

**MUNICIPAL SOLID WASTE AGREEMENT  
BETWEEN  
THE CITY OF SAN ANTONIO  
AND  
BFI WASTE SYSTEMS OF NORTH AMERICA, LLC  
D/B/A TESSMAN ROAD LANDFILL  
(RFP 23-069; RFX 6100016481)**

**STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §**

**I.       AGREEMENT**

1.1     This Municipal Solid Waste Agreement (hereinafter referred to as the "Agreement"), made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager (hereinafter referred to as "City"), and

BFI Waste Systems of North America, LLC  
d/b/a Tessman Road Landfill  
7000 IH 10  
San Antonio, Texas 78219

a limited liability company, registered in the State of Delaware and authorized to do business in Texas (hereinafter referred to as "BFI" or "Contractor"), said Agreement being executed pursuant to Ordinance No. \_\_\_\_\_, passed and approved by the City Council on \_\_\_\_\_, 2024. Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I – Request for Proposals – Municipal Solid Waste Disposal Services (RFP 23-069, RFX No.: 6100016481), Issued by the City on February 24, 2023, and all Exhibits to the RFP but only to the extent not in conflict with or amended by the contract documents or any amendment thereto;
2. Exhibit II – Addendum I. dated April 7, 2023, but only to the extent not in conflict with or amended by the contract documents or any amendment thereto;
3. Exhibit III – Addendum II, dated April 19, 2023, but only to the extent not in conflict with or amended by the contract documents or any amendment thereto;
4. Exhibit IV – Addendum III, dated May 8, 2023, but only to the extent not in conflict with or amended by the contract documents or any amendment thereto;
5. Exhibit V – RFP Response by Contractor, dated May 8, 2023, but only to the extent not in conflict with or amended by the contract documents or any amendment thereto;

6. Exhibit VI – Price Schedule. Submitted by Contractor in the response to the RFP, as RFP Attachment B;
7. Exhibit VII – Tiered Tonnage Disposal Rates submitted by Contractor on November 10, 2023;
8. Exhibit VIII – Copy of enabling Ordinance No. 2024-\_\_\_\_ - \_\_\_\_ - \_\_\_\_

1.2 With Contractor's RFP response, Contractor submitted Requested Exceptions to the City for consideration, the following of which have been agree to and incorporated as set out below:

- 1.2.1 Indemnification – This agreement has been drafted to address this issue.
- 1.2.2 Definition of Unacceptable Waste – This agreement has been drafted to address this issue.
- 1.2.3 Title to Waste – This agreement has been drafted to address this issue.
- 1.2.4 Rejection of Unacceptable Waste – This agreement has been drafted to address this issue.

1.3 Further, Contractor's responses to the RFP, its addendum are also fully incorporated by reference as Exhibit III hereto, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

1.4 The RFP and its addendum govern Contractor's responses; this Integration Agreement governs both the RFP and responses, in case of conflicts; the Enabling Ordinance governs all in case of conflict. This agreement supersedes any previous agreement or understanding of the parties, whether written or oral related to the subject matter of RFP 23-069: RFX 6100016481.

## **II. TERMS**

2.1 This Agreement may be fully executed upon approval of the City Council Ordinance. The effective date of this Agreement begins October 1, 2025, assuming full execution of the Contract Documents.

2.2 The term of this agreement is for ten (10) years and shall commence, after approval by the City Council as signified by the passage of an Ordinance, on the date recited in the enabling Ordinance, October 1, 2025, and terminate on September 30, 2035. By mutual agreement of the Parties, the City may renew the Agreement for two (2) additional renewal terms of five (5) years each, under the same terms and conditions, with no further action by City Council.

### **III. COMPENSATION**

3.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director, Solid Waste Management Department (hereinafter "Director"), of all services and activities set forth in this Agreement, City agrees to pay Contractor the Rates as provided in Exhibit VI, Price Schedule, as provided by the Contractor on May 8, 2023, as total compensation for all Rates and expenses and as described in the RFP (hereinafter referred to as "Compensation Schedule"). The Contractor shall bill the City for service rendered within ten (10) working days following the end of the month, and the City shall make best efforts to pay the Contractor on or before the 30<sup>th</sup> working day following the date of receiving the billing. Additionally, if volume dictates, the rate will decrease in accordance with the Tiered Pricing Schedule set out in Exhibit VII on all additional volume delivered by the City for the rest of that year. The Contractor shall accept waste delivered by the City to the Contractor's facility as described in the RFP.

3.2 The City will also pay the Solid Waste Disposal Fee assessed and levied by the Texas Commission on Environmental Quality (currently \$0.94 per ton). Contractor shall bill the City for the fee on each monthly billing. No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in the Compensation Schedule. This Agreement is only for disposal services and does not include the cost to transport waste to the Contractor.

3.4 The City shall not initiate a price decrease based upon falling prices, but the price paid by the City shall not exceed the rates posted and charged by Contractor to ordinary users of the facility (the so-called "Gate Rate").

3.5 In the unlikely event that the City does not fund the Solid Waste Management Department waste disposal program, and if funding for the entire Agreement is not appropriated at the time this Agreement is entered into, the City retains the right to terminate this Agreement at the expiration of each of the City's budget periods prior to a budget cycle where waste disposal funding is not appropriated.

3.6 It is understood and agreed by the Parties that the City does not guarantee any minimum volume of solid waste material. This is not an exclusive contract, and the City may dispose of solid waste by any other legal means.

### **IV. CPI ADJUSTMENT**

4.1 It is agreed that changes to the rates for services due to changes in the Consumer Price Index (CPI) are allowed with certain limitations. As used herein, the term "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index. The price per ton shown on the Price Schedule may be increased each year, starting in October 2026 through a Consumer Price Index (CPI) escalator. If the CPI decreases, the price per ton will be unchanged. A 12-month average of the CPI will be used for the calculation.

4.2 The CPI series that will be used is the Consumer Price Index for All Urban Consumers (Current Series); Series ID: CUUR0000SA0; Series Title: All items in U.S. city average, all urban consumers, not seasonally adjusted; Area: U.S. city average; Item: All items; Base period: 1982-84=100 or the successor of such index.

4.3 Method of Calculation for Price Adjustment. To calculate the price adjustment, the following formula shall be used:

- September will be used as the base period.
- Monthly CPI data for September through August, using the most recently available trailing twelve (12) months average CPI will be obtained from the Bureau of Labor Statistics
- Monthly CPI data for September through August, using the preceding twelve (12) months average CPI will be obtained from the Bureau of Labor Statistics
- An average of each 12-month period will be taken.
- The average of those separate 12-month periods will be subtracted from each other.
- The difference will then be converted into a percentage by dividing the change in points from the beginning (average) value.
- The resulting figure will be multiplied by the price per ton and rounded to two decimal points, giving you the new base price.
- In subsequent years, the same process will be repeated.

#### 4.4 Calculation Example

These figures are used only for example purposes and are not actual prices in the contract. This example assumes an initial tipping fee of \$30.00 per ton.

Most Recent 12 Months		Prior 12 Months	
MONTH	CPI	MONTH	CPI
Sep 2022	296.808	Sep 2021	274.310
Oct 2022	298.012	Oct 2021	276.589
Nov 2022	297.711	Nov 2021	277.948
Dec 2022	296.797	Dec 2021	278.802
Jan 2023	299.170	Jan 2022	281.148
Feb 2023	300.840	Feb 2022	283.716
Mar 2023	301.836	Mar 2022	287.504
Apr 2023	303.363	Apr 2022	289.109
May 2023	304.127	May 2022	292.296
Jun 2023	305.109	Jun 2022	296.311
Jul 2023	305.691	Jul 2022	296.276
Aug 2023	307.026	Aug 2022	296.171
Average	301.374	Average	285.848

Average - 12 months ending August 2023	301.374
Average - 12 months ending August 2022	285.848
Point Difference	15.526
Percentage Change	5.43%
Base Price	\$ 30.00
Increase (\$30.00 X 5.43%)	\$ 1.63
New Rate after CPI	\$ 31.63

#### 4.5 Date for Price Adjustment.

Prices shall be adjusted annually according to the process described above. The price change will be effective October 1 of each year. Rates will be first reflected in the November invoice for services performed in October.

### **V. SPECIAL CONDITIONS**

5.1 All of the waste collected by the City and to be disposed of at the Contractor's facility is Municipal Solid Waste (MSW). This waste is generated primarily from residential dwellings and some businesses. This waste is collected primarily from residential collection routes and from City drop-off centers. It may be composed of, but not limited to, kitchen, green and yard wastes, organic and other putrescible wastes, bulky waste, plastic items, metal, wood, paper, or other fiber, quartered or split tires, dead animals and many other wastes generated by typical households and businesses. Most of the waste to be delivered to the Contractor's facility will primarily be delivered in bulk and mixed from multiple residential customers. Dead animals shall be delivered in bulk. Brush and bulky materials may also be delivered in bulk. The process for delivering dead animals shall include notification and disposal in designated location defined by the Contractor.

5.2 This Agreement, does not include the disposal of hazardous, industrial, toxic, or radioactive wastes. It also does not include certain special wastes such as asbestos or liquids. The City does not expect a need to dispose of non-MSW waste. But, if the Contractor's facility state permit allows it to accept waste other than MSW for disposal, the Contractor and City may in the future negotiate separate terms for wastes other than MSW.

5.3 All Municipal Solid Waste shall be hauled by City Vehicle or designated City hauler to the Contractor's facility. Contractor shall not accept and shall reject any waste brought to its landfill that Contractor identifies as or that constitutes "unacceptable" waste. Unacceptable waste includes radioactive, hazardous, industrial, and toxic waste and other special wastes that require pre-approval, manifesting, etc. prior to acceptance. In the event that the City delivers unacceptable waste to the Contractor's facility, the Contractor will notify the City upon entry of the truck and prior to disposal of the waste. Contractor shall describe the nature of unacceptable waste and the City and Contractor will cooperate to arrange for removal of the unacceptable waste, the expense of removal to be borne by the City or the City's agent. Unacceptable waste does not include waste that was not unacceptable waste at the time of disposal, but is determined by a regulatory or other governmental authority at a later date to be unacceptable. Additionally, unacceptable waste does not include de minimis amounts of hazardous, toxic, radioactive substances that may be in

Municipal Solid Waste and collected as part of routine and standard collection of Municipal Solid Waste as long as such de minimis amounts are acceptable for disposal at the Facility.

5.4 Contractor agrees to work with the City in providing quarterly "Free Landfill Days" as provided in Section 003 of the Background Section of the RFP. These events are to be scheduled between both entities and mutually agreed upon. Cost for disposal of materials collected through these events will be borne by Contractor.

## **VI. NOTICE**

6.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same via United States Postal Service by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

**If intended for City, to:**

City of San Antonio  
Attn: Solid Waste Management Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
or  
100 W. Houston Street., 7<sup>th</sup> Floor  
San Antonio, Texas 78205

**If intended for Contractor, to:**

BFI Waste Systems of North America, LLC.,  
d/b/a Tessman Road Landfill  
Attn: General Manager  
4542 SE Loop 410  
San Antonio, Texas 78222

## **VII. ASSIGNMENT AND SUBCONTRACTING**

7.1 Contractor shall supply qualified personnel, including vehicle operators, as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

7.2 Except as otherwise stated herein. Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director. As a condition

of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee, or subcontractor. Notwithstanding the foregoing, Contractor may assign this Agreement without the City's consent to its parent companies or any of their subsidiaries.

7.3 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval or as otherwise permitted in Section 7.2 (to a parent company or subsidiary), shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of all or any part of its rights, title or interest in this Agreement. City may, at its option, cancel this Agreement, without City's consent or as otherwise provided herein, and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with the termination provisions herein, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

## **VIII. INSURANCE**

8.1 No later than 30 days before Agreement execution or the beginning of each annual term, Contractor must provide a completed Certificate(s) of Insurance to City's Solid Waste Management Department.

8.2 The certificate must be:

- clearly labeled with the legal name of the Contract on page 2 of the certificate;
- completed and signed by a person authorized by the insurer to evidence coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent's signature, and phone number,

8.3 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and all applicable blanket-form endorsements have been received and approved by City's Solid Waste Management Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

8.4 If the City does not receive copies of insurance endorsement, then by executing this Agreement, Contractor certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

8.5 The City's Risk Manager reserves the right to modify the insurance coverages, including their limits prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

8.6 Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the Contractor claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

<i><b>INSURANCE TYPE</b></i>	<i><b>LIMITS</b></i>
1. Workers' Compensation or other state approved program 2. Employers' Liability or other state approved program	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Environmental Insurance – (Contractor's Pollution Liability (Claims-made coverage)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.

8.7 Contractor must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Contractor and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Respondent shall provide City with subcontractor certificates and endorsements before the subcontractor starts work.

8.8 If a loss results in litigation related to this Section 8, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Contractor must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

City of San Antonio  
Attn: Solid Waste Management Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

8.9 Contractor's insurance policies must contain or be endorsed via blanket-form endorsement to contain the following provisions:

- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by blanket-form endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Policy language that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
- Contractor shall submit a blanket-form waiver of subrogation endorsement to include, workers' compensation, employers' liability, general liability, and auto liability policies, as applicable, in favor of City; and
- Provide 30 days advance written notice directly to City of any cancellation, non-renewal, or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

8.10 Within five (5) calendar days of a cancellation, material change in coverage, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8.11 In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Contractor to stop work and/or withhold any payment(s) which become due to Contractor under this Agreement until Contractor demonstrates compliance with requirements.

8.12 Nothing contained in this Agreement shall be construed as limiting the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

8.13 Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

8.14 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

8.15 Contractor and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

## **IX. NONWAIVER OF PERFORMANCE**

9.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants, or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in anyone or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver change, modification, or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the Director. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **X. INDEPENDENT CONTRACTOR**

10.1 Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and Contractor; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors, and Contractor, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

## **XI. TERMINATION**

11.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated above, or earlier termination pursuant to any of the provisions hereof. This Agreement may be terminated without cause by either Party upon 30 calendar days written notice. Upon written notice City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of the sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided above in Assignment and Subcontracting, which shall constitute an Event for Cause under this Agreement.

11.2 Defaults With Opportunity for Cure: Should Contractor default in the performance of this Agreement in a manner stated in this section below by:

- Bankruptcy or selling substantially all of company's assets.
- Failing to perform or failing to comply with any covenant herein required.
- Performing unsatisfactorily.

this shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate. At such time, City shall pay Contractor only all charges and fees for the services performed on or before such termination date. Thereafter, in the event such termination occurs during the initial term of this Agreement, City, as its sole and exclusive remedy may exercise its rights under Contractor's performance bond and procure the services of another waste services provider to complete the work covered under this Agreement for the remainder of the time period covered by the initial term of this Agreement. In the event of a failure by City to perform any material provision of this Agreement, the Contractor shall give written notice of such breach to the City along with at least fifteen (15) days (the "cure period") to correct such breach. Contractor may terminate this Agreement after such cure period if City has not adequately corrected such breach in accordance with this Agreement and Contractor so notifies City in writing of such termination action. At such time, City shall pay Contractor for all charges and fees for the services performed on or before such termination date

11.3 Termination By Law: If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

11.4 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with records retention requirements. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

11.5 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement. Contractor shall submit to City its claims, in detail, invoice(s) for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said one hundred and eighty (180) calendar days shall negate any liability on the part of City and constitute a Waiver by Contractor of any and all right or claims

that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

11.6 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

11.7 Termination not sole remedy: In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

## **XII. AMENDMENTS**

12.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor and signed by the Director. Substantive changes may require City Council approval.

## **XIII. INDEMNIFICATION**

**13.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly to the extent caused by CONTRACTOR'S negligent acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, Contractor agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.**

13.2 The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise the City in writing promptly, but in no event more than four (4) business days of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.

13.3 Defense Counsel - City shall have the right to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within fifteen (15) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

#### **XIV. FORCE MAJEURE**

14.1 All parties hereto shall use all due diligence to perform and take all necessary measures in good faith to perform the obligations contained herein; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, or any other good cause beyond the reasonable control of such party, then the time for performance as therein specified shall be approximately extended by the amount of the delay actually so caused.

#### **XV. CHOICE OF LAW**

**15.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. TEXAS CONFLICTS OF LAW RULES SHALL NOT BE USED TO CAUSE THE APPLICATION OF LAW OF A JURISDICTION OTHER THAN TEXAS.**

**15.2 THE OBLIGATIONS PERFORMABLE HEREUNDER BY BOTH PARTIES SHALL BE DEEMED PERFORMABLE IN SAN ANTONIO, BEXAR COUNTY, TEXAS. ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, AS A RESULT OF THIS AGREEMENT SHALL BE HEARD AND**

**DETERMINED IN THE STATE COURTS LOCATED IN THE CITY OF SAN ANTONIO,  
BEXAR COUNTY, TEXAS.**

## **XVI. CUMULATIVE RIGHTS**

16.1 Any rights herein shall be cumulative of any other action available at law or in equity to the City or to Contractor.

## **XVII. ADDITIONAL PROVISIONS**

### **17.1 Boycotting Israel.**

17.1.1 Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

17.1.2 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

17.1.3 “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

17.1.4 “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

17.1.5 By executing this Agreement with the City, Contractor hereby verifies that it does not boycott Israel, and will not boycott Israel during the Term of the Agreement. The City hereby relies on Contractor’s verification. If found to be false, the City may terminate this Agreement for material breach.

### **17.2 Boycotting Certain Energy Companies.**

17.2.1 This section only applies to a contract that:

(1) is between a governmental entity and a company with 10 or more full-time employees; and

(2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

17.2.2 “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

17.2.3 “Boycott energy company” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

17.2.4 Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

17.2.5 By or executing contract this Agreement with the City, Contractor hereby verifies that it does not boycott energy companies and will not boycott energy companies during the Term of this Agreement. The City hereby relies on Contractor’s verification. If found to be false, the City may terminate this Agreement for material breach.

### 17.3 Firearm Entities.

17.3.1 This section only applies to a contract that:

(1) is between a governmental entity and a company with 10 or more full-time employees; and

(2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

17.3.2 “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

17.3.3 "Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

17.3.4 Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

17.4.4 By executing this Agreement with the City, Contractor hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association. The City hereby relies on Contractor's verification. If found to be false, the City may terminate this Agreement for material breach.

17.4 Prohibition On Contracts With Companies Engaged In Business With Iran, Sudan, Or Foreign Terrorist Organization: Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

## **XVIII. ENTIRE AGREEMENT**

18.1 This Agreement together with its exhibits, as listed above, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties.

**Agreed, Consented to, and Executed this \_\_\_\_ day of \_\_\_\_\_, 2024.**

**CITY OF SAN ANTONIO**

**BFI WASTE SYSTEMS OF NORTH AMERICA, LLC.,  
D/B/A TESSMAN ROAD LANDFILL**

BY: \_\_\_\_\_

Printed name:

Title:

\_\_\_\_\_

Jasser Brenes

Printed Name:

Area President

Title:



**APPROVED AS TO FORM:**

Andrew Segovia

City Attorney

By: \_\_\_\_\_

Assistant City Attorney

## **EXHIBIT LIST**

1. Exhibit I – Request for Proposals – Municipal Solid Waste Disposal Services (RFP 23-069, RFX No.: 6100016481), Issued by the City on February 24, 2023, and all Exhibits to the RFP;
2. Exhibit II – Addendum I. dated April 7, 2023;
3. Exhibit III – Addendum II, dated April 19, 2023;
4. Exhibit IV – Addendum III, dated May 8, 2023;
5. Exhibit V – RFP Response by Contractor, dated May 8, 2023;
6. Exhibit VI – Price Schedule. Submitted by Contractor in the response to the RFP, as RFP Attachment B;
7. Exhibit VII – Tiered Tonnage Disposal Rates submitted by Contractor on November 10, 2023;
8. Exhibit VII – Copy of enabling Ordinance No. 2024-\_\_-\_\_-\_\_