

**SANITARY WASTE TRANSPORT SERVICE AGREEMENT**

This Agreement, made and entered into by and between the CITY OF SHOREACRES, a municipal corporation, of Harris County, Texas, hereinafter called "CITY", and BAYSHORE INDUSTRIAL, INC. a corporation, hereinafter called "COMPANY".

**I.  
DESCRIPTION**

COMPANY is the owner of certain real property, which is situated in the South La Porte, Texas Industrial District and not within the corporate limits of the CITY.

**II.  
PURPOSE**

COMPANY desires to purchase sanitary waste transport service from CITY for usual sanitary waste uses, and not for use for industrial processes of any kind. CITY agrees to transport COMPANY'S sanitary waste discharge from CITY'S wet well to Gulf Coast Waste Disposal Authority, which is located at 10800 Bay Area Blvd., Pasadena, Texas. For and in consideration of furnishing sanitary waste transport service by CITY, the parties hereto agree as follows:

**III.  
TERMS AND CONDITIONS OF SERVICE**

CITY has determined that it has adequate facilities available for furnishing sanitary waste transport service to COMPANY, based on the following terms and conditions:

- A. CITY will charge COMPANY a base fee (the "Base Fee") in the amount of \$400.00 per month, plus \$2.00 per each 1000 gallons of domestic sewage that COMPANY pumps into CITY'S gravity flow manhole lift station located immediately west of Shoreacres Boulevard and north of Choate Road (the "Manhole").
- B. The Base Fee will include all charges associated with CITY'S monthly taking and testing of one random sample of COMPANY'S domestic sewage discharge.
- C. CITY shall invoice COMPANY monthly for sanitary waste transport services, and COMPANY shall the CITY'S invoice within twenty (20) days from the date the invoice is received. If COMPANY does not pay any such invoice on or before its due date, COMPANY will be assessed a 10% late charge.
- D. If the entity that processes CITY'S sewage (CITY'S Sewage Processor") increases its processing fee during the term of this Agreement, CITY may raise the transport fee it charges COMPANY by the same amount, provided that, promptly upon receiving notice of a fee increase from CITY'S Sewage Processor, CITY shall provide COMPANY with a copy of said notice. If CITY does not promptly provide COMPANY with such notice, CITY may not raise the transport fee it charges COMPANY.
- E. Notwithstanding the foregoing, COMPANY'S payment obligation for sanitary waste transport services shall immediately abate if, for any reason, CITY ceases providing said transport services. COMPANY'S payment obligation shall not resume unless and until CITY recommences providing such services.

**IV.  
RESPONSIBILITIES OF CITY**

CITY shall provide sanitary waste transport service to COMPANY as follows:

- A. CITY shall allow COMPANY to pump domestic sewage to the Manhole.

- B. CITY shall monthly take and test one random sample of COMPANY'S domestic sewage discharge. CITY shall give COMPANY at least three (3) hours notice, by telephone and by fax, of its intention to take and test a sample. CITY shall take the sample only between the hours of 10:00 a.m. and 5:00 p.m. CITY shall test the sample for, and only for, the following analytes: CBOD\_ and pH.
- C. CITY shall use EastTex Environmental Services)"EastTex", which is located at 6913 Highway 225, Deer Park, Texas) as its laboratory for testing the sample. CITY shall deliver the sample to EastTex for testing, and CITY shall pay all associated lab charges.
- D. If, based on testing a sample, EastTex determines that COMPANY'S CBOD level exceeds 138 mg/l + 10% or COMPANY'S pH level is less than 5 or greater than 9, CITY shall promptly notify COMPANY by telephone and be fax of any such exceedance. Upon receiving such notice, COMPANY shall immediately cease discharging its domestic sewage into the Manhole. COMPANY shall have two days from its receipt of such notice to remedy the exceedance, and shall use 30-day averaging in the interim.
- E. If, based on testing a sample, EastTex determines that the sample shows outflow of any substance other than domestic sewage or normal cleaning products, CITY shall promptly notify the COMPANY by telephone and by fax of this condition. CITY shall the right to take and test a new sample at a charge to COMPANY of \$150. CITY shall give COMPANY at least two (2) hours notice, by telephone and by fax, of CITY'S intent to take and test an additional sample. CITY shall take the sample to EastTex. Upon receiving EastTex's lab report on the sample, CITY shall promptly fax and mail a copy of the report to COMPANY.
- F. City SHALL CHECK DAILY THE FLOW METER (THE "flow Meter") that COMPANY installs to measure the volume of domestic sewage it discharges in the Manhole. If CITY detects any problem with the Flow Meter, CITY will promptly notify COMPANY by telephone and by fax of such problem. COMPANY shall have two (2) days from its receipt of such notice to remedy the problem.
- G. CITY shall send a monthly invoice to COMPANY itemizing all charges for CITY'S domestic sewer services. The invoice shall also show the number of gallons of COMPANY'S wastewater discharge that CITY transported, the beginning and ending flow meter readings, and the meter reading dates.

## V.

### RESPONSIBILITIES OF COMPANY

COMPANY shall discharge domestic sewage to CITY'S Manhole as follows:

- A. COMPANY shall construct and maintain all apparatus needed to pump domestic sewage to the Manhole in compliance with State of Texas and CITY requirements. COMPANY shall notify the CITY when the Connection is to be performed. COMPANY may not begin pumping sewage into the Manhole until CITY approves the Connection, which approval shall not be unreasonably withheld.
- B. COMPANY shall install and maintain the Flow Meter. The location of the Flow Meter shall be approved by the CITY, which approval shall not be unreasonably withheld, and shall be as close the discharge connection point as possible. COMPANY shall install a tap downstream of the Flow Meter to facilitate sample extraction.
- C. COMPANY, at its expense, shall have the Flow Meter tested and calibrated no less than one time per year by a company approved by CITY. Should discrepancies between the CITY'S records and COMPANY'S Flow Meter occur at any time, the Flow Meter shall be re-tested. The cost of the additional testing shall be borne by CITY if the Flow Meter is found to be accurate. If the meter is found to be inaccurate, COMPANY shall pay for the cost of the testing and for calibration and necessary repairs. The party ordering the testing and calibration shall give notice by phone and fax to the other party three (3) hours in advance.
- D. COMPANY shall install a deflector on the outfall to help prevent degradation of the Manhole.

**VI.**  
**INSTALLATION AND OWNERSHIP OF FLOW METER AND SERVICE LINES**

All expenses of installing the Flow Meter, and of installing the service lines from the COMPANY'S site to the Flow Meter and from the Flow Meter to the Manhole, shall be borne by COMPANY. COMPANY shall own and maintain all service lines and plumbing facilities from COMPANY'S site to the Manhole. COMPANY shall also own the Flow Meter.

**VII.**  
**CITY'S CONSTRUCTION AUTHORITY**

CITY shall have final authority over engineering matters concerning the connection of COMPANY'S sewer line to the Manhole.

**VIII.**  
**RIGHT OF ENTRY**

CITY reserves the right of entry at all reasonable times, but only for the purpose of inspecting COMPANY'S wastewater facilities in order to observe their compliance with the terms and condition of this Agreement. Should CITY'S Sewage Processor so elect, a representative of CITY'S Sewage Processor may accompany CITY during its inspection. When exercising its right of entry, CITY shall notify COMPANY, by telephone and by fax, at least ten (10) days in advance. In addition, CITY and the representative of CITY'S Sewage Processor shall follow established health and safety policies in effect at COMPANY'S facility.

**IX.**  
**INDEMNIFICATION OF CITY**

COMPANY shall indemnify and hold CITY harmless from claims, including attorney's fees, resulting from any physical illness or disability that a person suffers, or resulting from any damage that CITY'S Sewage Processor incurs to its sewage processing facilities, and that a trier of fact determines at trial to have been caused by a substance other than domestic sewage or normal cleaning products discharged solely by COMPANY into the Manhole during the term of this Agreement. Said indemnification shall extend only to that portion of the illness or disability, or to that portion of the sewage processing facilities' damage, that the trier of fact finds to be directly attributable to COMPANY. COMPANY shall not indemnify CITY for that damage, that the trier of fact finds to be attributable to CITY or to any third party. In addition, to be entitled to any indemnification, CITY must meet all of its responsibilities set forth in Sections IV B-E each month during the term of this Agreement.

**IX.**  
**TERMINATION RIGHTS OF CITY**

CITY reserves the right to terminate this Agreement subject to the termination procedure below, and under the following conditions: 1) discharge by COMPANY of any substance other than domestic sewage or normal cleaning products, or 2) failure of COMPANY to pay any invoice within thirty (30) days of the due date.

In the event of a violation of the terms and provisions hereof by COMPANY, CITY shall provide COMPANY with written notice of any defects and COMPANY shall have the opportunity to cure any defects. If a defect consists of COMPANY'S discharging a chemical other than one found in normal cleaning products, the service lines from COMPANY'S site to the Manhole will be capped off by CITY, and COMPANY may not resume discharging until any such chemicals have been removed. Failure to correct any defects within twenty (20) days after receipt of notice may result in termination of the Agreement.

Upon receipt of written notice of termination, COMPANY shall have up to one (1) month to prepare for transition to another sanitary sewage discharge service. Provided that CITY does not terminate the Agreement based on COMPANY'S failure to timely correct a defect consisting of COMPANY'S discharging a chemical other than one found in normal cleaning products, CITY shall continue to transport COMPANY'S domestic sewage. If the transition is not complete within said one-month period; CITY shall have the right to terminate service at its sole discretion.

**XI.  
TERM**

The Agreement shall be for a period of twenty-four (24) months, beginning on the date by which both parties have executed the Agreement. At anytime, the parties may mutually agree to extend the Agreement or re-negotiate its terms. Both renewed and re-negotiated contracts must be approved by the Shoreacres City Council during a legally posted and open meeting. To allow sufficient time for City Council approval prior to the expiration of the Agreement, the parties should attempt to enter into negotiation no later than forty-five (45) days prior to the end of each contract year

ENTERED INTO effective this 28<sup>th</sup> day of July, 2004

BAYSHORE INDUSTRIAL, INC.

By: S Barkmann

Name: Stephen Barkmann

Title: President & GM

Address: 1300 McCabe Road

LaPorte, TX 77571

Signed this 23 of August 2004

CITY OF SHOREACRES

By: Nancy R. Edmonson

Name: Nancy R. Edmonson

Title: Mayor

Address: 601 Shoreacres Blvd  
Shoreacres TX 77571

Attest

[Signature]  
City Secretary