

City of Scottsbluff, Nebraska

Monday, August 31, 2020

Regular Meeting

Item Reports6

Council to discuss and consider action on the Contract with Waste Connections of Nebraska, Inc. to provide disposal services to the City and authorize the Mayor to sign the Contract.

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 2525 Circle Dr, Scottsbluff, NE 69361 (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 (“Solid Waste”) and recyclable material as further described on Exhibit A attached hereto and incorporated herein by reference (“Recyclable Material” and together with Solid Waste collectively referred to as ~~collectively “Solid-Acceptable Waste”~~ as further set forth on Exhibit A attached hereto and incorporated herein by reference, excluding any and all: (i) 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, and/or (ii) materials WC of NE is unable to accept in accordance with its municipal solid waste permit with the NDEQ (collectively (“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-Acceptable 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-Acceptable 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.

Upon reasonable requested by WC of NE, Customer shall, but in event more than two (2) time per calendar year, in addition to any labeling, placarding, marking, manifest or other such documentation required by law, provide WC of NE, with a representative sample of the Solid Waste to be disposed at the Transfer Station that would be of material significance to the handling of such Solid Waste (together, a “Waste Profile”). ~~Customer shall promptly furnish, upon request, to WC of NE any information regarding known, suspected, or planned changes in composition of such Solid-Acceptable Waste hereunder, 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 an 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 reasonable 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. Provided, the determination of Excluded Waste must be evidenced by samples of Excluded Waste present at the Transfer Station before Customer is required to comply with any of WC of NE's request.~~

ARTICLE II TITLE

Title to the Solid/Acceptable 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/Acceptable 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/Acceptable Waste shall be in, and risks and responsibilities therefore shall be borne by, Customer. Title to and liability for 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 Excluded Waste is found at any time WC of NE's municipal solid waste permit with NDEQ, or such 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 Excluded Waste. If Customer fails to timely cooperate with WC of NE to effect removal of the Excluded Waste, Customer may arrange for the transportation and disposal of the Excluded Waste at a facility permitted to accept such wastes and Customer shall promptly reimburse Customer for all costs incurred by Customer in connection therewith. Waste materials which are discovered to be or contain any Excluded Waste may be refused or rejected by WC of NE at any time (even after acceptance by WC of NE). WC of NE has the right to refuse, or to reject after acceptance, any load(s) of waste(s) delivered to the Transfer Station, including if WC of NE believes Customer has breached (or is breaching) its representations, warranties, covenants or agreements hereunder, or any applicable federal, state or local laws, regulations, rules or orders, even if only a portion of such waste load includes Excluded Waste. WC of NE shall have the right to inspect all vehicles and disposal containers of waste haulers, including Customer's vehicles, in order to determine whether the waste is Acceptable 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. If it is determined that waste provided by Customer is Excluded Waste and if such waste is in WC of NE's possession, WC of NE shall either: (i) prepare such Excluded Waste for lawful transportation by WC of NE and return to Customer, or (ii) require Customer to promptly remove such Excluded Waste, within a reasonable time after rejection by WC of NE. Customer shall be responsible for, and bear all expenses, costs, fines, penalties, liabilities, and damages incurred by WC of NE, as a result of the treatment or disposal of Excluded Waste,~~

including, without limitation, the reloading and removal of Excluded Waste delivered to the Transfer Station.

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 SolidAcceptable Waste. Customer shall also comply with work and safety rules, which have been promulgated and provided in written form to Customer 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 SolidAcceptable 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 SolidAcceptable 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. To the extent Customer is provided with written copies of the rules and regulations, 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 SolidAcceptable 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 and Recyclable Materials to be paid by Customer under this Agreement are set forth in Exhibit AB. The rates in Exhibit AB shall be subject to adjustments as set forth in Exhibit AB and in this Article IV.

In addition to all rate adjustments provided for in Exhibit A, WC of NE, in its sole direction, may request an adjustment to the rates set forth herein to fully cover costs arising from, relating to, or

associated with 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). WC of NE will make such request at least thirty (30) days prior to the effective date of such adjustments, and Customer will approve or deny such adjustment requests within such thirty (30) day period. If Customer denies any such request or fails to act within the time period set forth above, WC of NE, in its sole and absolute discretion, may terminate this Agreement on one hundred twenty (120) days' prior written notice to Customer. WC of NE will, r 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 five (5) 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 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 thirty (30) days after receipt of invoice, which payment shall be submitted to the WC of NE office on such invoice. If Customer 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 ~~upon request shall~~ provide ~~each part WC of NE shall provide the other~~ with certificates of insurance evidencing the above coverage. 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, pandemic, 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, however, WC of NE agrees to provide written notice of the assignment and contact information of the assignee to Customer within thirty (30) days of the assignment.

ARTICLE X ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between WC of NE and Customer with respect to Customer's disposal of ~~Solid~~[Acceptable](#) 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 Nebraska, 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 AB**SERVICE DETAIL / RATES FOR SOLID WASTE DISPOSAL****Solid Waste Service Detail**

The transfer station is available Monday thru Friday, from 7:00 a.m. to 4:00 p.m. for the receipt of Solid Waste. -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.

Recyclable Material Service Detail

The transfer station is available Monday through Friday—, from 7:00 a.m. to 4:00 p.m. for the receipt of Recyclable Materials. WC of NE may from time to time change the days and times on which it will accept Recyclable Materials on thirty (30) days prior written notice to Customer. For the purposes of this Agreement, “Recyclable Materials” shall mean: Food Boxes/Boxboard, Plastic Bottles & Containers (#1-#7), Newspaper, Cardboard (Cut Down to 3’x3’ or Less), Brown Paper Bags, Aluminum Foil & Trays (Cleaned), Phone Books, Hard/Soft Back Books, Catalogs & Magazines, Paper (White, Colored & Green Bar), Junk Mail, Tin & Aluminum Cans (Including Caps & Lids). Customer agrees to comply with any description of and/or procedures with respect to removal of contaminants or preparation of Recyclable Materials as reasonably provided by WC of NE. In the event that any Recyclable Materials furnished to WC of NE by Customer are, due to presence of contaminants, rejected by a recycling facility or otherwise are reasonably determined by WC of NE not to be resalable or to have a reduced resale value, WC of NE may, reject such load(s) of Recyclable Materials. Customer shall pay WC of NE the Basic Solid Waste Disposal Price for and rejected loads of Recyclable Materials (instead of the Basic Recyclable Material Disposal Price).

Rates

A) Basic Disposal Prices. 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 Solid Waste Disposal Price”) shall be Forty--Three 00/100 Dollars (\$43.00) per Ton. The basic disposal price paid by Customer to WC of NE for Recyclable Material (excluding any special waste) delivered to the Transfer Station hereunder (the “Basic Recyclable Material Disposal Price”) shall be Ninety-Eight 00/100 Dollars (\$98.00) per Ton. Neither ~~the~~ Basic Solid Waste Disposal Price nor the Basic Recyclable Material Disposal Price does not include ~~includes~~ 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 Solid Waste Disposal Price until _____, 2021. On that date and each year thereafter, the Basic Solid Waste Disposal Price and the Basic Recyclable Material Disposal Price shall be increased as follows:

The Basic Solid Waste Disposal Price and the Basic Recyclable Material Disposal Price shall each 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.

C) Additional Basic Recyclable Material Disposal Price Adjustment. Customer acknowledges and agrees that the Basic Recyclable Material Disposal Price is based off of the current material recovery facility processing fee of Forty and 00/100 Dollars (\$40.00) per Ton (“Processing Fee”) at the Waste Management Material Recovery Facility located at 5395 Franklin Street, Denver, Colorado (“WM MRF”). In addition to all other rate adjustments provided for herein, beginning on October 1, 2020 and on every January 1st, April 1st, June 1st, and October 1st thereafter for the remainder of the Term, the Basic Recyclable Material Disposal Price shall automatically adjust on a dollar-for-dollar basis based on any adjustments in the Processing Fee being charged at the WM MRF on such January 1st, April 1st, June 1st, and October 1st. For the avoidance of doubt and by way of example only, if the Basic Recyclable Material Disposal Price is \$98.00 per Ton, and on October 1, 2020, the Processing Fee at the WM MRF is \$43.25 per Ton, the Basic Recyclable Material Disposal Price beginning on October 1, 2020 shall be \$101.25 per Ton.

D) Maximum Basic Recyclable Material Disposal Price. Notwithstanding anything contained herein to the contrary, if at any time the Basic Recyclable Material Disposal Price exceeds One Hundred Ten and 00/100 Dollars (\$110.00) per Ton, Customer may discontinue its recycling program and cease bringing Recyclable Materials to WC of NE.