

RESTRICTIVE COVENANT

This Restrictive Covenant is by and between **BFI WASTE SYSTEMS OF NORTH AMERICA, LLC** and **GILES HOLDINGS, L.P.** (collectively, "the Owners") as the Owners of that 349.363 acre tract of land, more or less, as more particularly described in this Restrictive Covenant, and the **CITY OF AUSTIN**.

OWNER: BFI WASTE SYSTEMS OF NORTH AMERICA, LLC

**ADDRESS: 2575 IH 35 South, Suite 103
San Marcos, TX. 78666**

PROPERTY: A 54.13 acre tract of land, more or less, the tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this restrictive covenant.

OWNER: GILES HOLDINGS, L.P.

**ADDRESS: 1223 Judson Road
Longview, Texas 75601-3922**

PROPERTY: A 295.242 acre tract of land, more or less, comprised of certain parcels of land, the tract of land being more particularly described by metes and bounds in Exhibits "B" and "C" attached and incorporated into this restrictive covenant.

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to each Owner, the receipt and sufficiency of which is acknowledged.

WHEREAS, the Owners have provided sanitary waste disposal services to the citizens of the City of Austin ("City") by operating a municipal solid waste landfill on the Property ("the Landfill") since 1982;

WHEREAS, the Owners have submitted an application to the Texas Commission on Environment Quality ("TCEQ") seeking to increase the permitted capacity of the Landfill so as to continue to provide sanitary waste disposal services to the citizens of the City in future years;

WHEREAS, the Property described in this Restrictive Covenant is the same Property described in the application submitted to the TCEQ (TCEQ MSW Draft Permit No. 1447A) and currently the subject of a contested case hearing in the State Office of Administrative Hearings (SOAH Docket No. 582-08-2178);

WHEREAS, whether and the extent to which the Owners could expand the Landfill or the City could prevent or restrict expansion of the Landfill is uncertain and is a question that is ultimately decided solely by TCEQ and the courts;

WHEREAS, given that TCEQ and the courts could either allow the maximum possible expansion despite the best efforts of the City or deny an expansion despite the best efforts of the Owners, both Parties find it in their interest to compromise; and

WHEREAS, the Owners of the Property and the City have agreed that the Property should be impressed with certain covenants and restrictions; and,

WHEREAS, the Owners represent that no other person or entity other than themselves currently possesses any interest in such land, that the undersigned are hereby authorized to execute the Restrictive Covenant as the authorized representative on behalf of their respective entity, and further represent that no other person or entity is allowed to dispose of waste or operate a transfer station at the Landfill;

NOW THEREFORE, it is declared that the Owners of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by the restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owners of the Property, their successors and assigns.

- 1) After November 1, 2015, Owners shall not receive, process, recycle, or dispose any waste on the Property. Further, no transfer station, as defined in 30 TAC 330.3(157) shall ever be constructed or operated on the Property.
- 2) The maximum heights and footprint for the landfill, as approved by the TCEQ under permit number MSW 1447A for the Property, shall not be exceeded.
- 3) If any person or entity shall violate or attempt to violate this Restrictive Covenant, it shall be lawful for the City to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate this Restrictive Covenant, or prevent the person or entity from such actions, and to collect damages for such actions.
- 4) If any part of this Restrictive Covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Restrictive Covenant, and such remaining portion of this Restrictive Covenant shall remain in full effect.
- 5) If at any time the City fails to enforce the terms of this Restrictive Covenant, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
- 6) This Restrictive Covenant may not be modified, amended, or terminated without joint approval of both (a) a majority of the members of the Austin City Council, and (b) by the owner(s) of the Property.

EXECUTED this the 31st day of October, 2008.

OWNER:

Brad Dugas
Brad Dugas, Market Vice President
for the North Central Texas District
BFI Waste Systems of North America, LLC

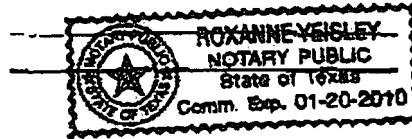
STATE OF TEXAS
COUNTY OF TRAVIS

00100

SUBSCRIBED AND SWORN TO BEFORE ME by Brad Dugas on
this the 31 day of October, 2008, to certify which witness my hand
and seal of office.

Roxanne Veisley
Notary Public in and for the State of Texas

My commission expires:
Printed Name of Notary:



OWNER:

Steve Mobley
Steve Mobley, ~~is~~ President
Mobley Management Co., L.L.C., General Partner,
Giles Holdings, L.P.

New York
STATE OF ~~TEXAS~~
DIVERS
COUNTY OF ~~TARRANT~~
§
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SUBSCRIBED AND SWORN TO BEFORE ME by Steve Mobley on
this the 21st day of October, 2008, to certify which witness my hand
and seal of office.

EVA C. RIVERA
NOTARY PUBLIC STATE OF NEW YORK
No. 07196081676
QUALIFIED IN OLSTNS COUNTY
MY COMMISSION EXPIRES DEC. 9, 2008

[Signature]
Notary Public in and for the State of Texas

My commission expires: Dec 9th 2008
Printed Name of Notary: EVA C. RIVERA

