

AGENDA ITEM AND RECOMMENDATION SUMMARY
CITY COUNCIL REGULAR MEETING
JANUARY 06, 2015

Consider Approving Interlocal Agreement Between the City of Edinburg and County of Hidalgo, for the Disposal of Non-Hazardous Solid Waste at the Edinburg Regional Sanitary Landfill Facility. [Ramiro L. Gomez, Director of Solid Waste Management]

STAFF COMMENTS AND RECOMMENDATION:

Staff is requesting the City Council approve an Agreement between the City of Edinburg and County of Hidalgo, for the disposal of Non-Hazardous Solid Waste. The Agreement is for an initial ten (10) year term with an automatic five (5) year renewal at mutually agreed upon rates.

This agreement encompasses our preliminary contract with the County to include additional amendments/deletions not included in the version approved by Hidalgo County Commissioners Court on December 16, 2014. Our current amendments/deletions have been discussed in length with County Staff and will be presented in an upcoming County Commissioners Court meeting for approval.

The amendments/deletions that are pending approval by the County are as follows:

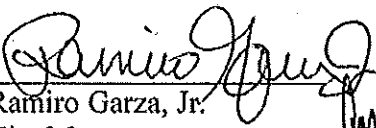
- Deletion of Transportation Clause, Article II Paragraph E Section E, - This clause stipulated that the City will not be responsible for the transport cost relating to transport of Solid Waste to the Landfill by an Independent County Approved Contractor. - This is previously addressed in the Paragraph and is further addressed by the City requiring that these contractors, if approved by the County, seek and obtain a separate contract with the City, under the Second Paragraph of Article IX.
- Deletion of Assignment Clause, Article X Paragraph I, - This paragraph allowed the County to assign the handling, disposal or processing of their solid waste, under this contract, without City approval.
- Deletion of a Non-Discrimination Clause, Article XI Paragraph D, - This is addressed by City Charter in the employment of individuals by the City.
- Adding the Neutral Party Paragraph, Article XXIII, for our Alternate Dispute Resolution Process.

The proposed agreement calls for a Disposal Rate of \$18.25 per ton for Municipal Solid Waste and \$15.50 for Debris. Their current disposal trend is in excess of 55,000 tons per year. This waste stream will not significantly impact the Landfill's current life expectancy, which is currently between ten (10) years and thirty-two (32) years respectively. Projected gross revenue from this acceptance is expected to be in excess of \$900,000 Dollars per Year. This contract, if approved, will become effective immediately after it's execution but with its initial use starting January 1, 2015.

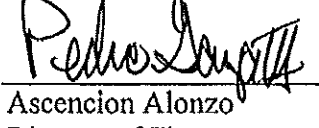
RECOMMENDATION:

Approve Interlocal Agreement Between the City of Edinburg and County of Hidalgo, for the Disposal of Non-Hazardous Solid Waste at the Edinburg Regional Sanitary Landfill Facility Pending Approval of Final Form by City Manager and City Attorney.

REVIEWED BY:

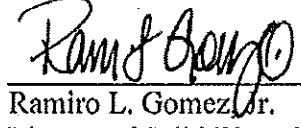


Ramiro Garza, Jr.
City Manager



Ascencion Alonzo
Director of Finance

PREPARED BY:



Ramiro L. Gomez, Jr.
Director of Solid Waste Management

RECORD OF VOTE:

APPROVED _____
DISAPPROVED _____
TABLED _____
NO ACTION _____

Richard Molina
Councilmember

J.R. Betancourt
Councilmember

Richard H. Garcia
Mayor

Homer Jasso, Jr
Councilmember

Elias Longoria, Jr.
Mayor Pro-Tem

STATE OF TEXAS

§

INTERLOCAL AGREEMENT BETWEEN

§

CITY OF EDINBURG AND THE COUNTY

HIDALGO COUNTY

§

OF HIDALGO FOR THE HANDLING OF

NON-HAZARDOUS MUNICIPAL SOLID WASTE

This Agreement is made and entered into, pursuant to Texas Government Code, Title 7 Chapter 791 (Vernon's Tex. Stat. and Codes Ann.) as of the _____ day of _____, 2014, by and between Hidalgo County, a political subdivision of the State of Texas, located in Edinburg, Hidalgo County, Texas ("Hidalgo County"), and the City of Edinburg, a municipal home-rule Texas corporation situated in Edinburg, Hidalgo County, Texas ("City"), owner and operator of the Department of Solid Waste Management - Waste Collection and Disposal Services, situated at 8601 North Jasman Road in Edinburg, Texas ("SWM"), for the purpose of setting forth the agreement between the parties, whereby Hidalgo County desires to contract with Edinburg for the handling and processing or disposal of non-hazardous solid waste materials, situated in and/or collected by the County's precincts and subject to the terms and conditions of this Agreement.

WHEREAS, the accumulation of garbage, litter, rubbish, junk and other deleterious substances constitutes a public hazard and nuisance; greatly increasing the danger of the spread of infectious, contagious and epidemic diseases; and

WHEREAS, Hidalgo County collects and/or arranges for disposal of non-hazardous solid wastes from within Hidalgo County; and

WHEREAS, Hidalgo County requires the handling and processing or disposal of such garbage, litter, rubbish, junk and other deleterious substances; and

WHEREAS, City owns, operates it's a landfill more specifically a Regional Type I and Type IV Sanitary Landfill(s) (the "Landfill"), pursuant to Permit No. 956B and/or Permit No. 2302, issued by the Texas Commission on Environmental Quality ("TCEQ"); and

WHEREAS, City has the capability and capacity, for the collection and disposal of such garbage, litter, rubbish, junk and other deleterious substances.

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants and agreements hereinafter set forth, and intending to be legally bound, Edinburg and Hidalgo County agree as follows:

I. OBLIGATIONS OF CITY OF EDINBURG

A. Type of Waste: During the term of this Agreement, City shall accept for disposal at the Landfill all of the non-hazardous solid waste delivered to the Landfill from Hidalgo County, including, but not limited to, trash, scrap food, leaves, grass, brush, bottles, cans, cardboard boxes, glass, and small dead animals (hereinafter said acceptable solid waste referred to as the "Waste Material"), but excluding radioactive, volatile, highly flammable, explosive, toxic or hazardous waste. In addition, Edinburg will not accept for disposal any liquid waste, or any article exceeding one (1) cubic yard in size, or any matter in violation of its operating permit. 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 Protection Agency ("EPA") or any agency of the State of Texas pursuant to the Resource Conservation and Recovery Act of 1976, as amended and including future amendments thereto, and any applicable state or federal regulations or laws. Title to the Waste Material delivered to the Landfill shall be transferred to and rest with Edinburg at the time the Waste Material is unloaded at the working face of the Landfill. All risks and responsibilities of the Waste Material shall be borne by Hidalgo County until the time the waste is unloaded at the working face. In the event that unacceptable material is delivered to the Landfill, it shall be the sole responsibility of Hidalgo County, under the City of Edinburg's direction or its representative, to contract the removal, hauling and disposal of the unacceptable material to an approved disposal site at the expense of Hidalgo County. In the event that fines are levied against the City of Edinburg due to Hidalgo County's noncompliance, it will be Hidalgo County's responsibility to incur such costs.

B. Compliance: Edinburg agrees to accept from Hidalgo County for disposal at the Landfill all Waste Material delivered from Hidalgo County. Edinburg agrees to operate in compliance with all applicable laws and regulations.

C. Hours of Operation: The minimum hours of operation of the Landfill shall extend from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 7:00 a.m. to 1:00 p.m. on Saturdays. Edinburg agrees to accept Waste Material transported from Hidalgo County to the Landfill at all other times, at the request of Hidalgo County under emergency circumstances, subject to payment by Hidalgo County of an additional sum per ton for such "off-hour" operations as hereinafter provided in Paragraph II-F. County shall notify City 24 hours in advance of such a request.

II. OBLIGATIONS OF HIDALGO COUNTY

A. Rates for Disposal: Hidalgo County agrees to deliver to the Landfill for disposal all solid waste which is collected by the County. Individual vehicle net weight for billing shall be based on tare weight.

Hidalgo County agrees to pay Edinburg the following sums for such disposal:

1. MSW Disposed-----\$ 18.25 per ton
2. Brush Disposed-----\$ 15.50 per ton
3. Passenger (16 inch wheel size or less)-----\$ 5.00/each
4. Truck (17 inch to 24 inch wheel size)-----\$ 8.00/each
5. Tractor (25 inch to 30 inch wheel size)-----\$ 20.00 each
6. Heavy equipment (over 30 inch wheel size)-\$ 150.00 each

B. Rates for Collection Hidalgo County Precinct 4 ONLY: Hidalgo County PCT 4 (“Precinct 4”) and CITY agree to invoice the Hidalgo County, the following for services rendered under this agreement for the collection of non-hazardous Roll-Off waste for Precinct 4:

1. Precinct 4, will notify the City 24 hours in advance the need for Roll-Off Services and the locations where these services would be rendered;
2. City and Hidalgo County agree that the following listed Service charge for Precinct 4 will be an all-inclusive charge for disposal and transport of the solid waste materials from the listed following Citizen Collections Stations located in Precinct 4 and delivered to the Landfill:

Fee Schedule (All Inclusive Rate):

- Doolittle Road Citizen Collection Station-----\$ 305.00
- San Manuel Citizen Collection Station-----\$ 305.00
- Hargill Citizen Collection Station-----\$ 305.00

(plus applicable Taxes and Fees and fuel adjustment (subject to Section D))

C. Class II, RACM, dry sludge’s, or other regulated wastes for which Edinburg possesses TCEQ acceptance authorization may be accepted at a rate formally approved by letter of agreement by both entities.

D. Adjustments to Rates: Such rates may be adjusted to reflect any increase or decrease in the cost of operations. Such rate adjustments may occur every **twelve (12) months**, on each anniversary date of this Agreement. Such rate adjustments shall be reflected by fluctuations in the Consumer Price Index for All Urban Consumers (published by the United States Bureau of Labor Statistics, Consumer Price Index, U.S. CITY Average, All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted, Based Period December 1999 = 100) (“CPI-U”). Beginning with year one (1) of this Agreement, and continuing every subsequent year during the term of this Agreement, the rates

identified in Paragraph II.A, shall be adjusted based on the percentage change in the CPI Index pursuant to the fluctuation of the All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted; however, that the Rates shall not fall below the initial Rates specified in **Paragraph II; Sections A&B**. The annual increases or decreases shall be applied on each anniversary date of this Agreement, so long as this Agreement is in effect; provided, however, that no such increase shall be effective sooner than forty-five (45) days following written notice (which notice shall include evidence of such rise in the CPI-U) to the Hidalgo County in order that Hidalgo County may adjust their budget accordingly or terminate this Agreement on thirty (30) days written notice after receipt of the forty-five (45) day notice of an increase in rate to Hidalgo County. Additionally, such rates may be adjusted to reflect any changes in local, state or federal regulations governing the operation of the Landfill that become effective or is implemented after the execution and delivery of this Agreement, and any new taxation or extraordinary factors relevant to the operation of the landfill.

E. Transportation Costs: Hidalgo County shall pay all its costs necessary to collect and transport the Waste Material to the Landfill.

1. In the event the Precinct 4 so chooses to exercise the option to utilize the services listed under Paragraph II Section B and requests that the City provide services to Precinct 4's Citizen Collections Stations listed herein above then Hidalgo County shall be invoiced for those services rendered at the rate(s) listed.

F. Off-Hours Disposal: Hidalgo County shall pay City an amount per ton of Waste Material disposed of at the Landfill during off-hours at a rate equal to **120 percent** of the normal contract rate in effect at such time. Off-hour rates would not be applicable under a natural disaster emergency, provided City has authorization from TCEQ for such emergency situation.

III. TIME OF BILLING AND PAYMENT

City shall bill Hidalgo County for all amounts due hereunder for disposal at the Landfill at the end of the month in which services are performed. Payment shall be made by Hidalgo County no later than **thirty (30) days** following receipt of said invoice.

IV. TERM OF AGREEMENT AND TERMINATION

A. Term. This Agreement shall be for an initial term, effective on **January 1, 2015**, and shall continue in full-force and effect through **Dec 31, 2025**. This Agreement shall automatically be extended for an additional five-year term at mutually agreed upon rates, unless either party notifies the other party in writing, not less than **sixty (60) days** prior to the expiration of the Agreement term, of its intention to terminate this Agreement, at which time both parties shall have a minimum of **two (2) years** to effectively

manage the impact of termination of this contract in order to project, arrange, and manage for the proper disposal of all municipal solid waste.

B. Termination. This Agreement may be terminated by either party without cause upon thirty (30) days written notice prior to the end of the original or any renewal term. This Agreement shall terminate automatically if: (1) the Landfill is filled to capacity; (2) if for any reason whatsoever, City is permanently prevented from accepting Waste Material for disposal at the Landfill due to causes over which it has no control; or (3) Hidalgo County is prohibited by any federal or state law from disposing of Waste Material at the Landfill. Additionally, if Hidalgo County fails to promptly make payments for amounts due hereunder, or if Hidalgo County does not appropriate sufficient funds to meet its obligations under this Agreement, or if either party shall violate any laws, ordinances or governmental regulations or materially breach any provisions of this Agreement, the non-breaching party may terminate this Agreement by giving written notice of default to the other party, and the defaulting party's failure to cure such default within 30 days after receipt of such notice (provided, if such default is of a nature that it cannot be cured within such 30 day period), the non-defaulting party shall not have the right to terminate this Agreement if the defaulting party commences the curing of such default within such 30 day period, and diligently pursues the curing thereof.

V. INSURANCE

A. City's Obligations: City shall maintain in continuous force and effect throughout the term of this Agreement public liability and property damage insurance in the minimum amount of \$500,000 (with a deductible there under of not more than \$250,000), covering the operation and maintenance of the Landfill. If requested, City shall furnish Hidalgo County with a certificate evidencing such insurance coverage. City shall notify Hidalgo County of the cancellation of or any material change in such insurance coverage.

B. Hidalgo County's Obligations: Hidalgo County shall maintain in continuous force and effect throughout the term of this Agreement public liability and property damage insurance in the amount of \$500,000 (with a deductible there under of not more than \$250,000), covering Hidalgo County's transportation of the Waste Material. If requested, Hidalgo County shall furnish City with a certificate evidencing such insurance coverage. Hidalgo County shall notify City of the cancellation of or any material change in insurance policy.

VI. DEFENSE, HOLD HARMLESS AND INDEMNITY CLAUSE

A. General Indemnification: City and Hidalgo County agree that should an act and/or omission of either party cause or incur, directly or indirectly, damage, loss, destruction, liability or claims against the other party as a result of willful misconduct or negligence, the party who so acted or failed to act shall assume

and pay for any and all defense in said matter, hold harmless and indemnify the other party from any and all losses, obligations, liabilities, causes of action, lawsuits, damages or assessments, as a result of said party's acts and/or omissions, including reasonable expenses and legal fees, to the extent caused by the negligent act or omission of such party.

B. Waste Material Indemnification: Hidalgo County agrees that in the event that it delivers or causes to be delivered to the Landfill any waste product excluded from the definition of Waste Material in Paragraph I-A, Hidalgo County shall assume and pay for all reasonable costs and expenses necessary to locate, isolate, remove from the Landfill and properly dispose of such waste. Further, Hidalgo County shall defend, indemnify, and hold harmless City from any and all losses, liabilities, damages, claims, penalties, fines or litigation expense arising from and caused by aforesaid described delivery of such excluded waste. This indemnification shall survive this Agreement and be enforceable as a separate agreement in the event such indemnification becomes necessary.

VII. INDEPENDENT STATUS

It is agreed and understood that each party hereto is considered an independent contractor. Any and all joint venture or partnership status is hereby expressly denied and the parties expressly state that they have not formed; either expressed or implied a joint venture or partnership.

VIII. FORCE MAJEURE

Except for the obligation to pay for services rendered, neither party hereto shall be liable for failure to perform hereunder due to contingencies beyond its control, including, but not limited to, strikes, riots, war, fire, acts of God, weather, compliance with any law, regulation or order, of the United States of America or any other governmental body or instrument thereof, whether now existing or hereafter created.

IX. SUCCESSORS AND ASSIGNS

City and Hidalgo County each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. Neither the City nor Hidalgo County shall assign, sublet, or transfer interest in this Agreement without written consent of the other.

City and Hidalgo County hereby agree, that in the event that Hidalgo County allows the commercial collection of its residents by an independent contractor, that the pricing of this Agreement shall be extended to the independent contractor(s) subject to a written and approved agreement outlining agreed new terms and conditions by the City and such contractor(s). Hidalgo County hereby agrees to provide a list of the qualified and authorized independent contractors it has selected to provide such services to the

County.

X. GENERAL AND ADMINISTRATIVE PROVISIONS

- A. **Authority:** Each party represents to the other that this Agreement, the transaction contemplated herein, and the execution and delivery hereof, has been duly authorized by all necessary proceedings and actions.
- B. **Time Limit:** Time is of the essence of this Agreement; and accordingly, all time limits shall be strictly construed and enforced.
- C. **No Waiver:** The failure or delay in the enforcement of the rights detailed therein shall not constitute a waiver of those rights or be considered as a basis for stopple. The parties may exercise their rights herein despite said delay or failure to enforce said rights.
- D. **Dispute or Contest:** In the event that a dispute occurs or an action in law or equity arises out of the operation, construction or interpretation of this Agreement, the party prevailing shall be entitled to reasonable attorney's fees and cost arising there from.
- E. **Paragraph Headings:** The paragraph headings used herein are descriptive only and shall have no legal force or effect whatsoever.
- F. **Choice of Law and Venue:** This Agreement shall be governed by the laws of the State of Texas and is performable in Hidalgo County, Texas.
- G. **Severability and Survival:** If any provision of this Agreement shall, for any reason, be held violative of any applicable law, and so much of the Agreement is held to be unenforceable, the invalidity of such a specific provision herein shall not be held to invalidate any other provisions herein, which other provisions shall remain in full force and effect, unless removal of the invalid provisions destroys the legitimate purposes of this Agreement, in which event this Agreement shall be terminated. The provisions of paragraphs I-A, IV-B, V-A, V-B, VI-A, and VI-B, shall specifically survive the expiration or termination of this Agreement and any renewal thereof.
- H. **Notices:** All notices required or permitted herein must be in writing and shall be forwarded by United States Mail, by Registered or Certified Mail, Return Receipt Requested, Postage Prepaid, to the party to whom notice is to be given at the address set forth below or to such address as either party hereto may designate to the other by notice from time to time for this purpose. Notices shall be deemed given upon deposit in a receptacle of the United States Postal Service.

XI. MISCELLANEOUS

- A. **Disposal:** Residential and Commercial Refuse will be collected, transported, and deposited at THE CITY OF EDINBURG REGIONAL SANITARY LANDFILL FACILITY, LOCATED AT 8601 NORTH JASMAN ROAD EDINBURG, TEXAS 78542.
- B. **Emergencies:** CITY agrees to use commercially reasonable efforts to assist the COUNTY in the event of an emergency situation on such terms and conditions as may be mutually agreed between CITY and the COUNTY.
- C. **Hauling:** All Residential, Commercial and Brush Refuse hauled by COUNTY shall be contained, tied or enclosed so that leaking, spilling or blowing is prevented.
- D. **Notification:** CITY shall notify the COUNTY and all Customers about complaint procedures, regulations and days for scheduled Residential Refuse collection.
- E. **Licenses:** CITY shall, at CITY's expense, obtain all licenses and permits necessary for the performance of CITY's services.

XII. ALTERNATE DISPUTE RESOLUTION

Neither party shall terminate this Agreement nor take any adverse action against the other party without first giving said party written notice of the Agreement violation or other problem and advising such party of the party's right to cure such problem within **thirty (30) days** of such notice. If the advised party corrects or cures the violation or problem within the specified thirty-day period, then neither violation nor adverse action related to this Agreement shall be incurred by the advising party.

It is the intent of the parties that litigation be avoided, and in order to allow for the quick resolution of any and all disputes, if any, the parties hereby agree that any claims, demands or disputes that cannot be amicably resolved between the parties upon written request by either party shall be submitted within two weeks to a neutral, trained party for assistance in dispute resolution by means of non-binding mediation. If mediation efforts are unsuccessful, parties may resort to protecting their rights by litigation in district court.

XIII. NEUTRAL PARTY

Said neutral third party should, if possible, be a local person with a background in dispute resolution and subject law. If the parties cannot agree on a neutral third party, then they shall submit the process to the American Arbitration Association for the selection of a neutral third party and the accomplishment of the non-binding mediation, in accordance with its guidelines.

XIV. COMMITMENT OF CURRENT REVENUES ONLY

In the event that, during any term hereof, the Commissioners Court of Hidalgo County does not appropriate sufficient funds to meet the obligations of Hidalgo County under this Agreement, Hidalgo County may terminate this Agreement upon ninety (90) days written notice to City. Hidalgo County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Hidalgo County pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1996).

IN WITNESS WHEREOF, EXECUTED by Edinburg and Hidalgo County acting under the authority of their respective governing bodies in Duplicate Originals on the date indicated above.

COUNTY OF HIDALGO

100 EAST CANO, SUITE 202
EDINBURG, TEXAS 78539
PHONE: (956) 318-2600; FAX (956)318-2699

BY: _____

Ramon Garcia, County Judge
County of Hidalgo

Date: _____

ATTEST:

By: _____

, County Clerk

APPROVED AS TO FORM:

By: _____

County Attorney

CITY OF EDINBURG

P.O. BOX 1079
EDINBURG, TEXAS 78540
PHONE:(956) 383-5661; FAX (956) 383-7111

BY: _____

Richard H. Garcia, Mayor
City of Edinburg

Date: _____

ATTEST:

By: _____

Mayra Garza, City Secretary

APPROVED AS TO FORM:

By: _____

City Attorney