecutes such remedy with reasonable diligence, the period of time for remedy of such breach of default shall be extended so long as the breaching/defaulting party prosecutes such remedy with reasonable diligence, but in no event beyond sixty (60) days after receipt of the default notice. Following the occurrence of any Event of Default, the non-breaching party/defaulting party may terminate this Agreement and/or exercise any other remedy it may have under this Agreement, applicable law and principles of equity.

ARTICLE VI PAYMENT

Customer agrees to make payment within ten (10) days after receipt of invoice, which payment shall be submitted to the WC of NE office on such invoice. If WC of NE fails to make timely payment of an undisputed invoiced amount, WC of NE may suspend Customer's right to use the Transfer Station at any time and for such period of time as Customer remains delinquent in its payment obligations. WC of NE may impose and Customer agrees to pay a late fee as reasonably set by WC of NE for all past due payments, and interest on all past due payments at the rate of one and one-half percent (1½%) per month, provided that no such late fee or interest charge shall exceed the maximum rate allowed therefor by applicable law.

ARTICLE VII INDEMNITY / INSURANCE

Customer hereby agrees to indemnify and hold WC of NE and its employees and agents harmless from and against any and all loss, damage, liability, or expense (including, but not limited to, reasonable attorneys fees and related costs) arising out of any claim for loss of or damage to property, including WC of NE's property, and injuries to or death of persons, including Customer's or WC of NE's employees, caused by or resulting from the negligence or willful misconduct, breach of this Agreement or violation of any federal, state or local laws or regulations by Customer or its employees, agents or elected officials, or the delivery to the Transfer Station pursuant to this Agreement of Excluded Waste.

WC of NE hereby agrees to indemnify and hold Customer and its employees, agents and elected officials harmless from and against any and all loss, damage, liability, or expense (including, but not limited to, reasonable attorney fees and related costs) arising out of any claim for loss of or damage to property, including Customer's property, and injuries to or death of persons, including WC of NE's or Customer's employees, to the extent caused by or resulting from the negligence or willful misconduct of WC of NE, its employees or agents or WC of NE's violation of any federal, state or local laws or regulations.

The indemnity obligations set forth herein shall survive the expiration or earlier termination of this Agreement.

Each party shall maintain in full force and effect throughout the term of this Agreement the following types of insurance in at least the amounts specified below:

<u>Coverages</u>	<u>Minimum Amounts of Insurance</u>
Worker's Compensation	Statutory
Employer's Liability	\$500,000 each Bodily Injury by Accident \$500,000 policy limit Bodily Injury by Disease \$500,000 each occurrence Bodily Injury by Disease
General Liability	\$2,000,000 combined single limit
Automobile Liability	\$2,000,000 combined single limit

All insurance will be by insurers authorized to do business in the state in which the Transfer Station is located. Prior to Customer being allowed on Transfer Station premises, Customer shall provide each part shall provide the other with certificates of insurance. Customer warrants that it will secure the above minimum amounts of insurance from any subcontractor. Each party shall be named as additional insured under all of the other party's insurance policies, with the exception of workers' compensation policies. To the extent of each party's indemnification obligations hereunder, each party agrees to waive all rights of recovery by way of subrogation against the other party in connection with any claims and/or damages covered by any of the insurance policies required under this Section, and each party shall cause all such insurance policies to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any claims and/or damages covered by such policies.

ARTICLE VIII FORCE MAJEURE

Except for the obligation to pay for services rendered, neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, war, fire, acts of God, or the revocation, suspension, denial, surrender or modification of any permit, license or approval regarding use, operation or closure of the Transfer Station.

ARTICLE IX ASSIGNMENT

This Agreement is assignable, subject to the prior written consent of both parties, and shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns; provided, however, that no such consent shall be unreasonably withheld, conditioned or delayed, nor shall such consent be required in the event of WC of NE's assignment of this Agreement to an affiliate of WC of NE.

ARTICLE X ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between WC of NE and Customer with respect to Customer's disposal of Solid Waste at the Transfer Station, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, with respect to the subject matter hereof. No changes, alterations or modifications to this Agreement will be effective unless in writing and signed by WC of NE and Customer.

ARTICLE XII MISCELLANEOUS

Savings Clause. Invalidation of all or any portion of the provisions herein contained by law, judgment, or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Waivers. One or more waivers of any covenant or agreement contained herein by a party shall not be constructed as a waiver of a further breach of the same.

Captions. The captions and Article headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe neither the scope of this Agreement nor the intent of any provision thereof.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one agreement binding on the parties hereto. Facsimile copies of signature pages shall be deemed originals.

Governing Law. This Agreement shall be governed by the laws of the State of Mississippi, without regard to that state's conflicts of laws jurisprudence.

Attorneys Fees. In any dispute to enforce this Agreement, the prevailing party is entitled fully to recover its reasonably incurred costs, including reasonable attorneys' fees incurred in the enforcement of its rights hereunder. In determining which party is the "prevailing party," the Court must take into account the claims pursued, the claims on which the pursuing party was successful, the claims on which the defending party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other party. Notwithstanding the foregoing, if a written settlement offer or counteroffer is not accepted and the judgment or award finally obtained (not including costs and reasonable attorneys' fees) is equal to or more favorable than such offer, or counteroffer, then the offeror is deemed to be the prevailing party.

Notices: All notices or other communications to be given hereunder shall be in writing and shall be deemed given when mailed by registered or certified United States mail at the addresses first hereinabove written.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Disposal Service Agreement as of the date first above written.

WC of NE:

Customer:

**WASTE CONNECTIONS OF NEBRASKA,
INC.**

CITY OF SCOTTSBLUFF, NEBRASKA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest:

Attest:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A**SERVICE DETAIL / RATES FOR SOLID WASTE DISPOSAL****Service Detail**

The transfer station is available Monday thru Friday, from 7:00 a.m. to 4:00 p.m. Solid waste accepted at the transfer station will be transported to our Subtitle D regulated J Bar J Landfill located south of Ogallala in Perkins County, Nebraska. The landfill is licensed by the Nebraska Department of Environmental Quality as a municipal solid waste landfill. The landfill meets or exceeds all of the state design and operational criteria. The landfill is in full compliance with all of Title 132 (Solid Waste Rules and Regulations) and has no groundwater contamination or gas migration issues.

Rates

A) **Basic Disposal Price.** The basic disposal price paid by Customer to WC of NE for Solid Waste (excluding any special waste) delivered to the Transfer Station hereunder (the “Basic Disposal Price”) shall be Forty Three 00/100 Dollars (\$ 43.00) per Ton. The Basic Disposal Price does not include sales, use, refuse collection, solid waste taxes, or local program fees, if applicable, for which Customer shall be solely responsible. The disposal price for special waste shall be as agreed to between the parties from time to time.

B) **CPI Adjustment.** There shall be no escalation in the Basic Disposal until _____, 2021. On that date and each Year thereafter, the Basic Disposal Price shall be increased as follows:

The Basic Disposal Price automatically increase by one hundred percent (100%) of the actual percentage change in the Consumer Price Index for the Prior Rolling Twelve-Month Period (as defined below). The Consumer Price Index or “CPI-U” means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, 1982-84=100, as prepared by the United States Department of Labor, Bureau of Labor Statistics (“BLS”), or its successor. If BLS designates an index with a new title or code number or table number as being the continuation of the index cited above, the new index will be used. Otherwise, the parties shall agree upon a new index. The “Prior Rolling Twelve Month Period” shall be calculated by establishing the CPI-U on each _____ as compared to the immediately preceding _____ during every year of the term.