

**EXCLUSIVE AGREEMENT  
FOR THE COLLECTION, HAULING AND DISPOSAL OF  
MUNICIPAL SOLID WASTE  
FOR THE HOA OF AVONDALE RANCH, INC.**

**STATE OF TEXAS**

**COUNTY OF TARRANT**

THIS EXCLUSIVE AGREEMENT (this "Agreement") is made and entered into as of February 1, 2015, by and between Midwest Waste Services, LLC, a Texas limited liability company ("Service Provider"), and HOA of Avondale Ranch, Inc., a Texas nonprofit corporation ("Association").

WHEREAS, the Association, subject to the terms and conditions set forth herein, desires to grant to the Service Provider the exclusive right to collect, haul and dispose of Municipal Solid Waste (as such term is defined herein) for all properties within the Association.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the Association hereby agree as follows:

**SECTION 1. DEFINED TERMS.**

The following terms, as used herein, will be defined as follows:

**Business Day** - Any day that is not a Saturday, a Sunday or Holiday.

**Container** - Any receptacle provided to the Association by the Service Provider and utilized by a Residential Unit for collecting Municipal Solid Waste. Containers are approximately 95 gallons in capacity.

**Hazardous Waste** - Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or state statute, rule, order or regulation.

**Handicapped Residential Unit** - Any Residential Unit that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste at the curbside, and that generates and accumulates Municipal Solid Waste. The identities of the members of a Handicapped Residential Unit shall be certified by an officer of the Association and agreed to by the Service Provider.

**Municipal Solid Waste** - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include construction and demolition waste or Hazardous Waste.

**Residential Unit** - Any residential dwelling now or hereafter governed by the Association's declaration that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste.

**Solid Waste** - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act, including any such waste which is mixed with or constitutes recyclable material.

**SECTION 2. EXCLUSIVE CONTRACT.**

The Association hereby grants to the Service Provider, in accordance with the Association's articles of incorporation, bylaws and any rules and regulations adopted by the Association, the exclusive right and privilege to collect, haul and dispose of Municipal Solid Waste Waste generated by all Residential Units. Except as otherwise expressly set forth herein, the Association shall implement reasonable measures to ensure that no Residential Unit may be permitted to utilize any other waste collection company for the services provided hereunder during the term of this Agreement.

**SECTION 3. TERM.**

The term of this Agreement shall be for a period of five (5) years, commencing on February 1, 2015 and concluding on January 31, 2020. The term shall be automatically renewed for successive terms of five (5) years each unless either party provides to the other party written notice of its election to not renew the term at least 180 days prior to the expiration of the then-current term.

**SECTION 4. SERVICE PROVIDER'S DUTIES AND OBLIGATIONS.**

It shall be the duty and obligation of Service Provider to perform the following services:

A. Provisions of Equipment and Facilities. Service Provider agrees to furnish trucks, equipment, machinery, tools, personnel, labor and any and all other items necessary and sufficient to fulfill its obligations under this Agreement, at its own expense, to adequately, efficiently and properly collect and transport Municipal Solid Waste from the Residential Units in a systematic, clean, healthful and sanitary manner.

B. Transportation and Disposal of Refuse. Service Provider will legally dispose of all Municipal Solid Waste collected pursuant to this Agreement. All Municipal Solid Waste collected by Service Provider pursuant to this Agreement shall be transported in such a manner as is reasonably calculated to minimize the leakage or the blowing or scattering of such waste.

C. Routes and Schedules. Service Provider agrees to establish a regular schedule for the collection of Municipal Solid Waste from the Residential Units as necessary to fulfill the requirements of this Agreement and, upon the execution of this Agreement, to inform the Association of such collection schedule. Notwithstanding the above, upon reasonable advance notice to the Association (i) Service Provider may change such collection schedule at any time and (ii) take various holidays as may be determined by Service Provider.

**SECTION 5. RESIDENTIAL UNIT COLLECTIONS.**

A. Residential Units. The Service Provider will collect Municipal Solid Waste from Residential Units once per week; provided, that (i) such Municipal Solid Waste is placed at the curb in poly-carts provided by the Service Provider and (ii) such waste is placed within five (5) feet of the curbside or right of way adjacent to the Residential Unit no later than 6:00 a.m. on the scheduled collection day.

B. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Containers; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need.

#### **SECTION 6. TITLE TO EQUIPMENT.**

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

#### **SECTION 7. RATES AND FEES.**

Subject to adjustment, as provided in Section 8 below, the rates and fees to be charged and received by the Service Provider monthly are Twenty Dollars (\$20) for the first Container plus Five Dollars (\$5.00) for each additional Container. In addition, the Service Provider will collect all applicable sales taxes.

#### **SECTION 8. RATE ADJUSTMENT.**

A. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances imposed on waste collection, transportation and disposal activities on a per-tonnage basis (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed after the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

B. CPI-U Adjustment. On the third anniversary of this Agreement and on each anniversary date of this Agreement thereafter, the rates hereunder shall automatically increase by the percentage increase, if any, in the CPI-U for the most recent 12-month period for which such CPI-U data is then-available. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) in the "Dallas / Fort Worth, TX" area (or in the event such CPI-U is discontinued, the CPI-U for the nearest available metropolitan area) based on the latest available figures from the Department of Labor's Bureau of Labor Statistics. Notwithstanding the above, no increase under this Section 8(B) shall exceed 20 percent.

C. Operating Cost Adjustment. In addition to the rate adjustments provided for above, at any time during the term of this Agreement, the Service Provider may petition the Association for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations. At the time of any such petition, the Service Provider shall provide the Association with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The Association shall have the right to determine the validity of any request for a change in rates.

#### **SECTION 9. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the Association agrees to adopt and maintain rules and regulations that will enable the Service Provider to provide the Services set forth herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior

to replacing or repairing such Containers, require security deposits from the Residential Units utilizing such Containers. The Association also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Residential Units for the purposes of rendering the Services contemplated hereby.

**SECTION 10. PROCESSING, BILLING AND FEES.**

On a monthly basis, the Service Provider agrees to bill and collect the rates and fees charged under this Agreement from all Residential Units. The Association shall not be held responsible for the collection of "bad debt" relating to any amounts billed by the Service Provider to Residential Units. Notwithstanding anything to the contrary contained in this Agreement, the Service Provider may, in its discretion, discontinue service to any Residential Unit that does not pay the full amount set forth herein for the services provided hereunder within thirty (30) days of the date of any invoice delivered to such Residential Unit.

**SECTION 11. SPILLAGE.**

The Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste placed outside of the Containers or bags by any Residential Unit. The Service Provider shall report the location of such conditions to the Association so that the Association can issue proper notice to the owner or occupant of the Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste. The Association shall have the right to require a Residential Unit to add additional Containers to its service where unsightly or unsanitary conditions have resulted from inadequate Containers.

**SECTION 12. HOURS OF SERVICE.**

For all the Services provided hereunder, the Service Provider's hours of service shall be between 6:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays, and may, at its sole discretion, observe Holidays during the term of this Agreement.

**SECTION 13. CUSTOMER SERVICE.**

A. Notification of Procedures. Service Provider shall notify the occupants of all Residential Units about procedures, rules and regulations, and days of collection on an annual basis and whenever there is a change in service, days of collection or procedures. Notice is to be in the form of printed matter distributed by Service Provider to all Residential Units at least ten (10) days prior to any change in the procedures, rules and regulations, days of collection or service.

B. Dangerous Animals. Employees of Service Provider shall not be required to expose themselves to the danger of vicious animals in order to accomplish refuse collection in any case where the owner or tenants have animals at large, but Service Provider shall promptly notify the Association of such condition and of Service Provider's inability to make collection.

C. Hazardous Weather. Service Provider may cancel a portion or all of a scheduled service day due to hazardous weather conditions, and shall notify the Association of such cancellation.

**SECTION 14. SERVICE PROVIDER'S RELATION TO ASSOCIATION.**

A. Service Provider as Independent Contractor. Service Provider is in all respects an independent contractor as to the work, duties, and rights granted herein, and neither Service Provider nor any person performing any of the work covered under this Agreement is in any respect an agent, servant, officer, or employer of the Association. This Agreement specifies the work to be done by Service Provider, but the method to be employed to accomplish this work shall be the exclusive responsibility of Service Provider and under Service Provider's exclusive contract and right of control. The doctrine of *respondeat superior* shall not apply between the Association and Service Provider, or any of Service Provider's agents, servants, employees, or subcontractor's and nothing herein shall be construed as creating a partnership or joint enterprise between the Association and Service Provider.

B. Assignment. This Agreement may be freely assigned, in whole or in part, by Service Provider.

**SECTION 15. MISCELLANEOUS.**

A. Multiple Originals. This Agreement may be executed in multiple originals, each of which shall be deemed for all purposes to be an original, and all of which are identical.

B. Paragraph Headings. The paragraph headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

C. Successors and Assigns. All of the terms, covenants, and agreements contained herein shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

D. Notices. Notices by either party to the other party shall be sufficient if sent by certified mail, postage paid, return receipt requested, addressed to the other party at the address designated below such party's signature hereunder.

E. Venue. Should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, venue for said action shall be in Tarrant County, Texas.

F. Savings Provision. In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

G. Force Majeure. The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond the reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

H. Attorneys Fees. The prevailing party in any suit, action or proceeding arising out of or involving the enforcement, interpretation or application of this Agreement shall be entitled to recover all reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

**SECTION 16. REMEDIES.**

In the event of a default by either party with respect to this Agreement, the non-defaulting party shall be entitled to all remedies available to such party at law or in equity, including the recovery of monetary damages or injunctive relief.

**SECTION 17. PRE-EXISTING CONTRACTS.**

Notwithstanding anything to the contrary contained in this Agreement, any Residential Unit under contract with another service provider for waste management services at the time of the execution of this Agreement may continue to utilize the services of such other service provider until such time as such contract expires or is terminated. Each Residential Unit utilizing the services of another service provider shall, at its earliest opportunity, terminate or prevent a renewal of such contract.

DULY PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF HOA OF AVONDALE RANCH, INC. AT A MEETING DULY HELD AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE ARTICLES OF INCORPORATION AND BYLAWS OF THE ASSOCIATION AND ALL APPLICABLE LAWS OF THE STATE OF TEXAS THIS 31 DAY OF JANUARY, 2015.

MIDWEST WASTE SERVICES, <sup>LLC</sup> ~~INC.~~  
337 Morrow Road  
Springtown, Texas 76082

By: W. Kent Durham  
W. Kent Durham  
Vice President

HOA OF AVONDALE RANCH, INC.

By: Corey Naughton  
Name: COREY NAUGHTON  
Title: PRESIDENT

ATTEST:

By: Mark Pierce  
Name: Mark Pierce  
Title: Secretary