



LANDFILL USE AGREEMENT

THIS AGREEMENT made and entered into this _____ day of June 2014, by and between TWO TOUGH GUY SERVICES, LLC, hereinafter referred to as "AGENCY" and the CITY OF BILLINGS, MONTANA, a municipal corporation, hereinafter referred to as "CITY."

WITNESSETH:

WHEREAS, the AGENCY is desirous of using the landfill facilities of the CITY for the disposal of solid waste; and

WHEREAS, the CITY is willing to allow the AGENCY use of its landfill facilities during normal published operating times.

NOW THEREFORE, in consideration of the mutual covenants and agreements between the parties hereto, it is mutually agreed as follows:

1. **TERM.** The term of this AGREEMENT shall be for a five year period from the commencement date of July 1, 2019 unless terminated by the CITY. The CITY may terminate this agreement at any time, with or without cause, upon thirty (30) days written notice to the AGENCY.
2. **USE OF FACILITIES.** The CITY will permit the disposal of solid waste, except industrial wastes, hauled by the AGENCY at the landfill facility operated by the CITY at such times as said landfill shall be open for disposal of solid waste. No liquid waste or hazardous waste as defined by the Environmental Protection Agency and the State of Montana Solid Waste Bureau will be accepted. By law, any hazardous waste is the responsibility of all parties involved from the time it is generated until its final disposal. AGENCY agrees to use facilities in accordance with all applicable federal and state legislation, all applicable local ordinances including, but not limited to Billings Municipal Code, Chapter 21, and all applicable federal, state, and local administrative rules in order to promote the health, safety, and welfare of the citizens of Billings, Montana.
3. **PAYMENT.** The AGENCY agrees to pay the CITY all established rates, charges, and fees of the CITY, now existing or revised, including franchise fees, surcharges, and late payment fees as specified in the CITY's adopted schedule of rates and fees for the use of said landfill facilities.
4. **CHARGE ACCOUNTS AND PAYMENT TERMS.** Terms of payment for services provided under this AGREEMENT are "Net 30 Days" of the monthly invoice date with all charges becoming delinquent and subject to finance fees from the due date until paid in full. Finance charges will be assessed at the rate specified in the CITY's adopted schedule of rates and fees.

The CITY and the AGENCY mutually agree that the charge account will be suspended when unpaid invoices are greater than 60 days past due. No future landfill services will be made on charge until the past due balance is paid in full.

The AGENCY shall pay to the CITY all attorney or collection agency fees incurred by the CITY related to non-payment for charges provided under this Agreement. The CITY agrees to give written notice to the AGENCY indicating any action to be taken.

5. **SERVICE AREA.** At least ten (10) calendar days prior to commencement of this AGREEMENT, the AGENCY must submit a list of locations the AGENCY is requesting to haul from, along with a description of the type of solid waste and estimated annual tonnage for each location to the Public Works Department in writing. The Public Works Department will make final approval in writing of approved locations within seven (7) calendar days of receiving the list from the AGENCY. Only solid waste generated within the approved locations can be disposed of in the City of Billings landfill.

During the term of this AGREEMENT, the AGENCY may request additional service areas in writing by submitting an addendum of the location list to the Public Works Department. The addendum must include locations and description of the type of solid waste and estimated annual tonnage for each location. The Public Works Department will make a decision based on the impact, both short term and long term, that the additional service area is projected to have on the City of Billings landfill. The Public Works Department must respond to the request within thirty (30) calendar days to notify



the AGENCY of approval or denial of the addendum. If the AGENCY is delinquent on a charge account, all addendums for additional service area requests will be denied until the charge account is paid in full.

If at any time during the term of the AGREEMENT the CITY finds it necessary to prohibit waste hauled to the City of Billings landfill from a previously allowed location, the CITY will provide a minimum of thirty (30) days written notice to the AGENCY.

- 6. **INDEMNITY.** Each of the parties hereto shall indemnify, hold harmless, and defend the other party, its agents, employees or officials, against any and all claims, demands, causes of action, damages, costs, expenses, liability, or judgments against the other party for personal injury, death, or property damage caused by the negligence of the other party, its agents, employees or contractors arising from, growing out of, or in any way connected with or incidental to performance of this agreement.

Indemnity under this agreement shall commence on the date of execution hereof and shall continue for the entire term this agreement is in effect and for any applicable period of limitations thereafter. Either party shall notify the other party, in writing, within ten (10) days of any claim made on the obligations indemnified against hereunder.

- 7. **ASSIGNABILITY.** Assignment of this Agreement by either party is prohibited.
- 8. **NOTICES.** All notices under this Agreement shall be in writing and shall be deemed given when personally delivered, or when mailed by United States certified mail or registered mail, return receipt requested. All notices shall be delivered to the contacts listed, or to identified contacts as updated by the parties:

CITY OF BILLINGS
PUBLIC WORKS ADMINISTRATION
2224 Montana Avenue
Billings, MT 59101

AGENCY
Two Tough Guy Services, LLC
Mr. Otto Goldbach
P.O. Box 2871
Cody, WY 82414

- 9. **INSURANCE.** AGENCY shall maintain in good standing the insurance described in this Section. Before rendering any services under this AGREEMENT, the AGENCY shall furnish the CITY with proof of insurance in accordance with this Section.

The AGENCY shall provide the following insurance and list the CITY as an additional insured:

- 1. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- 2. Commercial automobile liability -- \$1,500,000 per accident.

- 10. **MODIFICATIONS.** This Agreement shall not be changed or modified except by a subsequent agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

Two Tough Guy Services, LLC
AGENCY (Print Name Above)

By _____
WILLIAM A. COLE, MAYOR

By _____
Print Name _____
Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, CITY Attorney