

ORDINANCE 2020-04-09-0250

AUTHORIZING A LEASE AND CONTRACT WITH ATLAS ORGANICS, INC., D/B/A ATLAS ORGANICS CU05, LLC, FOR PROCESSING SERVICES FOR THE SOLID WASTE MANAGEMENT DEPARTMENT'S ORGANICS PROGRAM IN AN AMOUNT OF \$1,870,000.00 FOR THE FIRST YEAR OF A TEN YEAR TERM AND A PAYMENT OF \$5,528,749.00 FOR INFRASTRUCTURE IMPROVEMENTS AND SORTING EQUIPMENT TO BE CONSTRUCTED AT THE NELSON GARDENS LANDFILL

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WHEREAS, the SWMD began the organics program in 2011 as a major strategy to divert waste from the landfill and increase recycling in the community; the organic materials are collected by SWMD crews using automated equipment and delivered to a contractor to process the material into compost; the program has grown very popular city-wide; in FY2019, the SWMD sent approximately 68,000 tons of material to its organic processor and it is anticipated that this program may grow to over 80,000 tons annually within the next ten years; and

WHEREAS, on January 10, 2020, the City issued a Request for Proposal (RFP 20-025, 6100012385) for the procurement of "Organic Material Processing Services"; two responses were received and these were evaluated and scored by a committee consisting of representatives from various City departments and SAWS and, based on the evaluations and rankings made in the selection process, staff recommends awarding a contract to Atlas Organics, Inc., d/b/a Atlas Organics CU05, LLC, as the most qualified respondent; and

WHEREAS, Atlas Organics shall lease approximately 70 acres of land from the SWMD at the Nelson Gardens Landfill and will design, construct and install permanent infrastructure improvements, and pick line assets and equipment for an organics processing facility, and will operate the facility during the term of the contract. The improvements and assets become the property of the City of San Antonio immediately upon acceptance by the City. Atlas Organics will operate and maintain assets and equipment for the life of the contract. The value of the improvements is estimated at \$3,478,800.00; the value of the assets and equipment is estimated at \$2,049,949.00, and the deadline to complete the work on the facility is December 31, 2020; and

WHEREAS, Atlas Organics shall provide organic processing services at the Nelson Gardens facility for a 10-year term period at a rate of \$27.50 per ton, allowing for annual CPI increases, with a contract value estimated at \$1,870,000.00 for the first year. Atlas Organics shall accept all SWMD loads for organics processing and shall pay for all incidentals, including any non-organic or contamination material below five percent (5%) by weight; and

WHEREAS, this ordinance authorizes a lease and agreement with Atlas Organics for the processing of organic material for a total estimated contract value of \$1,870,000.00 for the first

year, and authorizes payment of \$5,528,749.00 for the infrastructure improvements and sorting equipment to be constructed on the City's Nelson Gardens Landfill for processing of the organic material. The deadline to complete the work on the facility is December 31, 2020. The initial term of the lease and agreement is ten years and shall begin January 1, 2021 and terminate on December 31, 2031. Two additional one-year renewals, at the City's sole option, are also authorized. Funds are available in the Solid Waste Operating Fund and Solid Waste Reserves; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Atlas Organics, Inc., d/b/a Atlas Organics CU05, LLC, is hereby selected to provide services in relation to the "Organic Material Processing Services" (RFP 20-025) for the City of San Antonio as the most qualified respondent to the Request for Proposals.

SECTION 2. The City Manager, or designee, or the Director, Solid Waste Management Department, or designee, is hereby authorized to take all actions necessary to negotiate and execute a Lease and Agreement with Atlas Organics, Inc., d/b/a Atlas Organics CU05, LLC, for a term of ten years, with the option for the City to extend the contract for two additional one year terms under the same terms and conditions. The term of the Agreement to construct the organics processing facility shall begin after approval by the City and shall end on December 31, 2020. The initial term for the operation of the organics processing facility shall be for ten years and shall begin on January 1, 2021 and terminate on December 31, 2031. Two additional one-year renewals, at the City's sole option, are also authorized. The City Manager, or designee, or the Director, Solid Waste Management Department, or designee, is hereby authorized to execute all documents required to exercise the annual renewal options with no additional Council action required, provided that funding is available and has been approved in the SWMD annual budget. A copy of the Agreement, in substantially final form, is attached and incorporated herein for all purposes as **Attachment I**. The execution authority granted by this ordinance shall expire 60 days from the effective date.

SECTION 3. Funds generated by this ordinance will be deposited in Fund 55001000, Internal Order 255000000024, and General Ledger Account 4401100.

SECTION 4. Funding in the amount of \$1,870,000.00 for this ordinance is available in Fund 55001000, Cost Center 5501010010 and General Ledger 5201041 as part of the Fiscal Year 2020 budget. Additional funding in the amount up to \$16,830,000.00 is contingent upon City Council approval of future fiscal year budgets within the duration of this contract.

SECTION 5. Payment is authorized to Atlas Organics CU05, LLC (Atlas).

SECTION 6. Funds in the amount of \$5,528,749.00 for this ordinance is authorized to be appropriated in Fund 55001000, Internal Order 390000002418 and General Ledger 6102100 and the Fiscal Year 2020 budget shall be amended.

SECTION 7. The budget in SAP Fund 55099000, Environmental Capital Project, SAP Project Definition 55-00030, Atlas Organics, shall be revised by increasing SAP WBS Element 55-

00030-90-14-01 entitled Transfer from I/O# 390000002481, SAP GL Account 6101100 – Interfund Transfer In, by the amount \$5,528,749.00.

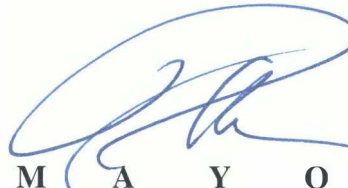
SECTION 8. Payment is authorized to be encumbered and made payable to Atlas Organics CU05, LLC (Atlas) in an amount not to exceed \$5,528,749.00. Payment is in support of the Atlas Organics Project, using Fund 55099000, with WBS 55-00030-05-02 and General Ledger 5202020. Funding is provided by Solid Waste Operating Fund and is budgeted as provided in Section 4 above.

SECTION 9. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.


SECTION 10. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 11. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.


PASSED and APPROVED this 9th day of April, 2020.


M A Y O R
Ron Nirenberg

ATTEST:


Tina J. Flores, Acting City Clerk

APPROVED AS TO FORM:


for Andrew Segovia, City Attorney



City of San Antonio

City Council

April 09, 2020

Item: 10

Enactment Number:

File Number: 20-2689

2020-04-09-0250

Ordinance approving a lease and contract with Atlas Organics CU05, LLC for processing services for the Solid Waste Management Department's organics program in an amount of \$1,870,000.00 for the first year of a ten year term, as well as a total payment of \$5,528,749.00 for infrastructure improvements and sorting equipment to be constructed at the Nelson Gardens Landfill. [David W. McCary, Assistant City Manager; David Newman, Director, Solid Waste Management]

Councilmember Rebecca Viagran made a motion to Motion to Approve. Councilmember John Courage seconded the motion. The motion passed by the following vote:

Aye: 8 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Sandoval, Courage and Perry

Absent: 2 Cabello Havrda and Pelaez

Abstain: 1 Gonzales

**AGREEMENT AND LEASE BETWEEN THE CITY OF SAN ANTONIO
AND
ATLAS ORGANICS, INC., D/B/A ATLAS ORGANICS CU05, LLC
FOR
ORGANIC MATERIAL PROCESSING SERVICES**

**STATE OF TEXAS
COUNTY OF BEXAR**

This Agreement and Lease (hereinafter referred to as the “Agreement” or “Lease”), made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager (hereinafter referred to as “City” or “COSA”), and

Atlas Organics, Inc.,
d/b/a Atlas Organics CU05, LLC
156 Magnolia Street
Spartanburg, SC 29304

a Corporation chartered under the laws of the State of Delaware (hereinafter referred to as “Atlas”, or “Contractor”), said Agreement being executed by the City pursuant to Ordinance No. 2020-04-09-_____, passed and approved by the City Council on April 9, 2020.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Proposal for Organic Material Processing Services, issued by the City on January 10, 2020 (RFP 020-025, 6100012385);
2. Exhibit II, Addendum I, dated January 15, 2020;
3. Exhibit III, Addendum II, dated January 31, 2020;
4. Exhibit IV, Addendum III, dated February 7, 2020;
5. Exhibit V, Addendum IV, dated February 18, 2020;
6. Exhibit VI, Addendum V, dated February 21, 2020;
7. Exhibit VII, Copy of enabling Ordinance No. 2020-04-_____-_____

Referenced Documents: Further, Atlas’s Response (including Atlas’s presentation to the COSA Evaluation Team on March 13, 2020, and Atlas’s Revised Pricing Proposal of March 30, 2020) to the RFP and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFP and its addendum govern Atlas’s response; this Agreement and Lease governs both the RFP and response; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written

or oral.

RECITALS:

WHEREAS, the City of San Antonio Solid Waste Management Department (SWMD) began the organics program in 2011 as a major strategy to divert waste from the landfill and increase recycling in the community. The organic materials are collected from the green carts provided to the residential customers by SWMD crews using automated equipment and delivered to a contractor to process the material into compost for processing and sale by the contractor as soil amendment and landscaping products. The materials collected from the green cart include organic material such as grass clippings, leaves, shredded paper and kitchen scraps. The program has grown very popular city-wide. In FY2019 the SWMD sent approximately 68,000 tons of material to its organic processor and it is anticipated that this program may grow to over 80,000 tons annually within the next ten years; and

WHEREAS, on January 10, 2020, the City issued a Request for Proposal (RFP 020-025, 6100012385) for the procurement of "Organic Material Processing Services". Two responses were received and these were evaluated and scored by a committee consisting of representatives from various City departments, and SAWS, and, based on the evaluations and rankings made in the selection process, staff recommended awarding a contract to Atlas Organics, Inc., d/b/a Atlas Organics CU05, LLC, as the most qualified respondent; and

WHEREAS, Atlas shall lease approximately 70 acres of land from the SWMD at the Nelson Gardens Landfill site (the "Landfill") and will design, construct, and install permanent infrastructure improvements (the Facility) with an estimated value at \$3,478,800.00; and will design, construct, and install pick line assets at the facility, the value of these assets are estimated at \$2,049,949.00; with a deadline to complete such work by December 31, 2020; and

WHEREAS, Atlas shall provide organic material processing services at the Facility for a 10-year term at a rate of \$27.50 per ton, allowing for annual CPI increases. The first year of the contract is expected to be valued at \$1,870,000.00. Atlas shall accept all SWMD loads for organics material processing and shall pay for all incidentals, including any non-organic or contamination below 5% by weight. The initial term for the processing services and lease shall begin January 1, 2021 and terminate on December 31, 2031, with two additional one-year extensions, at the City's sole option under the same terms and conditions; **NOW THEREFORE**,

The Parties agree that the recitals above are a part of this Agreement and that this Agreement incorporates all provisions and requirements of RFP 020-025, and the contract documents referenced above, and that those documents are incorporated into and made a part of this Agreement for all purposes to the extent that they are not in conflict with the provisions of this Agreement, in which event the provisions of this Agreement shall control.

Defined Terms. For purposes of this Agreement, the following terms shall have the following meanings:

Aerated Static Pile ("ASP"): shall mean the composting method which utilizes perforated pipes to allow air to go through the material to provide consistent oxygen to produce Compost. ASP

can be active, using air blowers and timers to force air through, or passive, using natural air convection.

Acceptable Feedstock: shall mean those biodegradable materials collected by the SWMD from the residential green carts and allowed by the Permit, including, but not limited to, the following: (i) yard waste, grass clippings, leaves, palm branches, brush, shrubs, tree pruning, straw, chipped tree branches, weeds, other plant materials; (ii) untreated and unpainted wooden pallets, wooden fencing and other clean wood waste; (iii) pre-consumer food residuals, post-consumer food residuals, cooked meats, and dairy products; (iv) compostable consumer products approved by the Biodegradable Products Institute (BPI). Items accepted are as provided in the RFP, Section 003(B), and is also referred to as “City Material” in this Agreement.

Compost: shall mean the product manufactured through the controlled aerobic, biological decomposition of biodegradable materials and has undergone mesophilic and thermophilic temperatures, which significantly reduces the viability of pathogens and weed seeds, and stabilizes the carbon such that it is beneficial to plant growth. Compost is further defined as having completed the composting process so that the material is mature, homogenous, and the temperature is low enough for use without harming vegetation. Upon completion, the Compost shall be STA-certified for quality and home garden use.

Contact Water: shall mean water from precipitation that has touched organic waste material prior to running off from the material.

Contamination: shall mean unacceptable material contained in the feedstock delivered to the Contractor. Unacceptable material includes items such as plastic film, metal, aluminum, foam or plastic. Contamination may also include items that have been treated or processed so that they are not compostable. Contamination shall be measured by weight. The Contractor shall be responsible for removal and recycling or disposal, including any and all costs for handling, transportation and disposal, of all contamination up to and including 5% by weight. In the event that the contamination exceeds 5%, the City shall be responsible for transportation and disposal and all costs associated with that effort for the volume greater than 5%.

Contamination Removal and Disposal Fee: shall mean a fee payable by City to Contractor. The City may, at its discretion, contract with Contractor to remove and dispose or recycle contamination greater than 5% at a rate of \$66.78 per ton which shall cover all costs including logistics, transportation and tip fees.

Director: shall mean the Director of the Solid Waste Management Department of the City, or his designee.

Facility: shall mean that certain approximately 70 acre parcel of land from which the Services are performed, located at the City’s Nelson Gardens Landfill site, and more particularly described in Exhibit 14 to the RFP (Exhibit I to this Agreement) attached hereto and made a part hereof, including all improvements to be constructed therein.

Hazardous Material: shall mean any substances, materials, chemicals and/or wastes which now or hereafter are classified or considered to be hazardous or toxic under any applicable

environmental law, or that are or become regulated by governmental authority because of toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity under any law applicable to the Facility, and shall also include: (a) gasoline, diesel fuel, and any other petroleum hydrocarbons; (b) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (c) polychlorinated biphenyls; (d) medical or biohazardous waste; and (e) flammable liquids and explosives. Hazardous material is a waste with properties that make it dangerous or capable of having a harmful effect on human health or the environment as defined by the US Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA).

Inbound Tonnage: shall mean all inbound material weighed by a certified scale owned by either City or the Contractor and dropped off at the Facility.

Minimum Tonnage: shall mean the minimum guaranteed tonnage of Acceptable Feedstock of 68,000 tons per contract year.

Permit: shall mean all Facility permits required by applicable Federal, State or Local agencies.

Process to Further Reduce Pathogens (PFRP): time-and-temperature requirement during the manufacturing of Compost to maintain average temperatures at 55 degrees Celsius (or 131 degrees Fahrenheit) or higher for 3 days.

Unacceptable Material: Any material other than Acceptable Feedstock, see also Contamination. Unacceptable material includes items such as plastic film, metal, aluminum, foam or plastic. Unacceptable material may also include items that have been treated or processed so that they are not compostable. Unacceptable material shall be measured by weight.

Term of Agreement, Term of Performance and Termination Date: The term of the Agreement (the “**Agreement Term**”) shall commence on the date that the last Party executes this Agreement (after approval by the City Council as signified by the passage of an Ordinance) and it has been approved as to form on the last page hereto (the “**Effective Date**”), and shall terminate on December 31, 2031, unless extended by the City for the option periods.

The Parties acknowledge and agree that the RFP was advertised with a long lead-time prior to commencement of providing organic material processing services to the City to allow potential Respondents ample time in case their proposal included a plan to build a new organic processing facility to accept and process all organics material from the City’s organics recycling (residential green cart) program and have the Facility be operational on or before December 31, 2020.

The Parties agree that Atlas shall lease approximately 70 acres of land from the SWMD at the Nelson Gardens Landfill site (the Facility), and will design, construct, and install permanent infrastructure improvements, and will design, construct, and install pick line assets on the Facility that will become the property of the City of San Antonio. This phase of the Agreement will begin on the Effective Date and terminate upon completion of construction of the Facility and acceptance by the Director, but no later than December 31, 2020.

The Parties agree that Atlas shall provide organic material processing services at the Facility for a

10-year term (the “**Performance Term**”) which shall commence, after approval by the City Council as signified by the passage of the Ordinance, on the date recited in the enabling Ordinance, January 1, 2021, and terminate on December 31, 2031. At the City’s sole option, the Agreement may be extended for two (2) additional one (1) year extension periods, under the same terms and conditions.

Compensation: As authorized by the Ordinance, total budget sums shall not exceed payment of \$5,528,749.00 to Atlas Organics for the infrastructure improvements and sorting equipment to be constructed on the Facility for processing of the organic material, unless City Council action is taken to amend the enabling Ordinance.

The Parties agree that Atlas will design, construct, and install permanent infrastructure improvements on the Facility that will become the property of the City. These improvements include: site work, a compost pad, roads, a scale house, a storm water pond and a Clear Span structure. The value of these improvements is estimated at \$3,478,800.00, and Atlas will be paid by SWMD in monthly draws based on the percentage of work complete related to the building, installation or purchasing of the infrastructure improvements with a deadline to complete such work by December 31, 2020.

The Parties agree that Atlas will design, construct, and install pick line assets on the Facility that will become the property of the City. These assets include: a robotic contamination removal system, a grinder, a radial stacker and electrical system upgrades to run the equipment. The value of these improvements is estimated at \$2,049,949.00, and Atlas will be paid for these improvements by SWMD in monthly draws based on the percentage of work complete related to the building, installation or purchasing of the assets with a deadline to complete such work by December 31, 2020.

In consideration of Contractor’s performance in a satisfactory and efficient manner, as determined solely by the Director of the Solid Waste Management Department (SWMD) (hereinafter “Director”), of all services and activities for the Facility, City agrees to pay Contractor an amount not to exceed five million five hundred twenty eight thousand seven hundred and forty nine dollars (\$5,528,749.00) as total compensation for the infrastructure improvements and equipment for the facility. It is agreed by the Parties that the City is not responsible for any costs, losses or expenses associated with this phase of the contract beyond this amount, nor shall the City be liable for any third party claims or obligations.

The Parties agree that Atlas shall provide organic processing services for the Agreement Term at a rate of \$27.50 per ton, allowing for annual CPI increases. The first year of the contract is expected to be valued at \$1,870,000.00. Atlas shall accept all SWMD loads for organics processing and shall pay for all incidentals, including any non-organic or contamination below 5% by weight.

The Parties agree that Atlas shall lease the Facility for an annual rental rate of one dollar (\$1.00).

The anticipated capital expenditures for the project are approximately \$5,528,749 which include direct cost of assets, contingency, and development and engineering fees. Atlas will bill and receive payments every 30 days for anticipated direct development or construction cost in the coming thirty (30) days. This schedule will be further defined between the parties after execution of this

Agreement under a mutually agreeable draw schedule. Atlas will bill COSA expected incurred direct cost expenses 30 days prior to those expenditures to keep from having COSA incur a financing expense. The development and engineering fee will be billed in two lump sums with fifty percent (50%) of the fee due at notice to proceed and fifty percent (50%) at substantial completion to be defined by the parties in the Agreement.

If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

Scope of Services: The services to be provided under this Agreement are to support the SWMD residential green cart Organics collection Program as outlined in RFP 020-025.

Upon signing of this Agreement, Atlas will begin working on a finalized site design in partnership with the COSA. When this design is complete, Atlas will begin all necessary engineering, procurement, and construction activities. At this point, a detailed timeline of construction will be produced by Atlas and approved by the COSA.

Infrastructure expenditures are expected to include approximately \$94,000.00 in site due diligence, and approximately \$3,384,000.00 in site preparation. Site due diligence is expected to include a site visit from an independent engineer, site soils investigation, stormwater analysis and design, pad design drawings and details, scale design, approach and structural design, permitting assistance, electrical engineering design, surveying, and soil, stone, and concrete testing. Site preparation is expected to include 30 acres of earthwork (2' compacted soil), 30 acres of geotextile membrane, 30 acres of aggregate base (ABC working pad), 4 acres of concrete (roads + tipping area), scales/scale house, one stormwater pond, 10 electrical poles, and a 3,200 square foot clear span building to house the pick line. The total expenditure is anticipated to be \$3,478,800.00, which includes a contingency, and development and engineering fees. Prior to commencing work related to the infrastructure assets, Contractor and City shall agree to written plans and specifications. Agreement of the drawings, plans and specifications shall be in writing as indicated by a signature from the Director or his designated representative. Atlas, as operator of the Facility, is authorized to modify plans and specifications to the mutual benefit of both parties, but any additional costs for modifications that exceed the budgeted amount shall be borne solely by Atlas. Payment of Infrastructure Assets will be made based on percent of work completed that complies and/or is consistent with the mutually agreed upon final plans and specifications for the Infrastructure Assets. Request for payments may be made monthly. In the event that work completed does not comport with the mutually agreed upon plans and specifications, both parties may agree to revise the plans and specifications only in the event of unforeseen circumstances or a field decision that yields more value to both parties. Atlas proposes that fifty percent (50%) of the development fee be paid at notice to proceed and fifty percent (50%) at substantial completion of the site. Atlas proposes that direct cost be billed through periodic draws that will be made from COSA to Atlas thirty (30) days before direct development costs associated with site development occur.

Expenditures associated with the presort facility and pick line assets are anticipated to be \$2,049,949.00. This includes the AMP Dual Cortex Robotic System, grinder, shredder, pick-line, radial stacker/conveyors, electrical infrastructure, contingency and a development and engineering fee. Atlas would replicate the fee schedule under the infrastructure assets section above for the

presort Facility assets, including the concept of mutually agreeing to the equipment to be obtained or constructed prior to acquisition. For equipment acquisition, Contractor may submit manufacturer information, model number, pictures and other data for the City's review and approval. The City shall approve these items in writing with a signature from the Director or his designated representative. Additional terms and conditions include: COSA will receive 2500 cubic yard annually of STA approved compost for educational purposes at a rate of \$0.00 per cubic yard. Quantities greater than 2500 cubic yards can be purchased by COSA at a preferential rate of \$14.00 per cubic yard;

Licensed Area/Equipment: Contractor will maintain the Facility in reasonable repair and condition pursuant to standard industry practices for similar operations, normal wear and tear excepted. This includes maintaining the roads, pads, storm water infrastructure and equipment within the Facility. Contractor shall maintain all equipment in good working order. Contractor shall perform all manufacturer's recommended preventative maintenance and operate the equipment professionally and within manufacturers guidelines.

During the Agreement Term, Contractor shall accept City organics in compliance with the RFP and the City shall deliver or cause to be delivered to the organics processing facility all City material described in the RFP Section 003–Background, Materials, subsection B, as the “program recyclable materials” (the “**City Material**”). It is understood and agreed by the Parties that the City will guarantee a minimum volume of 68,000 tons annually of City Material delivered to the Facility. The City covenants and agrees that during the Agreement Term it shall not take or support any action to prevent City Material from being delivered to the Facility once the Agreement Term commences and the Facility begins accepting City Material.

Processing/Tip Fees. During the Agreement Term, the City, through the Solid Waste Management Department, shall pay the Contractor a fee (the “**Tip Fee**”) of \$27.50 per ton for all tons of City Material delivered by the City or its agents to the Facility. The Tip Fees shall be adjusted pursuant to the RFP and the provisions below. The Tip Fees shall apply to all materials delivered to the Facility by the Solid Waste Management Department, their agents, or non-City entities authorized by the City.

Non-Processable Loads. If any load of City Material delivered to the Facility is not processable because it contains by weight more than forty percent (40%) non-organics or represents a health and safety hazard, Contractor may set aside such load and shall notify the City that the load is not processable. The City shall then have twenty-four (24) hours to inspect the load and if it reasonably determines that the load is in fact not processable, the City shall remove the entire rejected load within forty-eight (48) hours of the initial notification, all at its expense, and if not so removed, Contractor may do so and shall be fully reimbursed by the City as provided in this Agreement. Otherwise, Contractor shall accept and process the load.

Invoices. Contractor shall submit to the City a monthly invoice for the Tip Fees on or before the tenth (10th) calendar day of each month as to City Material delivered in the prior month.

Annual Fee Adjustment Subject to City Council's Approval. The Tip Fees shall remain fixed from the Effective Date through December 31, 2021. On January 1, 2022 and every January 1st thereafter for the Agreement Term, the Tip Fees may be increased or decreased, in accordance with

the Contract Documents and upon approval of City Council, based on the increase/decrease in the most recent "CPI-All Urban Consumers, Unadjusted 12 months ended December, Item: All items", from that in effect twelve (12) months earlier (the "CPI"). In no event shall an annual rate adjustment exceed five percent (5%). No decrease in the Tip Fees shall be made during the Performance Term if there had been any previous increases in the CPI that would have called for a Tip Fee increase, but that the City Council did not approve and was not implemented under this paragraph.

Construction/Renovation and Processing Equipment Plan. Within thirty (30) calendar days of the Effective Date, Contractor shall provide a detailed Construction/Renovation and Equipment Plan (the "Plan") based on the plan included in Contractor Response. The Plan shall, at a minimum, include the information required in the contract documents.

The Plan shall demonstrate the capability of the Contractor to accept, process, and market City Material as set forth in the Contract Documents. The City may at its expense retain a third party to review the Plan to evaluate whether the Facility will be in compliance with the Contract Documents. As required in the RFP, the Parties agree that the Facility must be constructed and operational no later than December 31, 2020.

I. DESCRIPTION OF LEASED PREMISES

1.1 City, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Atlas, does hereby lease unto Atlas, and Atlas does hereby accept from City, the following described property (collectively referred to as "Leased Premises"):

A. Ground Space: Approximately seventy (70) acres of land at the Nelson Gardens Landfill, San Antonio San Antonio, Bexar County, Texas, ("Ground Space"). and more particularly described in Exhibit 14 to the RFP (Exhibit I to this Agreement) attached hereto and made a part hereof.

1.2 City and Atlas have agreed that Atlas shall have exclusive use of the buildings and facilities on the 70 acre site to be constructed and used by Atlas at the Landfill unless otherwise agreed to in writing by the Parties. The location of the buildings and facilities shall also be added to the attached Exhibit 14 when such location is determined. City shall obtain a metes and bounds survey of the Leased Premises after the location of the improvements have been finalized by the parties. Said survey shall be incorporated into and become part of this Lease, and shall become the controlling description of the Leased Premises and their boundaries. Atlas's access is limited to the Leased Premises and no structures or other facilities shall be constructed on the remainder of the City's property without the prior approval of the City.

II. RENTAL

2.1 Atlas agrees to pay City as rental the sum of one dollar (\$1.00) annually for the use and occupancy of the Leased Premises and for the exclusive right to process organic materials at the Facility. Payment shall be due at the times and in the manner hereinafter provided. The annual payment shall commence upon last to occur of approval by the City Council and, the signature of the Parties to this Agreement. The due date for payment is ten (10) business days after Atlas's

acceptance of this Agreement and Lease and annually thereafter. Atlas shall have a full ten (10) year term from the start of operations at the organics processing facility which date is presently anticipated to be January 1, 2021. The City will invoice Contractor for the rental amount annually, on or around January 31st of each year.

2.3 All rentals and payments that become due and payable by Atlas shall be made to the City of San Antonio and shall be mailed or delivered to Solid Waste Management Department, 4410 W. Piedras Dr., San Antonio, Texas 78228 unless Atlas is otherwise notified in writing. The City reserves the right to require that payment be made by wire transfer. All rentals and payments unpaid for ten (10) days after the date due (as defined above in 2.1) shall bear an interest rate from the date due the payment was originally due until paid at an interest rate of eighteen percent (18%) per annum.

2.4 All rentals, fees and charges payable by Atlas to City under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.

III. USE OF LEASED PREMISES AND ATLAS RIGHTS AND OBLIGATIONS WITH RESPECT TO ORGANICS PROCESSING

3.1 Atlas shall use the Leased Premises only for the following activities: Construction and operation of an organic material processing facility for City Materials collected by the SWMD from residential green carts.

3.2 Prohibited use of the Leased Premises shall include all other uses and activities not expressly included in this Agreement.

IV. LEASE TERM

4.1 The term of this Lease shall be the same as the Agreement Term. If processing has not started at the Facility by January 1, 2021 then this Agreement shall immediately terminate.

4.2 Upon expiration or termination of this Agreement for any reason, Atlas shall have a period of sixty (60) days to remove any personal property from the Leased Premises. Property not removed shall be governed by section 13.1.

V. INDEMNIFICATION

As required and provided for in the RFP Exhibit 2.

VI. INSURANCE

As required and provided for in the RFP Exhibit 1.

VII. PERFORMANCE GUARANTEE & LANDLORD'S LIEN

7.1 Performance guarantee shall not be required under this lease and agreement.

7.2 Atlas hereby gives to City a lien upon all of its property located in or upon the Leased Premises, now, or at any time hereafter during the term of this lease, which lien will at all times be subordinate to any lien or security interest of the entity or entities providing financing for Atlas's project, to secure the prompt payment of charges herein stipulated to be paid for the use of said Premises; all exemptions of such property, or any of it, being hereby waived.

VIII. PRIVILEGES AND CONDITIONS

8.1 City hereby grants to Atlas the following general, non-exclusive privileges, uses and rights, subject to the terms, conditions and covenants herein set forth:

A. The general use by Atlas, of all common facilities and improvements, which are now, or may hereafter be, connected with or appurtenant to said Landfill, except as hereinafter provided, subject to all applicable fees of these areas. "Common landfill facilities" shall include all necessary public roadways, sidewalks, lighting facilities, or other common or public facilities appurtenant to said landfill.

B. The right of ingress to and egress from the Leased Premises, over and across common or public roadways serving the Landfill for Atlas, its agents, servants, patrons, invitees, suppliers of service and furnishers of material, and approved sublessees/sublicensees twenty four (24) hours a day, seven (7) days a week, and 365 days a year. Said right shall be subject to such ordinances, rules and regulations as now, or may hereafter, apply at the Landfill.

8.2 The granting and acceptance of this Lease Agreement is conditioned upon compliance with the covenant that the right to use said common Landfill facilities, in common with others so authorized, shall be exercised subject to and in accordance with the laws of the United States, State of Texas and City of San Antonio, the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of City, now in force or hereafter prescribed or promulgated by charter authority or by law.

8.3 City reserves the right to enter the Leased Premises (including any enclosed structures to be constructed) at any reasonable time for the purpose of inspecting same or verifying that fire, safety, sanitation regulations and other provisions contained in this Lease Agreement are being adhered to by Atlas. During its presence in the Leased Premises, City shall comply with all security requirements imposed on Atlas unless in the case of an emergency such as, but not limited to, flood, fire, or chemical spill, where the human life or health may be threatened or endangered. Atlas shall be obligated to make an authorized representative available at the City's request, or to accept liability if a hazard exists. In the event City enters the Leased Premises without an authorized representative of Atlas present, the City assumes all liability for the welfare and safety of those entering the Leased Premises and assumes liability for any actions of the personnel entering the Leased Premises while on the Leased Premises.

XIX. AS IS ACCEPTANCE AND CONDITION OF PREMISES

9.1 The parties agree that this Lease is granted by City, at Atlas's request.

9.2 Atlas has had full opportunity to examine the Leased Premises. Atlas's taking possession of the Leased Premises shall be conclusive evidence of Atlas's acceptance thereof in an "AS IS" condition, and Atlas hereby accepts same in its present condition as suitable for the purpose for which leased.

9.3 Atlas agrees that no representations respecting the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by City or its agents to Atlas, unless contained herein or made a part hereof by specific reference.

X. CONSTRUCTION BY ATLAS

10.1 Atlas shall have the right to erect, alter, remodel and renovate buildings and other improvements on the Leased Premises, provided that it shall submit to the Director plans and specifications prepared by registered architects and engineers setting forth the renovations, construction, alterations or improvements that Atlas desires to perform, in such detail as may be required by the Director and provided that approval of such plans and specifications by the Director is obtained as set forth below, such approval not to be unreasonably withheld. Atlas shall construct an organic material processing facility as proposed in response to the RFP and negotiations with the SWMD and as detailed above.

10.2 City agrees to examine and approve or disapprove plans and specifications submitted in accordance with the provisions above, within thirty (30) business days after receipt thereof, and to give Atlas written notification of same. In the event such approval is not forthcoming within thirty (30) days the plans as submitted shall be deemed to be accepted by the City and the Atlas shall proceed with work just as if the City had granted approval. The approval by City of such plans and specifications refers only to the conformity of same to the general architectural plan for the Leased Premises, as opposed to their architectural or engineering design. City, by giving its approval, assumes no liability or responsibility therefore, or for any defect in any work performed according to such plans and specifications. Atlas agrees not to commence any renovations, construction, alterations or improvements until City, through the Director, has given written approval regarding Atlas's plans and specifications so long as such approvals are not received later than thirty (30) days after submission as outlined above.

10.3 Further, prior to the commencement of construction, Atlas shall procure any and all additional approvals of the plans and specifications for its buildings and improvements required by any federal, state or municipal authorities, agencies, officers and departments having jurisdiction thereof and shall obtain any and all requisite building or construction licenses, permits or approvals. Construction shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, state or municipal agency or department having jurisdiction thereof. Atlas specifically agrees that it shall hold City completely harmless from and against any and all claims, causes of action or liabilities, whether actual or potential, associated with any construction or site development undertaken by Atlas hereunder.

10.4 The cost of any renovations, construction, alterations or improvements upon the Leased Premises shall be borne and paid for solely by Atlas. Except as may be otherwise set forth herein, City has no financial or other obligation of any kind under this Lease Agreement, other than the renting to Atlas of the premises which are the subject hereof for the term and consideration hereinbefore set forth.

10.5 Upon completion of all renovations, construction, alterations or improvements, a conformed set of "as built" plans and a Certificate of Occupancy shall be provided by Atlas to the Director.

10.6 In undertaking any such renovations, construction, alterations or improvements, it is expressly understood that, where applicable, unless otherwise agreed to in writing by the parties, Atlas shall be responsible, at its sole expense, for any and all construction and maintenance of access roads and connections to the Leased Premises and Landfill's access system necessary for access to the Leased Premises, along an alignment and in accordance with designs and plans approved in advance, in writing, by the Director. It is further expressly understood and agreed that any improvements and access thereto constructed by Atlas on the Leased Premises shall be performed in such a manner that shall not create or cause flowage of surface drainage onto adjacent tracts or interrupt flow to the storm drainage system. Notwithstanding the foregoing, Atlas shall have the right to use any roads and connections to the Leased Premises that are installed on the Landfill by City or on behalf of City, whether in existence on the Effective Date or installed thereafter.

XI. LIENS PROHIBITED

11.1 Atlas shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against Atlas's leasehold interest in the land, buildings or improvements thereon, by reason of any work, labor, services or materials supplied, or claimed to have been supplied, to Atlas or to anyone holding the Leased Premises, or any part thereof, through or under Atlas.

11.2 If any such mechanics' lien or material men's lien described in Paragraph 11.1 above shall be recorded against the Leased Premises, or any improvements thereon, Atlas shall provide notice to the Director of same, and cause the same to be removed or, bonded around pursuant to the terms of the Texas Property Code. In the alternative, if Atlas, in good faith, desires to contest the same, it shall be privileged to do so; however, in such case, Atlas hereby agrees to indemnify and save City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to sale of the property or execution of such judgment.

XII. MAINTENANCE AND REPAIR

Atlas commits to perform repairs to the Leased Premises within the following parameters:

- A. to maintain the structural soundness of roofs, foundations, and exterior building walls on the Leased Premises;

B. to maintain, repair, and replace parking areas, roads throughout the Lease Premises, lighting, electrical systems and other mechanical and building systems on the Leased Premises associated with the Facility or installed by Atlas;

C. alterations or modifications that may be required by law, including Americans With Disabilities Act requirements, orders, judgments, ordinances, regulations, codes, directive, permits, licenses, covenants, and restriction now or hereafter applicable to the Leased Premises when such alterations are or modifications are made necessary by the actions of Atlas (e.g. Atlas performed improvements to Leased Premises that were illegal or improper when originally constructed; Atlas removed or damaged improvements that would have met legal requirements); mentioned above, City has the option to perform the maintenance and improvement requested and invoice Atlas for City's costs associated with such maintenance and improvements plus a fifteen percent (15%) administrative fee.

12.3 Except for any shared space, including the crew quarters and restroom facilities, Atlas shall pay or cause to be paid, any and all charges for water, heat, gas, electricity, sewer and any and all other utilities used on the Leased Premises, throughout the term of, or any extension of, this Lease Agreement, including, but not limited to, any connection fees and any and all additional costs related to utility connection, metering, maintenance, repair and usage. It is understood and agreed by the Parties that the City has committed and will allow Atlas to tie into the existing water supply, such cost to interconnect being paid by Atlas. Additionally, the City will provide Atlas an office and use of the current crew quarters for periodic meeting space and bathroom facilities.

12.4 Except as provided in this Article XII, Atlas shall, throughout the term of this Lease Agreement and any extension hereof, assume the entire responsibility, cost and expense, for all repair and maintenance of the Leased Premises and all buildings and improvements thereon, whether such repair or maintenance be ordinary, extraordinary, structural or otherwise. Additionally, without limiting the foregoing, Atlas shall:

A. At all times maintain the buildings and improvements in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair; and

B. Replace or substitute any fixtures and equipment which have become inadequate, obsolete, worn out, unsuitable or undesirable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances other than those required to obtain financing, which shall automatically become a part of the buildings and improvements; and

C. At all times keep the Leased Premises' grounds, buildings, improvements, fixtures, equipment and personal property, in a clean and orderly condition and appearance, and in compliance with all permits; and

D. Provide, and maintain in good working order, all lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including City and Director, Solid Waste Management Department; and

E. Observe all insurance regulations and requirements concerning the use and condition of the Leased Premises, for the purpose of reducing fire hazards and increase the safety of Atlas's operations on the Landfill; and

F. Repair any damage caused by Atlas to paving or other surfaces of the Leased Premises or the Landfill, in connection with the scope of the Lease Agreement, caused by any oil, gasoline, grease, lubricants, flammable liquids and/or substances having a corrosive or detrimental effect thereon, or by any other reason whatsoever; and

G. Take measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of the Leased Premises; the planting, maintaining and replanting of any landscaped areas; consistent with Atlas's construction and operations and with prior approval of the Director or his designee; and

H. Be responsible for the maintenance and repair of all utility services lines upon and serving the Leased Premises but limited to only those lines servicing the Leased Premises including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers; and

I. Keep and maintain all vehicles and equipment operated by Atlas on the Facility in safe condition, good repair and insured, as required by this Lease Agreement; and

J. Replace broken or cracked plate glass, paint/repaint structures and, where applicable, mow the grass upon the Leased Premises; and

K. Provide and use suitable covered metal receptacles for all garbage, trash and other refuse; assure that boxes, cartons, barrels or similar items are not piled in an unsightly, unsafe manner, on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Director, for the adequate sanitary handling and disposal away from the Landfill, of all trash, garbage and refuse caused as a result of the operation of Atlas's business.

L. All premises will be kept in a safe and secure manner. Trash and litter shall be kept to a minimum. The Facility shall be well kept and professional looking. All operations shall be conducted in a safe and professional manner to ensure against fire or other hazards.

M. All Infrastructure Assets and Pick Line Assets shall be maintained properly with all preventative maintenance performed. They shall be operated in a professional manner in accordance with manufacturers recommendations and guidelines.

12.6 The adequacy of the performance of the foregoing maintenance and repair by Atlas shall be determined by the Director, whose reasonably exercised judgment shall be conclusive. Should Atlas refuse or neglect to undertake any such maintenance or repair, or if City is required to perform any maintenance or repair necessitated by the negligent acts or omissions of Atlas, its employees, agents, assignees, subtenants or licensees, then City shall have the right, but not the obligation, to perform such maintenance or repair on behalf of and for Atlas. The costs of such maintenance or repair, plus any associated overhead reasonably determined by City, shall be

reimbursed by Atlas to City no later than ten (10) days following receipt by Atlas of written demand from City for same, or if agreed by the Parties a credit will be applied to the monthly Tip Fee payment. In cases not involving maintenance or repair requiring exigent action, City shall provide Atlas a written request that Atlas perform such maintenance or repair, at least thirty (30) days before City effects such maintenance or repair on behalf of Atlas.

XIII. TITLE

13.1 It is expressly understood and agreed that any and all items of personal property owned, placed or maintained by Atlas on the Leased Premises during the term hereof shall be and remain Atlas's property. Provided that Atlas is not in default in its rental payments under this Lease Agreement, it may remove or cause to be removed all such items from the Leased Premises. At City's sole election, any such items remaining on the Leased Premises more than sixty (60) days after City provides Atlas notice to vacate the premises due to expiration of the term hereof or upon earlier termination, shall then belong to City without payment of consideration.

13.2 Unless otherwise provided in this Lease Agreement, all foundations, buildings, alterations, additions or improvements, except removable trade fixtures, (hereinafter "Improvements") made upon the Leased Premises by Atlas shall be the property of Atlas during the Lease Term until construction of the Facility is completed and payment by the City to Atlas has been made. Such Improvements may be conveyed, transferred or assigned, only to a person or entity to whom this Lease Agreement simultaneously is being transferred or assigned, whereupon the holder of the leasehold interest hereunder shall own the improvements. Any attempted conveyance, transfer or assignment of Improvements, to any person or entity, whether voluntary, by operation of law or otherwise, without prior approval of the Director, shall be void and of no effect.

13.3 Unless otherwise stated herein, at City's sole option, title to Improvements made upon the Leased Premises by Atlas, and permanent fixtures annexed thereto, shall vest in and become the property of City, at no cost to City and without any instrument of conveyance, upon the expiration of the term of this Lease Agreement or upon earlier termination thereof. Notwithstanding the foregoing, Atlas covenants and agrees, upon City's demand, on or after termination of the Lease Agreement, to execute any instruments requested by City in connection with the conveyance of such Improvements. City shall notify Atlas whether or not City intends take title to Improvements, or any portion thereof, as herein provided, at least sixty (60) days prior to the expiration of the term of this Lease Agreement or earlier termination thereof. City's failure to provide such notice, however, shall not act as a waiver of its rights hereunder; provided that City, within a reasonable time after receipt of Atlas's written request, advises Atlas of its election hereunder.

13.4 Should City elect not to take title to Improvements, or any portion thereof, as provided in Paragraph 13.3 above, same shall be removed by Atlas, at its sole cost and risk, in compliance with all applicable laws and regulations and, to the degree reasonably possible, the Leased Premises shall be restored to the condition that existed prior to the construction of same. Should Atlas fail to undertake such removal within ninety (90) days following the expiration or termination of this Lease Agreement, City may undertake such removal at Atlas's expense.

XIV. ENVIRONMENTAL COMPLIANCE

14.1 City and Atlas acknowledge that the Nelson Gardens Landfill site is a closed municipal solid waste landfill that is being maintained by the City in accordance with the requirements of the Texas Commission on Environmental Quality. Notwithstanding the fact that the Facility is located in an area of the Landfill site that was not used for landfill disposal, no actions by Atlas under this Lease and Agreement shall interfere with or place in jeopardy compliance with the TCEQ requirements to maintain this status.

14.2 Atlas acknowledges that if any fuel tanks or other facilities are installed on the premises during the term of this Lease, Atlas shall be the owner any fuel storage facilities placed by Atlas, its sublessees, licensees or permittees in, on or upon the Leased Premises. Atlas agrees that it shall, at its sole expense, comply with all applicable federal, state and local statutes, laws, ordinances, rules and regulations concerning fuel storage facilities, including, but not limited to, regulations promulgated by the Environmental Protection Agency, as well as all inspection, financial liability and inventory control recording requirements, and that it shall provide City with copies of certificates of registration from the Texas Commission on Environmental Quality (hereinafter "TCEQ") for any new fuel storage facilities together with copies of any required proof of financial responsibility and other documentation reasonably required by the Director, Solid Waste Management Department or applicable regulatory agency.

14.3 During the term of this Lease Agreement and any extensions thereof, should changes in applicable statutes, laws, rules or regulations regarding fuel storage facilities necessitate the removal, modification or replacement of such fuel storage facilities in, on, upon or under the Leased Premises, then such removal, modification or replacement shall be timely undertaken and performed by Atlas, at its sole cost and expense. Ownership of the fuel storage facilities shall, at all times, remain in the Atlas, its sublessees, licensees and permittees. Furthermore, if requested by City, Atlas shall within ninety (90) days following the termination or expiration of this Lease Agreement, at its sole cost, remove said Items from the Leased Premises, perform any required soil or other investigations, perform regulatory remediation and restore the Leased Premises to a condition in compliance with all applicable statutes, laws, rules, or regulations governing fuel storage facilities.

14.4 Atlas shall, in conducting any activity or business on the Leased Premises, including environmental response or remedial activities, comply with all environmental laws, including, but not limited to, those regarding the generation, storage, use, transportation and disposal of solid wastes, hazardous materials, toxic chemicals, special wastes or other contaminants, and all laws, regulations and notice requirements pertaining to releases or threatened releases of hazardous materials, toxic chemicals, special wastes or other contaminants into the environment. Atlas shall not cause the release, or permit its employees, agents, permittees, contractors, subcontractors, subAtlas, or others in Atlas's control, supervision, or employment, to release (whether by way of uncapping, pouring, spilling, spraying, spreading, attaching or otherwise), into or onto the Leased Premises or any other location upon or above the Landfill (including the air, ground and ground water thereunder and the sewer and storm water drainage systems thereon), any quantity of hazardous substances (as defined or established from time to time by applicable local, state, or federal law and including, among other things, hazardous waste and any other substances that have been or may in the future be determined to be toxic, hazardous or unsafe). To the extent any such release may exceed quantities or volumes permitted by applicable federal, Texas or

local law, Atlas shall immediately notify the Director, TCEQ, and Local Emergency Planning Committee, as may be required under the federal Emergency Planning and Community Right To Know Act, or other applicable law or regulation. Atlas, or any occupant of Leased Premises, shall be responsible for compliance with said Act, in the event of any such release.

14.5 Atlas shall remedy any release or threatened release caused by Atlas's operations at the Landfill, as described above and, whether resulting from such release or otherwise, remove any hazardous materials, special wastes and any other environmental contamination caused by Atlas on, under or upon the Leased Premises, as may be required by a governmental or regulatory agency responsible for enforcing environmental laws and regulations. Such work shall be performed, at Atlas's sole expense, after Atlas submits to City a written plan for completing such work. City shall have the right to review and inspect all such work at any time, using consultants and representatives of its choice, at City's sole cost and expense. Specific cleanup levels for any environmental remedial work shall be designed to meet all of the applicable environmental laws and regulations, to the satisfaction of the appropriate government or regulatory agency responsible for enforcing environmental laws and regulations.

14.6 Atlas agrees to defend, indemnify and hold harmless City, its elected and appointed officials, officers, agents and employees, from and against any and all losses, claims, liability, damages, injunctive relief, injuries to person, property or natural resources, costs, expenses, enforcement actions, actions or causes of action, fines and penalties, arising solely as a result of action or inaction of Atlas, its employees, agents or contractors, in connection with the release, threatened release or presence of any hazardous material, contaminants, or toxic chemicals at, on, under, over or upon the Leased Premises and Landfill, whether or not foreseeable, regardless of the source or timing of occurrence, release, threatened release, presence or discovery of same. The foregoing indemnity includes, without limitation, all reasonable costs at law or in equity for removal, clean-up, remediation and disposal of any kind, as well as all reasonable costs associated with determining whether the Landfill is in compliance, and causing the Landfill to be in compliance with, all applicable environmental laws and regulations and all reasonable costs associated with claims for damages to persons, property or natural resources. In the event that City is named in any enforcement action or lawsuit by any party in connection with the environmental condition of the Leased Premises caused solely by the action or inaction of the Atlas, Atlas shall defend City and indemnify and hold harmless City from any reasonable costs, damages, fines and penalties resulting therefrom.

14.7 In addition to any other rights of access herein regarding the Leased Premises, City shall, upon reasonable notice, have access thereto in order to inspect and confirm that the Atlas is using same in accordance with all applicable environmental laws and regulations. Atlas shall, upon the Director's demand and at Atlas's sole expense, demonstrate to the Director (through such tests, professional inspections, samplings, or other methods as may be reasonably required by the Director) that Atlas has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable federal, Texas or local law. Qualified independent experts, chosen by Atlas, subject to City's approval, which approval shall not be unreasonably withheld, shall conduct any such tests and assessments. Atlas shall provide copies of reports from any such testing or assessments to City upon receipt. Should Atlas not provide same to City, City may conduct, or cause to be conducted, such tests, inspections, samplings and

assessments, and Atlas shall reimburse City for all costs of such actions, no later than thirty (30) days following receipt by Atlas of invoices therefore, provided however that no reimbursement will be required if the tests, inspections, etc. demonstrate that Atlas has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable federal, Texas or local law. City reserves the right to conduct any of the above actions, at reasonable intervals and at the Director's discretion.

14.8 Atlas, at City's request, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the non-privileged documents and materials Atlas has prepared pursuant to any environmental law or regulation, which may be retained by City or submitted to any governmental regulatory agency; provided, such documents and materials relate to environmental regulatory compliance and pertain to the Landfill or the Leased Premises. If any environmental law or regulation requires Atlas to file any notice or report of a release or threatened release of regulated materials on, under or about the Leased Premises or the Landfill, Atlas shall promptly submit such notice or report to the appropriate governmental agency and simultaneously provide a copy of such report or notice to the Director. In the event that any written allegation, claim, demand, action or notice is made against Atlas regarding Atlas's failure or alleged failure to comply with any law or regulation, Atlas, as soon as practicable, shall notify the Director in writing and provide same with copies of any such written allegations, claims, demands, notices or actions so made.

14.9 The parties to this Lease Agreement, including the employees or subcontractors who may enjoy a future right of occupation through Atlas, acknowledge a right and a duty in City, exercised by the Director, to review safety and potential environmental impacts of any proposed operation, business, maintenance or other activity of the Atlas and its sublessees. To this end, said Director shall have authority to disapprove an activity of the Atlas and/or any sublessee, on the basis of a risk assessment. The parties understand that Landfill premises are not intended for use involving refining, processing, manufacturing, maintenance, overhaul, or similar heavy industrial activities entailing use, storage, manufacture, or transport of critical volumes of regulated or hazardous materials or toxic chemicals. For purposes of this Lease Agreement, "critical volumes" are those which, in the discretion and judgment of the Director pose or may pose an unreasonable risk to Landfill property, its occupants, employees or the public. Discretion and judgment are reserved to the Director due to the fact that combinations and proximity of such materials are synergistic. The Director's decision in this regard is final, and said Director shall exercise such review prior to any lease or sublease, from time to time, as he may deem necessary for appropriate risk assessment of existing leases and subleases.

14.10 Atlas and City agree that the environmental responsibility of Atlas is limited to the Leased Premises and the equipment the Atlas installs, operates and/or owns on the Leased Premises. Atlas will be responsible for environmental compliance solely with respect to any improvements the Atlas may add to the Leased Premises. In no event shall the Atlas be responsible for compliance/reporting to state or federal authorities or absorb financial responsibility of environmental issues, waste deposits, ground water issues, or other environmental requirements/liabilities on landfill property with the exception of any such obligations exclusively related to the operation and maintenance of the Facility.

XV. SIGNS

Atlas shall neither erect signs nor distribute advertising matter upon Landfill Premises, without the prior written consent of the Director. City and Atlas hereby confirm approval of all signs currently on the Leased Premises only if such signs were built in accordance with the City's permitting process and if such signs do not constitute an obstruction hazard as determined by the Director.

XVI. REGULATIONS

Atlas's officers, agents, employees and servants shall obey all rules and regulations promulgated by City, its authorized agents in charge of the Landfill, or other lawful authority, to insure the safe and orderly conduct of operations and traffic thereon.

XVI. QUALITY OF SERVICES

Atlas shall, at all times, furnish good, prompt and efficient services.

XVII. REPRESENTATIONS AND WARRANTIES

17.1 Atlas Representations and Warranties. Atlas represents and warrants to City as follows:

- A. Atlas is a Delaware limited liability company with full legal right, power and authority to enter into and to fully and timely perform its obligations hereunder;
- B. Atlas has duly authorized, executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation, enforceable against Atlas in accordance with its terms;
- C. Neither the execution nor delivery by Atlas of this Agreement, nor the performance by Atlas of its obligations hereunder, conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it, or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which Atlas is a party or by which Atlas or any of its properties or assets are bound, or constitutes a default thereunder;
- D. No approval, authorization, order, consent, declaration, registration or filing with any federal, state or local governmental authority is required for the valid execution and delivery of this Agreement by Atlas, except such as have been disclosed to City or have been duly obtained or made;
- E. Atlas has no knowledge of any action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending against Atlas, in which an unfavorable decision, ruling or finding would materially adversely affect the performance by Atlas of its obligations hereunder, or that, in any way, would materially adversely affect the validity or enforceability of this Agreement; and
- F. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it.

17.2. City Representations and Warranties. City represents and warrants to Atlas as follows:

- A. City is a Texas home rule municipality, with full legal right, power and authority to enter into and to fully and timely perform its obligations hereunder;
- B. City has duly authorized, executed and delivered this Agreement, and this Agreement constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms;
- C. Neither the execution nor the delivery by City of this Agreement, nor the performance by City of its obligations hereunder conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it, or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree, or any agreement or instrument to which City is a party or by which City or any of its properties or assets are bound, or constitutes a default thereunder;
- D. No consent, approval or authorization of, or registration, filing or declaration with, any federal or state governmental authority or other regulatory agency or action of the corporate authorities of the City, which has not been received, waived or satisfied as of the date hereof, is required for the valid execution and delivery by City of this Agreement, the consummation by City of the transactions contemplated hereby or compliance by City with the terms and provisions thereof;
- E. All persons making up City's City Council are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with City's charter and other applicable law;
- F. The term of this agreement does not extend beyond any applicable limitation imposed by City's charter or other applicable law;
- G. City has no knowledge of any action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending against City, in which an unfavorable decision, ruling or finding would materially adversely affect the performance by City of its obligations hereunder, or that, in any way, would materially affect the validity or enforceability of this Agreement;
- H. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;
- I. City holds title to the Landfill free and clear of all liens, encumbrances and claims of third parties.

XVIII. RESERVED

XIX. SECURITY

19.1 City shall use reasonable efforts to provide for the security of the Landfill to prevent entry or movement of unauthorized persons thereupon, in accordance with the City Code of San Antonio,

Texas, as currently written, or as amended or replaced in future. Atlas will be responsible for the security of the Facility to include securing the premises, equipment and property therein. City shall not be responsible for loss by vandalism, fire, or other destruction of property.

19.2 Atlas shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States or State of Texas, regarding Landfill security requirements or measures.

XX. TERMINATION, DEFAULT AND REMEDIES

Termination: For purposes of the Agreement, "termination" of the Agreement shall mean termination by expiration of the Agreement Term, as described above, or earlier termination pursuant to any of the provisions hereof. Upon written notice from the City delivered to Contractor prior to Contractor's remedy of Contractor's sale, transfer, pledge, conveyance or assignment of the Agreement in violation of the provisions herein (an "Assignment Violation"), the City may terminate the Agreement as of the date provided in such notice if Contractor has committed an Assignment Violation.

Defaults With Opportunity for Cure. Each of the following shall constitute an "Event of Default" on the part of either Party, as applicable below, to the Agreement:

- (a) a Party's failure to timely perform any of its obligations under the Agreement; or
- (b) bankruptcy or insolvency of either Party, provided that in the case of involuntary bankruptcy, the proceeding or case relating thereto shall continue undismissed for a period of 120 days, and further provided that the Party has moved within 15 days of the filing of the petition for involuntary bankruptcy to have such petition declared invalid.

In the Event of Default by either Party, if within thirty (30) days after the defaulting Party shall have received notice from the other Party that an Event of Default has occurred, the defaulting Party has not remedied such Event of Default, the other Party shall have the option, at any time prior to such Event of Default being remedied, to terminate the Agreement by providing written notice to the defaulting Party and shall have the right to seek all other remedies provided by law against the defaulting Party. In the case of a termination by reason of Atlas's Event of Default, City shall have the right to contract with another Contractor to complete the work required in the Agreement and to offset the cost of said new Agreement with a new Contractor against Atlas's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits, beyond a reasonable temporary period, the performance of any of the duties herein, including pursuant to a decision of a court of competent jurisdiction that such state or federal law or regulation prohibits such performance, then the Agreement shall automatically terminate as of the effective date of such prohibition.

Regardless of how the Agreement is terminated as provided above, Atlas shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to

City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Atlas, or provided to Atlas, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Atlas in accordance with records retention requirements. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Atlas's sole cost and expense. Payment of compensation due or to become due to Atlas is conditioned upon delivery of all such documents, if requested.

Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of the Agreement, Atlas shall submit to City its claims, in detail, for the monies owed by City for services performed under the Agreement through the effective date of termination. Failure by Atlas to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Atlas of any and all right or claims to collect monies that Atlas may rightfully be otherwise entitled to for services performed pursuant to the Agreement.

Upon the effective date of expiration or termination of the Agreement, Atlas shall cease all operations of work being performed by Atlas or any of its subcontractors pursuant to the Agreement.

Termination not Sole Remedy. In no event shall a Party's action of terminating the Agreement pursuant to its termination rights hereunder by reason of a default of the other party hereunder, be deemed an election of such Party's remedies as a result of such default, nor shall such termination limit, in any way, at law or in equity, such Party's right to seek damages from or otherwise pursue the other Party for its default hereunder

20.1 Each of the following shall constitute an event of default by Atlas:

A. Atlas shall fail to pay any rent as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) days after receipt by Atlas of written notice thereof.

B. Atlas shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Atlas of written notice of same, or if more than thirty (30) days shall be required because of the nature of the default, if Atlas shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.

C. Atlas shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.

D. An Order of Relief shall be entered, at the request of Atlas or any of its

creditors, under federal bankruptcy, reorganization laws or any law or statute of the United States or any state thereof.

E. A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Atlas and shall not be dismissed within thirty (30) days after the filing thereof.

F. Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Atlas and such possession or control shall continue in effect for a period of thirty (30) days.

G. Atlas shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.

H. The rights of Atlas hereunder shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceeding or occurrence described in paragraphs C through G of this Section 20.1.

I. Atlas shall voluntarily discontinue its operations at the Landfill for a period of sixty (60) consecutive days for reasons other than an act or omission of City, its agents, employees or contractors.

20.2 Each of the following shall constitute an event of default by City:

A. City shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, or shall interfere with or prevent Atlas's enjoyment of the rights granted hereunder, and if such neglect, failure, interference or prevention should continue for a period of thirty (30) days after receipt by City of written notice of same, or if more than thirty (30) days shall be required because of the nature of the default, if City shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.

B. City shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.

C. An Order of Relief shall be entered, at the request of City or any of its creditors, under federal bankruptcy, reorganization laws or any law or statute of the United States or any state thereof.

D. A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against City and shall not be

dismissed within sixty (60) days after the filing thereof.

E. Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of City and such possession or control shall continue in effect for a period of sixty (60) days.

F. City shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.

G. The rights of City hereunder shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceeding or occurrence described in paragraphs B through F of this Section 20.2.

20.3 In the event any default shall occur, the non-defaulting party then, or at any time thereafter, but prior to the removal of such condition of default, shall have the right, at its election, either to terminate this Lease Agreement, by giving at least thirty (30) days written notice to the defaulting party, at which time if Atlas is the defaulting Party, Atlas will then quit and surrender the Leased Premises to City, but Atlas shall remain liable as hereinafter provided, or City may enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Atlas and those claiming under Atlas, forcibly if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Atlas or those claiming under Atlas for such repossession.

20.4 City's repossession of the Leased Premises shall not be construed as an election to terminate this Lease Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Atlas, or unless such termination is decreed by a court of competent jurisdiction.

20.5 Upon repossession, City shall have the right, at its election and whether or not this Lease Agreement shall be terminated and after Atlas has removed its equipment and facilities from the Leased Premises, to relet the Leased Premises or any part thereof for such period(s), which may extend beyond the term hereof, at such rent and upon such other terms and conditions as City may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Atlas and City agree that City's duty to relet the Leased Premises or otherwise to mitigate damages hereunder shall be limited to those requirements set forth in the Texas Property Code, as amended. City shall in no event be liable, and Atlas's liability shall not be affected or diminished whatsoever, for failure to relet the Leased Premises, or in the event the Leased Premises are relet, for failure to collect any rental under such reletting, so long as the City uses objectively reasonable efforts to comply with said Property Code. City and Atlas agree that any such duty shall be satisfied and City shall be deemed to have used objective reasonable efforts to relet the Leased Premises and mitigate City's damages by advising City's lease agent, if any, of the availability of the Leased Premises, or City operates the Facility.

20.6 In the event that City elects to relet, rentals received by same from such reletting shall be

applied: first, to the payment of any indebtedness, other than rent due hereunder from Atlas under this Lease Agreement; second, to the payment of any cost of such reletting; third, to the payment of rent due and unpaid hereunder; and finally, the residue, if any, shall be held by City and applied hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Atlas hereunder, then Atlas shall pay such deficiency to City. Such deficiency shall be calculated and paid monthly. Atlas shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such reletting not covered by the rentals received from such reletting of the Leased Premises.

20.7 If City shall terminate this Lease Agreement or take possession of the Leased Premises by reason of a condition of default, Atlas and those holding under Atlas, shall forthwith remove their goods and effects from the Leased Premises. If Atlas or any such claimant shall fail to effect such removal forthwith, City may, without liability to Atlas or those claiming under Atlas, remove such goods and effects and store same for the account of Atlas or of the owner thereof at any place selected by City, or, at City's election, and upon giving thirty (30) days' written notice to Atlas of date, time and location of sale, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as City in its sole discretion may deem advisable. If, in City's judgment, the cost of removing and storing, or of removing and selling any such goods and effects, exceeds the value thereof or the probable sale price thereof, as the case may be, City shall have the right to dispose of such goods in any manner City may deem advisable.

20.8 Atlas shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse the SWMD Fund from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds remain after such reimbursement, City may deduct from such surplus any other sum due to City hereunder and shall pay over to Atlas any remaining balance of such surplus sale proceeds.

20.9 If City shall enter into and repossess the Leased Premises as a result of Atlas's default in the performance of any of the terms, covenants or conditions herein contained, then Atlas hereby covenants and agrees that it will not claim the right to redeem or re-enter the said Premises to restore the operation of this Lease Agreement, and Atlas hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Atlas, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Atlas shall have made default under any of the covenants of the Lease Agreement and to claim any subrogation of the rights of Atlas under these presents, or any of the covenants thereof, by reason of such payment.

20.10 All rights and remedies of City and Atlas herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently, whenever and as often as deemed desirable.

20.11 If proceedings shall, at any time, be commenced for recovery of possession, as aforesaid, and compromise or settlement shall be effected either before or after judgment whereby Atlas shall be permitted to retain possession of the Leased Premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or to

this Agreement.

20.12 Any amount paid or expense or liability incurred by City for the account of Atlas may be deemed to be additional rental and the same may, at the option of City, be added to any rent then due or thereafter falling due hereunder.

XXI. HOLDING OVER

It is agreed and understood that any holding over by Atlas, with City's consent, after the termination of this Lease Agreement, shall not renew and extend same, but shall operate and be construed as a tenancy from month-to-month, upon all the terms and conditions set forth herein, except that rental, as reasonably determined by the Director, Solid Waste Management Department, shall also be paid to City by Atlas for all buildings on the Leased Premises, as of the end of the primary term of this Lease Agreement. Should Atlas hold over against City's will, Atlas agrees to pay to City, as monthly rent during such period of holding over, for such Premises (including all buildings located thereon, whether title to such buildings is in the name of City or Atlas) for each month of such tenancy, the sum of five thousand dollars (\$5,000.00), plus all applicable fees, including but not limited to any other fees authorized by this Agreement and/or authorized by Ordinance. Atlas shall be liable to City for all loss or damage resulting from such holding over against City's will after the termination of this Lease Agreement, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by City, in the event that Atlas fails or refuses to surrender possession, shall not operate to give Atlas any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by City of its right to immediate possession thereafter.

XXII. ASSIGNMENT, SUBCONTRACTING AND SUBLET

Assignment and Subcontracting: Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under the Agreement. Persons retained to perform work pursuant to the Agreement shall be the employees, agents or subcontractors of Contractor. Contractor, its employees, agents or its subcontractors shall perform all necessary work.

It is City's understanding, and the Agreement is made in reliance thereon, that Contractor does intend to use subcontractors in the performance of the Agreement for the design, construction and installation of assets for the Facility. When Contractor identifies the subcontractors in the performance of the Agreement in any material manner, such shall be approved by the Director prior to the provision of any services by such subcontractor.

Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of the Agreement. Compliance by subcontractors with the Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in the Agreement to an assignee, transferee, or subcontractor of Contractor means only any such assignee, transferee or subcontractor that has been approved by the Director.

Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any

interest in the Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in the Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

Any attempt to transfer, pledge or otherwise assign the Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in the Agreement, City may, at its option, in accordance with the provisions of the section hereof titled "Termination, Default and Remedies" cancel the Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with the termination provisions herein, notwithstanding any other remedy available to City under the Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of the Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

22.1 Atlas shall not transfer or assign this Lease Agreement or Atlas's interest in or to the Leased Premises, or any part thereof, without having first obtained City's prior written consent, which may be given only by or pursuant to an ordinance enacted by the City Council of the City of San Antonio, Texas; provided, however, that to the extent allowed by law, the foregoing shall not apply to and prevent the assignment of this Lease Agreement to any corporation, or other entity with which Atlas may merge, that may acquire ownership of Atlas, or that may succeed to all of Atlas's rights in Atlas's assets used in the performance of its obligations under this Agreement.

22.2 Atlas shall not sublet the Leased Premises or any part thereof without having first obtained the Director's written consent. In the event Atlas requests permission to sublease, the request shall be submitted to said Director, at least 30 days prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto. The identity of the sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history and all other information requested by said Director shall be specified. Atlas shall not sublease a total of more than fifty percent (50%) of the Leased Premises and/or or its component building and ground premises. If such limit is exceeded, City shall have the right, upon thirty (30) days' written notice, to recapture the space described in the sublease, and terminate the entire Lease Agreement on the expiration of such thirty (30) day period. In the event of any recapture, Atlas's rental payments shall be adjusted on a pro- rata basis; provided, however, that all options of City contained in the Default and Remedies Section shall be available to City.

22.3 In the event of a sublease where the rental established in the sublease exceeds the rental for same established in the Lease Agreement, Atlas shall pay to City, as additional rent, the excess of the rental received from the sublessee over that specified to be paid by Atlas herein, provided that Atlas may charge a reasonable fee for administrative costs in addition to the sublease rental, not to exceed fifteen (15%) of the specified sublease rental. Such fifteen percent (15%) shall not be considered as excess rental. Nothing herein shall prevent Atlas from charging a reasonable fee to others for the use of capital equipment and facilities owned by Atlas on the subleased premises and charging for use of utilities and other services being paid for by Atlas. Should any method of

computation of rental to be paid by a sublessee, other than computation based upon a rental rate per square foot be employed, the provisions of this paragraph will apply if the rental received for the proportionate area of the Leased Premises by Atlas exceeds the rental paid to City for said proportionate area of the Leased Premises.

22.4 Each transfer, assignment or subletting to which there has been consent shall be by written instrument, in a form satisfactory to City, and shall be executed by the transferee, assignee or sublessee who shall agree, in writing, for the benefit of City to be bound by and to perform the terms, covenants and conditions of this Lease Agreement. Four (4) executed copies of such written instrument shall be delivered to City. Failure either to obtain City's prior written consent or to comply with the provisions herein contained, shall operate to prevent any such transfer, assignment or subletting from becoming effective.

22.5 Should the subletting of the Leased Premises be approved by City, however, Atlas agrees and acknowledges that it shall remain fully and primarily liable under this Lease Agreement, notwithstanding any such sublease and that any such sublessee shall be required to attorn to City hereunder.

22.6 The receipt by the City of rent from an assignee, subtenant or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Atlas from further observance or performance by Atlas of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the City, unless such waiver be in writing, signed by the Director.

22.7 City hereby consent to Atlas's assignment or pledge of this Agreement and all rights granted hereunder as collateral in connection with the financing required in connection with Atlas's performance of its obligations under this Agreement, provided that Atlas shall notify City of any such pledge or assignment, including the name and address of any assignee. City shall provide copies of all notices delivered to Atlas hereunder to all such assignees and shall permit such assignees to perform any of Atlas's obligations hereunder, including the cure of any failure by Atlas to perform any obligation hereunder within the time allowed to Atlas for such cure. City agrees to execute any additional documents reasonably required in connection with Atlas's financing, provided that such documents do not impose upon City obligations in addition to the obligations set out in this Agreement. Subject to approval by the City Council, City agrees to accept a lender of Atlas or a designee of such lender as a substitute lessee under this Agreement, provided that any such substitute lessee shall have the technical capability of performing the obligations of Atlas hereunder and shall have a credit rating equal to or better than Atlas's credit rating on the Effective Date.

22.8 City will not sell or otherwise transfer all or any portion of City's interest in the Landfill unless the purchaser or transferee agrees in writing to assume all of City's obligations pursuant to this Agreement. In such event, City will provide Atlas with a copy of such written agreement at least fifteen (15) days in advance of the effective date of any such sale or transfer.

XXIII. FIRE AND OTHER DAMAGE

23.1 In the event a City-owned building or equipment on the Leased Premises shall be partially damaged by fire or other casualty through no fault of Atlas, Atlas shall give immediate notice thereof to City and the same shall be repaired, at City's expense, without unreasonable delay, unless City determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until repair the rent hereunder shall not cease or be abated during any repair period. In the event that the damage to the building, by fire or other casualty, is so extensive that the building is rendered wholly untenable, and such damage to the building, in the exclusive judgment of City, makes rebuilding same to be impractical, then at the option of the City, and upon notice to Atlas, this Lease Agreement, as it applies to said building, shall cease, and the rent hereunder shall be apportioned and paid up to date of such damage. If City elects to rebuild such building, City shall notify Atlas of such intention within thirty (30) days of the date of the damage, otherwise the Lease Agreement, as applicable to said building, shall be deemed canceled and of no further force or effect. Notwithstanding any provision above, should the destruction or damage to said building (to the extent of work that is to be provided as part of City's obligation) be so great that it will not be reasonably repaired or restored by City within one hundred twenty (120) days to the state of fitness that existed prior to the commencement of improvements, if any, performed by Atlas, Atlas may, at its option, terminate this Lease Agreement, as it applies to said building, by written notification of same given to City within thirty (30) days after the occurrence of such casualty, or upon notification that the work will not be completed within the one hundred twenty (120) days.

23.2 City's obligations to rebuild or repair under this Section shall, in any event, be limited to restoring said building to substantially the condition that existed prior to the commencement of improvements, if any, performed by Atlas and shall further be limited to the extent of the insurance proceeds available to City for such restoration. Atlas agrees that if City elects to repair or rebuild as set forth in this Section, then Atlas will proceed with reasonable diligence, at its sole cost and expense, to rebuild, repair and restore its improvements, signs, fixtures, furnishings, equipment and other items provided or installed by Atlas in or about the Leased Premises in a manner and to a condition at least equal to that which existed prior to the damage or destruction.

23.3 In the event that the building or other improvements upon the Leased Premises constructed by and/or owned by Atlas are damaged or destroyed by fire or any other casualty during the term of this Lease Agreement or any extension hereof, regardless of the extent of such damage or destruction, the rent payable hereunder shall not abate. Furthermore, Atlas shall, no later than one hundred twenty (120) days following the date of such damage or destruction, commence to repair, reconstruct or replace the damaged or destroyed building or improvement and prosecute the same with reasonable diligence, so that the building or improvement shall, at Atlas's sole expense, be restored no later than one (1) year following such damage or destruction to substantially the condition it was in prior to said damage or destruction. Should the commencement, construction or completion of said repair, reconstruction or replacement be prevented or delayed by reason of war, civil commotion, acts of God, strikes, governmental restrictions or regulations, fire or other casualty, or any other reason beyond the control of Atlas, the time for commencing or completing the repair, reconstruction or replacement, as the case may be, shall automatically be extended for the period of each such delay.

XXIV. LAWS AND ORDINANCES

Atlas agrees to comply promptly with all laws, ordinances, orders and regulations affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, use and business operations. Atlas shall comply with all Federal and State regulations concerning its operation on the Landfill and shall indemnify and hold harmless City, its officers and employees, from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or the State of Texas, by reason of Atlas's failure to comply with the terms of this Section or with any other terms set forth in this Lease Agreement.

XXV. TAXES AND LICENSES

Atlas shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon the Atlas, Leased Premises, the business conducted thereon or upon any of Atlas's property used in connection therewith. Atlas shall also maintain, in current status, all Federal, State and local licenses and permits required for the operation of its business.

XXVI. NONDISCRIMINATION

26.1 Any discrimination by Atlas, its sublessees, agents or employees, based on race, color, creed, sex, age, religion, national origin or handicap, in employment practices, or use of the Leased Premises, is prohibited.

26.2 Atlas agrees to bind contractually all its sub-organizations and sublessees to all the foregoing terms and conditions.

26.3 Atlas shall comply with City's Nondiscrimination Clause, including the development and use of an Affirmative Action plan for equal employment opportunity. If requested by City, this plan shall be submitted annually and monitored through an annual status report, reflecting the prior year's activity. Quarterly affirmative action status reports shall also be provided, upon City's request. Any and all provisions of this Lease Agreement pertaining to Atlas shall apply as well to any Minority Business utilized by Atlas in its operations hereunder.

XXVII. WAGES

Atlas shall pay at least the minimum wage, as required by Federal and State statutes, to employees of its operations hereunder.

XXVIII. FORCE MAJEURE

No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, terrorism, blockades, insurrections, riots, epidemics,

landslides, lightning, earthquakes, fires, storms, hurricanes, floods, high-water washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, inability to procure materials, partial or entire failure of wells or of supply of landfill gas within the Landfill, enactment of statutes, laws or regulations, acts of governmental bodies, or any other event that is beyond the reasonable control of such Party. The Party suffering a Force Majeure Event shall give notice to the other Party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The non-affected Party may terminate this Agreement if such failure or delay continues for a period of 90 days or more. Unless this Agreement is terminated in accordance with this Section, the Term of this Agreement shall be automatically extended by a period equal to the period of suspension.

XXIX. SEVERABILITY

If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws, it is the parties' intention that the remainder hereof not be affected. In lieu of each clause or provision that is illegal, invalid or unenforceable, the parties intend that there be added, as a part of this Lease Agreement, a clause or provision, as similar in terms to such illegal, invalid or unenforceable clause or provision, as may be possible, yet be legal, valid and enforceable.

XXX. AMENDMENT

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and signed by the Director. Substantive changes, to include an increase in the amount of compensation, shall require additional City Council approval.

XXXI. NOTICES

Notices to City shall be deemed sufficient if in writing and sent, registered or certified mail, postage prepaid, or by recognized courier service (such as DHL, UPS, or FedEx) to Director, Solid Waste Management Department, City of San Antonio, 4410 W. Piedras Dr., San Antonio, TX 78228, and to such other address as may be designated, in writing, by the Director, Solid Waste Management Department from time to time. Notices to Atlas shall be deemed sufficient if in writing and sent, registered or certified mail, postage prepaid, or by recognized courier service (such as DHL, UPS, or FedEx) addressed to Atlas at the address shown herein. Either party to this Lease Agreement may change its address by giving notice of such change at least one week prior to the change as herein provided. All notices shall be deemed received upon actual receipt as evidenced by the receipt issued by the U.S. Postal Service or the delivering courier service.

XXXII. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, creates a relationship other than one of City and Atlas.

Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The Parties understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under the Agreement and that the Contractor has no authority to bind the City.

XXXIII. CUMULATIVE REMEDIES NO WAIVER - NO ORAL CHANGE

33.1 The specific remedies of the parties under this Lease Agreement are cumulative and do not exclude any other remedies to which they may be lawfully entitled, in the event of a breach or threatened breach hereof. Unless otherwise specifically provided for in the Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of the Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of the Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of the Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the Director. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

33.2 City's receipt of a rent payment, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach. In addition to other remedies herein, the parties shall be entitled to an injunction restraining the violation, or attempted violation, of any of the covenants, conditions or provisions hereof, or to a decree compelling performance of same; subject, however to other provisions herein.

XXXIV. ENTIRE AGREEMENT

This Agreement and Lease, together with its authorizing ordinance and its exhibits, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties. The parties intend that neither shall be bound by any term, condition or representation not herein written or incorporated by reference.

XXXV. CONFLICT OF INTEREST

Atlas acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, Atlas warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Atlas further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XXXVI. GENERAL PROVISIONS

36.1 Incorporation of Exhibits. All exhibits referred to in this Lease are intended to be and hereby are specifically made a part of this Agreement.

36.2 Incorporation of Required Provisions. City and Atlas incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

36.3 Nonexclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant to Atlas any exclusive right or privilege for the conduct of any activity on the Landfill, except that, subject to the terms and provisions hereof, Atlas shall have the right to exclusive possession of the property leased to Atlas under the provisions of this Agreement. The City controls the Landfill.

36.4 Energy Conservation. Atlas shall comply with City Rules and Regulations pertaining to energy conservation and management to the extent that such Rules and Regulations do not infringe on the rights and privileges granted herein.

36.5 Inspection of Books and Records. City, at its expense and on reasonable notice and during normal business hours, shall have the right from time to time to inspect and copy the books, records, and other data of the Atlas relating to the provisions and requirements hereof, provided such inspection is made during regular business hours and such is not prohibited by the U.S. Government.

36.6 This Agreement and Lease may be signed in multiple counterparts, each of which shall be

valid. Electronic signatures are authorized and valid as provided by the laws of the State of Texas.

XXXVII. PARTIES BOUND

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted hereby.

XL. TEXAS LAW TO APPLY

All obligations under this Lease Agreement are performable in Bexar County, Texas, and shall be construed pursuant to the laws of the State of Texas, except where state law shall be preempted by any rules, laws or regulations of the United States.

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XLI. APPROVALS BY CITY

Whenever this Lease Agreement calls for approval by City, such approval shall be evidenced, in writing, by either the Director, Solid Waste Management Department, or the City Manager of the City of San Antonio, or their designees.

XL. GENDER

Words of either gender used in this Lease Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XLI. CAPTIONS

The captions of the provisions contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provision of this Lease Agreement.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

SIGNATURES ARE ON THE NEXT PAGE

IN WITNESS WHEREOF, the undersigned have duly executed this Lease and Agreement as of the dates set forth below.

Agreed, Consented to, and Executed this ____ day of April, 2020.

CITY/:
CITY OF SAN ANTONIO

ATLAS:
Atlas Organics, Inc.,
d/b/a Atlas Organics CU05, LLC

BY: _____

Printed name:

BY: _____

Title:

Joseph B. Mc Millan
CEO

CITY MANAGER, or designee

APPROVED AS TO FORM:

Office of the City Attorney
Andrew Segovia, City Attorney

By: _____

Assistant City Attorney

Exhibits and Attachments.

Exhibit I, a Request for Proposal for Organic Material Processing Services, issued by the City on January 10, 2020 (RFP 020-025, 6100012385);

Exhibit II, Addendum I, dated January 15, 2020;

Exhibit III, Addendum II, dated January 31, 2020;

Exhibit IV, Addendum III, dated February 7, 2020;

Exhibit V, Addendum IV, dated February 18, 2020;

Exhibit VI, Addendum V, dated February 21, 2020;

Exhibit VII, Copy of enabling Ordinance No. 2020-04-____-_____

Referenced Documents: Further, Atlas's Response (including Atlas's presentation to the COSA Evaluation Team on March 13, 2020, and Atlas's Revised Pricing Proposal of March 30, 2020) to the RFP and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.