

SECOND AMENDMENT TO SETTLEMENT AGREEMENT BETWEEN
THE CITY OF MCKINNEY,
CONSTRUCTION RECYCLING AND WASTE CORPORATION,
AND OSTTEND LANDFILL, LTD., AS ASSIGNEE AND SUCCESSOR IN INTEREST
OF 380-MCKINNEY, L.P.

This Second Amendment to Settlement Agreement (the "Second Amendment") is entered into by and between the City of McKinney, Texas ("McKinney"), Construction Recycling and Waste Corporation ("CRWC"), and Osttend Landfill, Ltd. ("Osttend") for the purposes and consideration set forth herein.

RECITALS

WHEREAS, McKinney is a home rule city, a municipal corporation organized and operating in accordance with its charter and the laws of the State of Texas; and

WHEREAS, CRWC is a Texas corporation having its principal place of business in Dallas County, Texas; and

WHEREAS, 380-McKinney, L.P. ("380-McKinney") is a Texas limited partnership with its principal place of business in Dallas County, Texas; and

WHEREAS, McKinney, CRWC and 380-McKinney entered into that Settlement Agreement Between the City of McKinney, Construction Recycling and Waste Corporation, and 380-McKinney, L.P. dated and effective December 19, 2001 (the "Agreement") governing the use and operation of a Type IV landfill in McKinney (the "Landfill"); and

WHEREAS, Osttend Landfill, Ltd. ("Osttend") is a Texas limited partnership with its principal place of business in Dallas County, Texas; and

WHEREAS, the ownership of the Landfill was transferred from 380-McKinney to Osttend Landfill, Ltd. in 2014, thereby making Osttend a successor or assignee of 380-McKinney under the terms and provisions of the Agreement and assumed all rights, obligations, benefits, and liabilities arising from said Agreement; and

WHEREAS, the Parties (as hereinafter defined) executed that one certain First Amendment to the Agreement dated effective February 2, 2020; and

WHEREAS, McKinney, CRWC and Osttend (collectively the "Parties") desire to amend the Agreement and First Amendment, in part, to modify the term for accepting waste under the Agreement, including conditions precedent for certain extensions of the term, the inspector fees, the tipping fees, and to provide certain assurances regarding Spur 399/US 380, as provided hereinbelow. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained in the Agreement and First Amendment and as modified by this Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in settlement of disputed claims, McKinney, CRWC, and Osttend hereby contract and agree as follows:

1. From and after the Effective Date of this Second Amendment, Article IV, titled "Opening Date and Closure Date of Municipal Solid Waste Facility," of the Agreement is hereby amended in part by deleting Section 4.3 in its entirety and replacing said Section 4.3 with a new Section 4.3 to read as follows:

"4.3 The Parties acknowledge and agree that acceptance of waste at the Facility began on August 1, 2019. Subject to the "Acceptance of Waste Extensions" described in Section 4.4 below, CRWC agrees that it will stop accepting waste at the Facility on July 30, 2064. However, CRWC may request McKinney to amend this Agreement to allow CRWC to accept waste at the Facility for a longer period of time."

2. From and after the Effective Date of this Second Amendment, Article IV, titled "Opening Date and Closure Date of Municipal Solid Waste Facility," of the Agreement is hereby amended in part by adding a new Section 4.4 to read as follows:

"4.4 Beginning on August 1, 2064, CRWC may request up to three (3) "Acceptance of Waste Extensions", each being for a period of ten (10) years. A written request for an Acceptance of Waste Extension shall be received by the City not later than 120 days prior to subject extension period. Approval of an Acceptance of Waste Extension shall be discretionary in the City and such approval shall be conditioned upon the City's review of the environmental quality (including but not limited to air, water, light, noise, pollutants) and overall impacts of the Facility, at the City's cost but with full cooperation from the CRWC, to ensure that no health or safety issues exist, and that another 10-year extension is appropriate. In addition, an Acceptance of Waste Extension may be authorized only upon a finding that the Facility is found to be in compliance with the following:

- a. The operation of the landfill does not constitute a nuisance or a danger to the public's health, safety, or general welfare; and
- b. The maximum capacity of the landfill has not been reached or exceeded; and

- c. CRWC continues to effectively manage “clean-up” and maintenance of US 380 along the project site; and
- d. All “host and tipping” fees, inspector fees, etc. are current and in good standing; and
- e. No bird mitigation issues have arisen; and
- f. The avigation easement has been followed, and no issues with TKI have occurred.”

3. From and after the Effective Date of this Second Amendment, Article V, titled “Host Fee and City Inspector,” of the Agreement is hereby amended in part by deleting Section 5.1 in its entirety and replacing said Section 5.1 with a new Section 5.1 to read as follows:

“5.1 CRWC agrees to pay to McKinney a host fee for each truck that deposits waste at the Facility of \$3.00 for each truck regardless of capacity until December 31, 2031. Thereafter, and beginning on January 1, 2032, January 1, 2042, January 1, 2052, January 1, 2062, and continuing on each 10-year anniversary thereafter, the host fee shall be automatically increased by an additional \$1.00 from the previous 10-year period and throughout the Life of the Facility.”

4. From and after the Effective Date of this Second Amendment, Article V, titled “Host Fee and City Inspector,” of the Agreement is hereby amended in part by deleting Section 5.4 in its entirety and replacing said Section 5.4 with a new Section 5.4 to read as follows:

“5.4 In addition to the host fee, CRWC agrees to pay McKinney the amount of Forty-Five Thousand Dollars (\$45,000.00) per year beginning February 5, 2020 and thereafter until January 1, 2026, and after which the amount shall increase annually by an amount equal to two percent (2%) of the prior year’s amount, up to \$70,000.00, for the Life of the Facility to be used at McKinney’s discretion to employ an inspector for the City of McKinney (“Inspector Fee”).”

5. From and after the Effective Date of this Second Amendment, Article XI, titled “Trip Tickets and Notice of Illegal Wastes” of the Agreement is hereby amended in part by deleting Section 11:2 in its entirety and replacing said Section 11.2 with a new Section 11.2 to read as follows:

“11.2 CRWC may accept any Type IV Solid Waste carried by McKinney’s contracted hauler that originates within McKinney.”

6. From and after the Effective Date of this Second Amendment, Article XVI, titled “Miscellaneous,” of the Agreement is hereby amended in part by adding a new Section 16.23 to read as follows:

“**16.23** CRWC shall not oppose any Spur 399/US 380 bypass alignment. CRWC agrees to fully participate and coordinate with the City to ensure that the roadway alignments are established in accordance with the City’s recommendations to TXDOT.”

7. Except to the extent the Agreement and the First Amendment are modified by this Second Amendment, the remaining terms and conditions of the Agreement and the First Amendment shall remain unmodified and in full force and effect.

8. In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of the First Amendment or this Second Amendment, the terms and conditions of this Second Amendment shall prevail and control.

9. The Agreement, the First Amendment, and this Second Amendment embody the entire understanding between the parties hereto with respect to its subject matter and can be changed only as set forth in the Agreement.

10. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same Second Amendment.

11. All other provisions, terms and sections of the Agreement and the First Amendment shall remain in full force and effect, and this Second Amendment shall in no way release, affect or impair any other provision or responsibility contained in the Agreement.

EXECUTED to be effective as of this the ____ day of _____,
2021.

CITY OF MCKINNEY, TEXAS,
a Texas municipal corporation

By: _____
PAUL G. GRIMES
City Manager

Date: _____

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**CONSTRUCTION RECYCLING AND WASTE
CORPORATION**, a Texas corporation

By: 

THOMAS F. NOONS
President

Date: 11-16-2021

OSTTEND LANDFILL, LTD., a Texas limited partnership

By: Real Property Development, Ltd, a Texas limited partnership, Its General Partner

By: LaSalle GP, LLC, a Texas limited liability company, General Partner

By 
THOMAS NOONS
Manager

Date: 11-4-2021

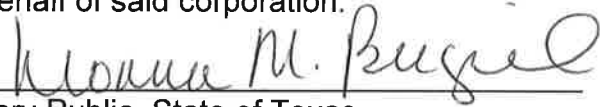
STATE OF TEXAS §
COUNTY OF COLLIN §

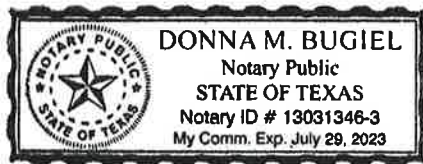
This instrument was acknowledged before me on the _____ day of _____, 2021, by PAUL G. GRIMES, City Manager of the **CITY OF MCKINNEY, TEXAS** a Texas municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF COLLIN §

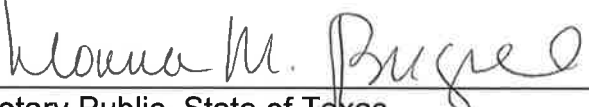
This instrument was acknowledged before me on the 4 day of Nov, 2021, by THOMAS F. NOONS, President of **CONSTRUCTION RECYCLING AND WASTE CORPORATION.**, a Texas corporation, on behalf of said corporation.


Notary Public, State of Texas



STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 4 day of Nov, 2021, by THOMAS F. NOONS, in his capacity as Manager of LaSalle GP, LLC, a Texas Limited Liability Company, known to me to be the person whose signature is subscribed to the foregoing instrument, and acknowledged to me that LaSalle GP, LLC, is the General Partner of Real Property Development, Ltd, a Texas Limited Partnership, which entity is the General Partner of **OSTTEND LANDFILL, LTD.**, a Texas Limited Partnership and that executed the foregoing instrument on behalf of and as the act of **OSTTEND LANDFILL, LTD.**



Notary Public, State of Texas

