



Duncanville City Council Meeting Agenda
City Council Briefing Room and City Council Chamber
Videoconference via ZOOM
Duncanville City Hall
203 E. Wheatland Road
Duncanville, TX 75116
(972) 780-5017

Monday, September 26, 2022
6:00 P.M.

City of Duncanville City Council meetings are available to all persons regardless of disability. The City of Duncanville offers Hearing Assistance Receivers for use during City Council Regular Sessions. If you require special assistance, please contact the City Secretary at (972)780-5017 or write 203 E. Wheatland Road, 75116, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purposes of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.

The City of Duncanville reserves the right to reconvene, recess or align the Regular Session or called Executive Session or order of business at any time prior to adjournment.

SUPPLEMENTAL NOTICE OF MEETING BY VIDEO CONFERENCE

In accordance with an Order of the Office of the Governor issued on March 16, 2020, as extended, the City Council for the City of Duncanville, Texas will conduct a City Council Regular Meeting in person and by video conference at 6:00 pm on Monday, September 26, 2022 in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") in an effort to slow the spread of the Coronavirus (COVID-19) pandemic.

This is an open meeting conducted by in person and video conference.

Due to limited seating in council chambers, persons or participants may attend by video conference in order to maintain safe social distance as provided in this notice.

To view the live meeting or previous meetings click on the link below.

<https://duncanvilletx.new.swagit.com/views/454/>

To submit a comment via email the following information is required:

- Submit a comment by 4:00 p.m. on Monday, September 26, 2022.
- Email citysecretary@duncanville.com
- Email title: Public Comment – September 26th
- First and Last Name; and address

Page

1. CITIZENS' INPUT

"Pursuant to Section 551.007 of the Texas Gov't Code, any member of the public has the opportunity to address the City Council concerning any matter of public business or any posted agenda item; however, the Act prohibits the City Council from deliberating any issues not on the public agenda and such non-agenda issues may be referred to City staff for research and any future action; all persons addressing are subject to council adopted rules and limitations permitted by law"

At this time, two-minute comments will be taken from the audience on any topic. To address the Council, please submit a fully-completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting. In accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decisions at this time. Issues may be referred to City Staff for research and possible future action.

To view the live meeting or previous meetings click on the link below.

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To submit a comment via email the following information is required:

- Submit a comment by 4:00 p.m. on Monday, September 26, 2022.
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2. ITEMS FOR INDIVIDUAL CONSIDERATION

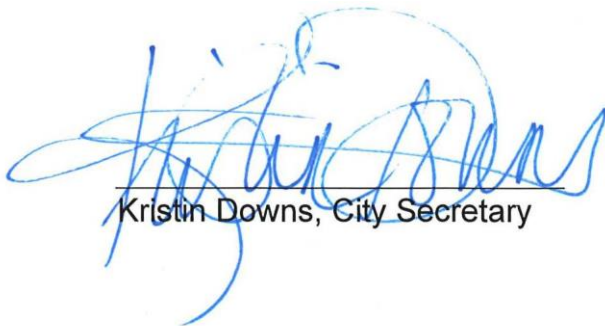
- A. Consider a Resolution approving the terms and conditions of a Solid Waste Disposal Agreement for landfill disposal of solid waste with Waste Management of Texas, Inc.

3 - 17

[Waste Management - Pdf](#)

ADJOURNMENT

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Duncanville City Hall, a place convenient and readily accessible to the general public, as well as to the City's website www.duncanville.com and said Notice was posted on the following date and time: **Monday, September 19, 2022 at 7:00 P.M.** and remained posted for at least two hours after said meeting was convened.



Kristin Downs, City Secretary

“Guns prohibited on these premises by state law unless licensed under Chapter 411, Tex. Gov. Code. Section 46.035 Texas Penal Code.”

“Las armas de fuego están prohibidas en estas instalaciones por la ley estatal a menos que estén autorizadas bajo el Capítulo 411 del Código de Gobierno de Texas. Sección 46.035 del Código Penal de Texas.”



STAFF REPORT

MEETING: Special City Council - 26 Sep 2022

TITLE:

Consider a Resolution approving the terms and conditions of a Solid Waste Disposal Agreement for landfill disposal of solid waste with Waste Management of Texas, Inc.

Vision Statement:

“Duncanville, a City of Champions, is a safe, vibrant, diverse community committed to excellence in education, business, and good governance.”

Pillar:

- **Develop: Infrastructure Improvement Strategy**
 - **Ensure the viability and adaptability of the city’s infrastructure, facilities, and transportation network through thoughtful financial and long-term planning.**

STAFF RESPONSIBLE:

Jacqueline R. Culton, PE, MBA, Interim Director of Public Works

BACKGROUND/HISTORY:

The City of Duncanville approved a ten-year "Solid Waste and Disposal Agreement" with Waste Management, Inc., with a contract commencement date of September 23, 1997. Under the current contract, the City’s municipal solid waste, both residential and commercial, is disposed of in Waste Management’s landfill. A very small percentage of brush is disposed of at GWG’s disposal facility. On January 16, 2007, the "Second Amendment to Solid Waste and Disposal Agreement" was approved by the City. The Second Amendment established a year-to-year contract renewal process and provided a 90-day notice by either party to terminate the Contract upon the expiration of the current contract term. On July 16, 2019, the "Third Amendment to Solid Waste and Disposal Agreement" was approved, extending the required notice period before contract termination by either party from 90 days to 180 days.

On March 18, 2022, Waste Management notified the City of its intent to terminate the existing contract and enter into a new contract with the City for landfill services, effective October 1, 2022. Waste Management indicated that the current agreement is twenty-five years old, outdated, and requires significant updates to reflect current disposal market conditions.

The proposed contract, as provided in July 2022, includes the following provisions:

- Provides for the City’s continued disposal of its municipal solid waste in Waste Management’s Skyline Landfill located in Ferris, Texas, during the initial term of October 1, 2022, through

September 30, 2027. The Agreement may be renewed for two additional, five-year terms upon the mutual, written consent of the City and Waste Management.

- Updates contract pricing to a “Per Ton” disposal rate. Currently, the City is billed a “Per Ton” rate for disposal of compactible solid waste (e.g., from rear-load trash trucks and front-load commercial trucks) but is billed a “Per Yard” rate for solid waste in roll-off containers. Under the new contract, all solid waste will be weighed at the landfill and billed on a “Per Ton” basis. Weighing each load will provide a more accurate measurement of disposal quantities and accurate billing.
- Establishes the solid waste disposal rate at \$22.50 per ton plus applicable federal, state, and local fees or taxes. The Texas Commission on Environmental Quality currently assesses Waste Management a fee of \$0.95 per ton. Under the new contract, this fee would be passed on to the City. Waste Management has indicated that the updated service price is necessary to accurately reflect the current market for landfill services. The proposed rate adjustment increased the City’s contractual services landfill budget from approximately \$900,000 per year to \$1.1 million per year (based on the estimated disposal amount of 46,000 tons of solid waste annually). The updated cost is included in the City’s adopted budget for the Fiscal Year 2023. Under the current contract, Waste Management charges the City a total of \$19.14 per ton for disposal of compactible solid waste, \$6.79 to \$7.09 per cubic yard for solid waste in roll-off containers, and \$21.43 per cubic yard for non-compactable solid waste such as concrete and tree stumps, etc.
- Provides for Waste Management to request a cost increase based on increases in governmental taxes, fees or other charges, or uncontrollable circumstances. Uncontrollable circumstances include the following: new or increased fees, etc., by local, state, or federal agencies or governments; an act of God; and industry-wide labor, equipment, parts shortages, and governmental restraint of trade.
- Adopts the Consumer Price Index for All Urban Consumers, CPI-U Garbage and Trash Index, 12-month Average, as the annual rate escalator. The proposed CPI index for Garbage and Trash better models the solid waste industry and thus is a more suitable cost escalator for landfill disposal services. The current contract’s annual rate escalator is based on the Consumer Price Index for All Urban Consumers, All Items. The current yearly rate escalator is overly broad.

POLICY EXPLANATION:

City Council approval is required to approve the terms and conditions of the Solid Waste Disposal Agreement with Waste Management of Texas, Inc., to provide solid waste landfill disposal services during the initial term of October 1, 2022, through September 30, 2027. The Agreement may be renewed for successive five-year periods upon the mutual consent of the City and Waste Management.

FUNDING SOURCE:

ORG and Object Number

NA

Available Budget

NA

Purchase Amount

NA

After Encumber

NA

ACTION ALTERNATIVES:

1. Approve the terms and conditions of a solid waste disposal agreement for landfill disposal of solid waste with Waste Management of Texas, Inc.
2. Other actions as directed by Council.

ATTACHMENTS:

[Attachment 1 - Resolution No. - 2019-044R - Waste Management Agreement](#)

RESOLUTION NO. 2019-044R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SOLID WASTE DISPOSAL AGREEMENT FOR LANDFILL DISPOSAL OF SOLID WASTE WITH WASTE MANAGEMENT OF TEXAS, INC., ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT "A," AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Duncanville and Waste Management of Texas, Inc. entered into a Solid Waste and Disposal Agreement dated September 23, 1997, to cause all acceptable waste that the City collects or that is collected on its behalf by its solid waste collection contractor to be delivered to the disposal site throughout the term of the Contract; and

WHEREAS, the said agreement was amended pursuant to, inter alia, the Second, and Third Amendments to Solid Waste and Disposal Agreement on January 16, 2007, and July 16, 2019, respectively; and

WHEREAS, the City Council and Waste Management of Texas, Inc. desire to enter into a new agreement to provide for the continuation of landfill services for the period of October 1, 2022, through September 30, 2027, with two, five-year renewable terms to be executed upon mutual, written, agreement of both parties; and

WHEREAS, such continuation of landfill disposal is subject to the terms and conditions of the new Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, THAT:

SECTION 1. The City Council of the City of Duncanville approves the terms and conditions of the Solid Waste Disposal Agreement for landfill disposal of solid waste with Waste Management of Texas, Inc., attached hereto and incorporated herein as Exhibit "A."

SECTION 2. The City Council of the City of Duncanville hereby authorizes the City Manager, or her designee, to the necessary documents.

SECTION 3. This resolution shall become effective immediately upon its passage.

DULY RESOLVED AND ADOPTED by the City Council of the City of Duncanville, Texas, on the 26th day of September, 2022.

APPROVED:

Barry L. Gordon, Mayor

ATTEST:

Kristin Downs, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Exhibit A

DRAFT**SOLID WASTE DISPOSAL AGREEMENT**

This Solid Waste Disposal Agreement (“Agreement”) is made this ____ day of _____, 2022, but is effective as of the Effective Date, by and between Waste Management, Inc. of Texas, Inc., a Texas corporation (“**Operator**”), and the City of Duncanville, Texas (“**Customer**”).

WITNESSETH:

WHEREAS, Operator owns and operates a solid waste disposal facility known as the Skyline RDF in north Texas, and desires to provide Customer with solid waste disposal services; and

WHEREAS, Customer provides solid waste collection and transportation services through its own operations and/or using a collection and transportation contractor and desires to continue exclusive disposal services at Operator’s Skyline Landfill for the benefit of the citizens of the City.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective covenants herein contained, the parties have agreed as follows:

**ARTICLE 1
DEFINITIONS**

1.1 “Acceptable Waste” means any and all municipal solid waste and construction and demolition debris except Unacceptable Waste which, in compliance with governmental licenses and permits in effect, may be received for disposal at the Landfill(s).

1.2 “Affiliate” means any entity that, directly or indirectly, controls, is controlled by, or is under common control, with any party to this Agreement at the time this Agreement is entered.

1.3 “Agreement” means this Solid Waste Disposal Agreement, as it may be amended from time to time.

1.4 “Base Rate” shall have the meaning set forth in Article 4.

1.5 “Customer” shall mean the City of Duncanville, Texas and its exclusive Acceptable Waste collection and transportation contractor(s).

“Customer’s Contractor” shall mean the Customers’ solid waste collector and transporter.

1.6 “TCEQ” means the Texas Department of Environmental Quality or any predecessor, successor or other substituted agency, department or commission of the State which has regulatory authority over solid waste disposal permitting and enforcement.

1.7 “Effective Date” shall have the meaning set forth in Section 2.1.

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1.8 “Hazardous Waste” means hazardous waste and toxic or radioactive substances (even though they may be part of a delivered load of waste), as such terms are defined by applicable federal or state laws or regulations. Hazardous Waste – A form of Excluded Waste and is defined as any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or listed or characteristic Hazardous Waste as defined by federal, state, provincial or local law or any otherwise regulated waste. Hazardous Waste shall include, but not be limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, and including future amendments thereto, and any other applicable federal, state or local laws or regulations.

1.9 “Initial Term” shall have the meaning set forth in Section 2.2.

1.10 “Landfill” shall mean the Skyline RDF, owned and operated by Operator, and located at 1201 N. Central Ave., Ferris, Texas, 75125.

1.11 “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et. seq., as amended.

1.12 “Renewal Terms” shall have the meaning set forth in Section 2.3.

1.13 “Special Waste” includes, without limitation, all treated/~~de-characterized~~ (formerly hazardous) wastes; polychlorinated biphenyl (PCB) wastes; industrial process wastes; asbestos containing material; chemical containing equipment; ~~demolition debris~~; incinerator ash; medical wastes; off-spec chemicals; sludges; spill-cleanup wastes; underground storage tank (UST) soils; wastes from service industries; and other materials requiring special handling in accordance with applicable law, statute, regulation, rule or ordinance.

Any nonhazardous solid waste which, because of its physical characteristics, chemical make-up, or biological nature requires either special handling, disposal procedures including liquids for solidification at the landfill, documentation, and/or regulatory authorization, or poses an unusual threat to human health, equipment, property, or the environment. Special Waste includes, but is not limited to:

Waste generated by an industrial process or a pollution control process;

Waste which may contain residue and debris from the cleanup of spilled petroleum, chemical or commercial products or wastes, or contaminated residuals;

Waste which is nonhazardous as a result of proper treatment pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (“RCRA”);

Waste from the cleanup of a facility which generates, stores, treats, recycles or disposes of chemical substances, commercial products or wastes;

Waste which may contain free liquids and requires liquid waste solidification;

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Containers that once contained hazardous substances, chemicals, or insecticides so long as such containers are “empty” as defined by RCRA;

Asbestos containing or asbestos bearing material that has been properly secured under existing Applicable Law;

Waste containing regulated polychlorinated biphenyls (PCBs) as defined in the Toxic Substances Control Act (TSCA);

Waste containing naturally occurring radioactive material (NORM) and/or technologically-enhanced NORM (TENORM); and

Municipal or commercial solid waste that may have come into contact with any of the foregoing.

1.14 “State” means the state of Texas.

1.15 “Suspicious Waste” means waste which the Operator reasonably suspects may be Unacceptable Waste.

1.16 “Unacceptable Waste” means any and all waste that is either:

(a) waste that is prohibited from being received or disposed at the Landfill by federal, state, or local law, regulation, rule, code, ordinance, order, permit or permit condition at the time of its delivery to the Landfill;

(b) Hazardous Waste; or

(c) Special Waste.

ARTICLE 2 TERM AND TERMINATION

2.1 Effective Date. This Agreement will become effective on October 1, 2022 (“**Effective Date**”).

2.2 Initial Term. The initial term of this Agreement is five years, commencing on the Effective Date of this Agreement and running continuously through September 30, 2027 (the “**Initial Term**”).

2.3 Renewal Term. This Agreement may be renewed only by mutual written consent of the parties for two additional terms of five years each, as determined in each party’s sole discretion. The Base Rates during the renewal years shall be calculated as set forth in Section 4.2 of this Agreement.

2.4 For Cause Termination. Either party may terminate this Agreement upon 30 days written notice to the other party (during which such 30-day period, such party shall have the opportunity to cure) for the following: (a) in the event of either party’s breach of any term

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or provision of the Agreement, including Customer's failure to pay on a timely basis, which is not timely cured, or (b) if the other party becomes insolvent, the subject of an order for relief in bankruptcy, receivership, reorganization dissolution, or similar law, or makes an assignment for the benefit of its creditors (a "Default").

If either party breaches any material provision of this Agreement and such breach is not substantially cured within thirty (30) days after receipt of written notice from the non-breaching party specifying such breach in reasonable detail, the non-breaching party may terminate this Agreement by giving thirty (30) days written notice of termination to the breaching party. However, if the breach cannot be substantially cured within thirty (30) days, the Agreement may not be terminated if a cure is commenced within the cure period and for as long thereafter as a cure is diligently pursued. Upon termination, the City shall pay Operator only such charges and fees for the services performed on or before the termination effective date and Operator shall have no further obligation to perform any services under this Agreement.

2.5 Notice of termination shall be in writing and deemed given when delivered in person or by certified mail, postage prepaid, return receipt requested. The non-breaching party shall have the right to seek damages against the other party.

ARTICLE 3 SCOPE OF SERVICE

3.1 Waste Delivery. Beginning on the Effective Date, Customer agrees to exclusively deliver all Acceptable Waste it collects within the City limits to the Landfill and Operator agrees to accept all Acceptable Waste delivered by the Customer for disposal.

3.2 Condition Precedent. The obligations of Operator under this Agreement are expressly subject to the prior issuance to Operator, and the continuing effectiveness, of all licenses, permits and approvals issued to Operator that Operator reasonably deems necessary to operate the Landfill, which is permitted by the TCEQ. Operator will continue to diligently pursue continuance of all permits needed to operate the Landfill.

3.3 Hours. The Landfill will be open to accept Acceptable Waste for disposal during the posted hours of operation. Operator may, in its discretion, change the hours of operation at the Landfill upon providing at least 21 days' written notice to the City.

3.4 Compliance with Applicable Laws. Operator will comply with all present and future federal, State, and local statutes and ordinances regulating the operation of Landfill for the disposal of solid waste, and with all other rules, regulations, orders and amendments thereto imposed by all federal and State regulatory agencies having jurisdiction over the operation of the Landfill.

3.5 Right to Refuse Unacceptable Waste. Operator shall not be required to accept, and reserves the right to reject or revoke acceptance of, any waste tendered or delivered to the Landfill by Customer that Operator, in its reasonable and sole discretion and upon good faith belief, considers to be Unacceptable Waste or Suspicious Waste.

3.6 Unacceptable Waste. Operator may, at its option, reject Unacceptable Waste delivered by Customer and (i) require Customer to pay or reimburse Operator for all costs,

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expenses, fines, and damages incurred due to the removal of and proper disposal of the Unacceptable Waste, or (ii) if it is impractical, impossible, or the TCEQ does not approve of removing the Unacceptable Waste from the Landfill, Operator can require the Customer to pay or reimburse Operator for any and all costs, damages and/or fines incurred in managing or handling the Unacceptable Waste at the Landfill.

3.7 Title to Waste. Operator is vested with title to all Acceptable Waste delivered by Customer and accepted by Operator at the Landfill. Operator assumes all responsibility for proper disposal of Acceptable Waste. Any revenue or other value received by Operator as a result of reclamation, recycling or other type of resource recovery related to the Acceptable Waste shall be solely for the account of Operator. Title to Unacceptable Waste remains with the Customer or the generator at all times.

3.8 Holidays. The Landfill may, in the discretion of Operator, be closed on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, or such other days as Operator may determine, provided Operator provides at least ninety (90) days written notice to Customer.

3.9 Landfill Access. During the term of this Agreement, the Customer shall have a license to enter the Landfill facility for the limited purpose of, and only to the extent necessary for, off-loading Acceptable Waste at the location and in the manner directed by Operator. Except in an emergency, or at the express direction of Operator, the Customer's personnel shall not leave the immediate vicinity of their vehicle. The Customer agrees to adhere to Operator's rules, policies, and procedures, including without limitation safety procedures, applicable to customers delivering Acceptable Waste to the Landfill. After off-loading the Acceptable Waste, the Customer's personnel shall promptly leave the Landfill. Under no circumstances shall the Customer or its personnel engage in any scavenging of waste. Operator may refuse to accept Acceptable Waste from, and shall deny an entrance license to, any of the Customer's personnel whom Operator believes is under the influence of alcohol or other chemical substances or who violates the Landfill rules on delivering and off-loading waste.

ARTICLE 4 COMPENSATION TO OPERATOR

4.1 Base Rate. The parties have agreed upon the following Base Disposal Rate ("Base Rate") for receiving and disposing Acceptable Waste received from Customer at each Landfill. These Base Rates do not include applicable state, local, and federal fees and taxes, such as the Texas Commission on Environmental Quality disposal fee, which will be added to the Base Rates upon invoice. ~~Applicable state, local, and federal fees and taxes shall not exceed \$0.95 per ton unless otherwise agreed to by Customer.~~

\$22.50 per ton plus applicable federal, state, and local fees or taxes

4.2 Annual Rate Adjustments. Commencing on the first anniversary of the Agreement Effective Date and annually on each anniversary thereafter (the "Adjustment Date"), the then current Base Rate, as adjusted hereunder, shall be increased by the same percentage increase in the Consumer Price Index, series CUSR0000SEHG02 CPI-U Garbage

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& Trash Collection Services, US City Average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics (“CPI-U”). Operator must receive approval from the City to increase base rates. The CPI-U adjustment will be calculated using the change in the 12-month annual average of monthly CPI-U index values between the 12-month period of the year immediately prior to the adjustment date, and the 12-month period of the year before. Adjustments to the Contractor’s service rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.

4.3 Uncontrollable Circumstances. Operator may adjust the Base Rate to account for increased costs resulting from Uncontrollable Circumstances. Uncontrollable Circumstances shall mean an act, event or condition (excluding those which result from the willful or negligent action or inaction of a party) occurring during the term that has or will affect WM’s costs of performing the services, but only if such act, event or condition is beyond the reasonable control of WM. Uncontrollable Circumstances shall include, but are not limited to, the following: imposition of new or increased fees, surcharges, or taxes by local, state, or federal agencies or governments; an act of God, industry-wide labor, equipment, parts shortages, and governmental restraint of trade. Operator will provide written notice and justification to the Customer of such Uncontrollable Circumstance and associated adjustment at least ninety (90) days prior to implementing the change.

4.4 Billings. Operator shall bill Customer once per month for Acceptable Waste delivered to the Landfill by Customer pursuant to this Agreement. All Acceptable Waste must be weighed. Each invoice will detail the number of loads and tonnage amount delivered, dates delivered, for the time period covered by the invoice. Customer will pay each invoice within 30 days of Customer’s receipt of the invoice, without further notice by Operator. A late charge of 1.5% per month will be imposed on any outstanding balance that is over 45 days old.

4.5 Books and Records. Operator will keep daily records of the weight and volume of waste delivered to the Landfill, and Customer has the right to inspect the same insofar as they pertain to the weight and volume of Acceptable Waste received from Customer at the Landfill.

ARTICLE 5

INDEMNITY AND RESPONSIBILITIES

5.1 Indemnity by Operator. Operator agrees to indemnify, save harmless, and defend the Customer, from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys’ fees) (collectively, “Losses”), which Customer may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders caused by Operator’s breach of any term or provision of the Agreement, or by the negligent acts or omissions or willful misconduct of Operator, its employees, or its subcontractors in the performance of this Agreement.

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5.2 Customer Responsibilities. Customer agrees to pay the Operator for all Losses that Operator may incur, become responsible for, or payout as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders caused by Customer's breach of any term or provision of the Agreement, or by the negligent acts or omissions or willful misconduct of Customer its employees, or its subcontractors in the performance of this Agreement, which includes Losses arising from Unacceptable Waste.

5.3 Survival. The provisions of Paragraphs 5.1 and 5.2 shall survive termination of this Agreement.

ARTICLE 6 INSURANCE

6.1 Insurance Maintained by Customer's Contractor. Customer's contractor who transports material to the Landfill on behalf of Customer, shall maintain, at their own cost and expense, and furnish to Operator certificates attesting to the existence of the following insurance policies and liability limits, which may be met by a combination of primary and excess insurance policies:

- a. Workers Compensation insurance (statutory)
- b. Employer Liability – \$1,000,000 per occurrence
- c. Commercial General Liability (property damage and bodily injury coverage) \$2,000,000 per occurrence and \$3,000,000 annual aggregate
- d. Automobile Liability - \$2,000,000 each accident for bodily injury, death, or property damage

Each such policy and certificate shall (i) show Operator and its affiliates, employees and agents as additional insureds, except for workers compensation and employer's liability, (ii) provide that Customer's insurances shall be primary in all instances with respect to Operator's insurance, which shall be treated as excess insurance, for all claims that arise out of the negligence of Customer, and (iii) contain a standard cross liability and severability clause and a statement of the insurer's obligation to notify the party to whom the certificate is addressed at least 30 days prior to cancellation of any policy covered thereunder.

6.2 Insurance Maintained by Operator. Operator shall maintain, at its own cost and expense, and furnish to Customer certificates attesting to the existence of the following insurance policies and coverage, which may be met by a combination of primary and excess insurance policies:

- a. Workers Compensation insurance (statutory)
- b. Employer Liability – \$1,000,000 per occurrence
- c. Commercial General Liability (property damage and bodily injury coverage) \$2,000,000 per occurrence and \$3,000,000 annual aggregate
- d. Automobile Liability - \$2,000,000 each accident for bodily injury, death, or property damage.

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ARTICLE 7 CONFIDENTIALITY

7.1 Confidentiality. The terms and exhibits, if any, contained in this Agreement constitute trade secrets or other confidential or proprietary business, pricing, or technical information (collectively, "Confidential Information") of the parties which shall not be disclosed by either party to any third party, orally, in writing, or electronically, without the prior written approval of the other party to this Agreement, except to the extent that disclosure is required (a) by law (including any filings to the Securities & Exchange Commission), or (b) by a financial institution in order to apply for or obtain credit. In the event either party receives a subpoena, court order, or other directive or is otherwise compelled or required to produce a copy of this Agreement or any information regarding this Agreement, at least five (5) days' notice (if possible) shall be given to the other party to this Agreement prior to responding so as to allow the other party to either consent or seek appropriate relief or a protective order. The term Confidential Information shall not include any information, and neither party hereto will be under any obligation to protect any information, which is or becomes available to the public or is generally known in the industry other than through an unauthorized disclosure by a party hereto. Confidential Information may only be disclosed to officers, employees, or representatives of either party who have a need to know the Confidential Information and who are obligated to maintain the confidentiality of the Confidential Information. (UNDER WHAT RULE/STATUTE IS THIS DEEMED CONFIDENTIAL?)

ARTICLE 8 MISCELLANEOUS

8.1 Force Majeure. The performance of this Agreement by either party may be suspended and the obligations hereunder excused or extended in the event, and during the period, that such performance is prevented, hindered, or delayed by a cause or causes beyond the reasonable control of such party including, without limitation, default of the other party; labor disputes, strike or lockout; acts of God; war; fire; storm; hurricane; explosion; national defense requirements; pandemic or epidemic, accidents; riot; flood; sabotage; governmental restraint; governmental emergency declarations; power failures; industry-wide labor or equipment shortages; and the revocation or suspension of or failure to obtain, for reasons beyond Operator's reasonable control, any licenses or permits required for continued operation of a Landfill. In the event of disruption of services under any such circumstances, Operator will make every reasonable effort to reopen the Landfill to accept waste as soon as practicable after the cessation of the cause of suspension of services.

8.2 Enforcement. In the event that there is a dispute between the parties, and either party brings an action to interpret this Agreement, or to enforce any right which such party may have hereunder, or in the event an appeal is taken from any judgment or decree of a trial court, the party ultimately prevailing in such action will be entitled to receive from the other party its costs and reasonable attorneys' fees to be determined by the court in which such action is brought.

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8.3 Assignment. No assignment of this Agreement or any right accruing under this Agreement will be made by either party hereunder without the written consent of the other party, which shall not be unreasonably withheld, conditioned, or delayed, except that Operator may assign this Agreement to an affiliate or subsidiary that it directly or indirectly controls, is controlled by, or is under common control with Operator.

8.4 Right to Require Performance. The failure of either party at any time to require performance by the other party of any provisions of this Agreement will in no way affect the right of that party thereafter to enforce the same. No waiver by either party of any breach of any of the provisions hereof will be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any other provision.

8.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflict of laws principles.

8.6 Severability. If any provision of this Agreement is declared illegal, void or unenforceable, the remaining provisions will not be affected but will remain in full force and effect.

8.7 Headings. The headings used herein are for convenience only and are not to be construed as part of this Agreement.

8.8 Specific Services. This is an Agreement for the performance of specific services described herein. Under no circumstances or conditions shall the operation of the Landfill by Operator in accordance with this Agreement be deemed a public function, nor has Customer acquired an interest, ownership or otherwise in the real or personal property or improvements or fixtures at the Landfill by virtue of this Agreement.

8.9 Notice. All Notices or other communications to be given to a party hereunder shall be in writing and shall be deemed given upon the earlier to occur of (a) actual receipt by such party or (b) three business days after being deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, or sent via overnight courier, addressed to such party as follows:

To Operator: Waste Management of Texas, Inc.
Attn: Landfill Manager
9900 Giles Lane
Austin, TX 78754

With a Copy to: Waste Management
Attn: Legal Department
9900 Giles Lane
Austin, TX 78754

To Customer: City of Duncanville, Texas

DRAFT

With a Copy to: _____

Any changes of address by either party shall be by notice given to the other in the same manner as specified above.

8.10 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter, and it will not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate conformed originals as of the day first set forth above.

Operator:
Waste Management of Texas, Inc.

Customer:
City of Duncanville, Texas

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____