

**Bruin Waste & City of Grand Junction  
Development Agreement  
Material Recovery Facility**

This **Development Agreement** (“Agreement”) is entered into as of the Effective Date by and between Bruin Waste Management, LLC, a Colorado limited liability company (“Bruin”) and the City of Grand Junction, a Colorado home rule municipal corporation (“City”) (individually, a “Party,” and together, the “Parties”). The Effective Date is the date of mutual execution of this Agreement by the Parties.

**Recitals:**

A. Bruin is a waste management service provider with experience in the collection, hauling, processing, recycling, and disposal of solid waste. Bruin provides service to a number of cities, towns and unincorporated areas in Western Colorado. The City desires to develop a public material recovery facility by and through a public private partnership with Bruin (PPP) as a subject matter expert in the solid waste recovery field. The City solicited proposals, and the City Council confirmed that Bruin/the Bruin proposal, (“Proposal”) which materially informs this Agreement would advance the City’s interests in protecting and advancing the public health, safety and welfare.

B. Pursuant to the City Council’s award to Bruin for its Proposal (Request for Proposal No. 5472-24-DD) Bruin and the City have negotiated and agreed to collaborate pursuant to a PPP to develop a new material recovery facility (“Facility”) on certain real property located at 365 32 Road (to be described as Lot 2 of Grand Mesa Industrial Park upon recordation of the plat therefor) within the City of Grand Junction (“Property”).

C. As provided by this Agreement Bruin will act as the City’s representative for the design and construction of the Facility (“Project”) and will coordinate with the City and third parties in the development of the Project, including, but not necessarily limited to, purchase of the Property, assisting in securing financing for the Project, design and construction of site and building modifications, selection and implementation of equipment and systems necessary to operate the Facility, preparation of request(s) for proposal for the Project, review of bids, and contracting with bidder(s) for equipment, materials, installation, and construction.

D. By and with this Agreement the Parties intend to create terms and to be bound to the same to establish the working relationship between Bruin and the City from the Effective Date of this Agreement for the purposes set forth herein.

E. Following the Facility/Project being fully operational, it is the desire and expectation that Bruin will operate the Facility for the City, upon specific terms to be agreed and set forth in an Operating Agreement to be executed by the Parties.

**NOW THEREFORE**, the Parties agree as follows:

1. **Term:** The term of this Agreement shall be the from the Effective Date until Facility Start-Up, defined as when the recycling equipment has been installed, tested, and accepted by the City (“Term”).

2. **Bruin Scope of Work:** Bruin will perform the following activities in cooperation with the City:

### **2.1 Design and Construction Support**

2.1.1 Develop one or more Request(s) for Proposal (“RFP(s)”) and help the City evaluate and select one or more entities to design, supply all key equipment, and build out the Facility.

2.1.2 Once such vendor(s) is/are selected, work with vendor(s) and the City to perform engineering and design, and help the City make the final design decisions for the Facility and Project. Bruin will assist the City in making technical design decisions that will ultimately impact operations.

2.1.3 Support the City in overseeing the Project construction start-to-finish, including building repairs and modifications, processing equipment selection and installation, and commissioning. While the City will lead day-to-day management of the Project, Bruin will consult with and advise the City on changes and other technological decisions relating to modern, efficient and effective material recovery systems.

### **2.2 Financing**

2.2.1 Work with the City to source the financing for the Project.

2.2.2 This will include activities like identifying financing partners, various sources of capital including grants and equipment financing, performing data analysis, financial modeling, presentation creation, and other support necessary to secure financing for the Project.

### **2.3 Business Development**

2.3.1 Work with the City, other Western Slope municipalities, and other potential customers (for both inbound materials volume and end markets), building relationships and securing volumes for the Facility to help ensure the effective future operation of the Facility with and for the City.

**3. Shared Scope of Work:** The City and Bruin will cooperate in the following shared responsibilities:

- 3.1** The City will lead RFPs (as needed and if required) for contractors for Project construction, such as general contractors, demolition contractors, electrical contractors, insulation contractors, structural steel contractors, masonry contractors, and other non-technical site work.
- 3.2** City staff will prepare, review and execute agreements for the purchase of the equipment and any other construction-related contracts and lead the review and negotiations with third parties to complete the agreements. Bruin will provide assistance and comments as requested by the City.
- 3.3** The City will lead the Project financing effort and negotiate and draft key bank/lending documents. Bruin will provide support for any data and project analysis required for the financing including project presentation, and other matters that support the financing efforts.
- 3.4** The City will be the primary point of contact for oversight during the construction phase of the Project. Bruin will act as a technical subject matter expert and liaison for key equipment and design decisions.
- 3.5** The City will facilitate workstreams prior to and during construction related to any permitting or code related requirements.
- 3.6** The City will contract directly for all the construction work to be performed to construct and install improvements on the Property necessary for the Project and may issue one or more RFPs for such work depending on the scope. This includes vendors such as the general contractor that will complete and oversee building modifications, the equipment vendors, structural engineers required for building modifications, and other engineering.
- 3.7** With City Manager Approval, Bruin will have the authority to directly engage professional technical and expert service providers for work having a cost of up to \$199,999.00. The expenses for these limited scope third-party vendors will be pass-through expenses, at cost, to the overall project.
- 3.8** Bruin will, as requested by the City, have input on the evaluation and/or selection of technical and/or specialized equipment vendors.

4. **Payment.** For Bruin's services as set forth in this Agreement, the City will pay Bruin as follows:

4.1 **Real Estate Fee.** Three percent (3%) of the \$5,600,000 purchase price of the Property (\$168,000.00) and \$100,000.00 as reimbursement for the earnest money deposit paid by Bruin pursuant to the real estate contract for the Property. The City shall pay the Real Estate Fee in the total sum of \$268,000.00 within seven (7) days after the City closes on the Property purchase. The earnest money paid by Bruin to the Seller will be credited to the City purchase price for the Property at closing.

4.2 **Developer Fee:** Two and one-half percent (2.5%) of total Project Costs (excluding the cost of acquisition of the Property), to be paid in progress-based installments as follows (the combination of which shall not exceed 2.5% of the total Project Costs):

- 4.2.1 Execution of Developer Agreement- \$25,000
- 4.2.2 Selection of equipment vendor for and relating to the initial design/build RFP - \$25,000
- 4.2.3 Quarterly payments of two and one-half percent (2.5%) of the Project expenditures, less retainages, for and relating to construction, if at all, of the initial construction of the Project which is the subject of this Agreement.

For purposes of this Section 4.2, Project Costs shall mean the costs incurred in connection with the Project, such as, but not necessarily limited to, building and site design and construction; purchase, installation and testing of equipment; and other Project-related costs, until Facility Start-Up.

5. **General Provisions:**

5.1 **Insurance.** The City shall be responsible for carrying property casualty and liability insurance during the Term, regardless of whether the City or Bruin holds record title to the Property at any given time. Bruin will not be responsible or liable for the safety of third parties during construction of the Project, or during the Term. To the extent permitted by law, the City shall indemnify, defend, and hold harmless Bruin from third-party claims arising from the Project or work related thereto, except for claims arising directly from the willful conduct of Bruin or its employees or representatives.

5.2 **Operating Agreement.** The City Council has expressed its intention to select Bruin to operate the Facility following completion of the Project; however, the specific terms of the Operating Agreement cannot be determined until the details of the Extended Producer Responsibility Program ("EPR") are determined by the Circular Action Alliance and accepted by the Colorado Department of Public Health and Environment, which oversees the EPR. The specific terms of the Operating Agreement will be negotiated in

good faith by and between the City and Bruin once there is enough information about how the EPR funds will be administered with respect to the Facility. The City and Bruin agree to negotiate the specific terms of an Operating Agreement in good faith as the EPR details are made clear.

**5.3 Liquidated Damages.** The Parties acknowledge that Bruin will suffer damages and harm if the City does not contract with Bruin to operate the Facility. Therefore, if for any reason the City does not enter into an Operating Agreement with Bruin on or before Facility Start-Up or otherwise elects not to have Bruin operate the Facility, the City will pay Bruin the sum of \$500,000.00 as liquidated damages, and said sum shall be in addition to, and not in lieu of, the fees set forth in Section 4 above and those set forth in Section 5.5 below. The Parties acknowledge and agree that actual damages may be difficult to determine and that the sum of \$500,000.00 is a full, fair and reasonable estimate of damages.

**5.4 Real Estate Contract.** The City will own the Property and the Facility. Bruin has entered into a real estate contract for the purchase of the Property ("PSA"). The PSA will be assigned to the City prior to closing.

**5.5 Compensation for Early Termination.** Should the City abandon or terminate the Project prior to Project completion for any reason, the City shall pay Bruin for all compensation earned to the date of termination, and shall, in addition, reimburse Bruin for all of its out-of-pocket expenditures related to the Project or this Agreement, except for travel for Bruin representatives. Such compensation and reimbursement shall be made within thirty (30) days of the date of the invoice by Bruin, with supporting documents for such expenses.

**5.6 Authority.** The Parties warrant that the individuals signing below do so with the full authority of the Party on whose behalf they sign. By signing below, the individuals represent that they have the full authority to bind the Party they represent to the terms, conditions and obligations of this Agreement.

**5.7 Modification.** This Agreement may be modified only in writing executed by the Parties.

**5.8 Notice.** Any notice required or permitted to be given under the terms of this Agreement shall be in writing and served by personal delivery, email (with receipt verification) or United States mail, postage prepaid, addressed to the Party receiving notice at the following address:

Bruin:  
Bruin Waste Management, LLC  
Attn: Jeffrey R. Kendall  
P.O. Box 360

City:  
City of Grand Junction  
Attn: Jay Valentine  
250 N. 5<sup>th</sup> St

Naturita, CO 81422  
[jrk@bruinwaste.com](mailto:jrk@bruinwaste.com)

Grand Junction, CO 81501  
[jayv@gjcity.org](mailto:jayv@gjcity.org)

Notice by personal delivery or email shall be deemed to have been given and received upon receipt. Notice mailed shall be deemed to have been given and received on the second regular mail delivery date following the date of mailing shown upon the postal receipt. A Party may change the address to which notice is to be given by notice of change of address given in the manner specified herein.

**5.9 Headings.** Section headings or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision.

**5.10 Rules of Construction.** Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa; and the masculine gender shall include the feminine and neuter genders, and vice versa. The provisions of this Agreement have been independently, separately and freely negotiated by the Parties as if drafted by both of them. The Parties waive any statutory or common law presumption that would serve to have this Agreement construed in favor of or against either Party.

**5.11 Annual Appropriation.** This Agreement and the City's obligations arising out of or under the Agreement are expressly contingent on and subject to annual appropriation of funds by the City Council. In accordance with Paragraph 59 of the City Charter, the City Manager will prepare and submit to the City Council a request for an appropriation or provision of a sufficient amount of funds to pay any financial obligation of the City. Bruin acknowledges and agrees that as of the Effective Date the City Council has not appropriated funds for the construction of the Project and/or for payment of any Liquidated Damages; however, this acknowledgement shall not operate as a waiver of any claims by Bruin arising under this Agreement nor excuse the City's failure to perform its obligations hereunder.

**5.12 Dispute Resolution.** The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted for non-binding mediation, with the Parties sharing equally in the mediator's fees and charges, and with each party to bear its own attorneys' fees in connection with the mediation, regardless of the outcome of the mediation. If the matter is not resolved through mediation, then the Parties may proceed to District Court. This Agreement has been negotiated and agreed to by, with and through the common effort of the Parties and as such each waives and foregoes the customary rule that ambiguities are construed against the drafter. In the event of any ambiguities the Parties agree to a liberal construction of the Agreement and to give meaning, purpose, and effort to attempting to resolve the ambiguity(ies) in favor of continuing the Agreement for the benefit of the Project.

**5.13 Entire Agreement.** The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement pertaining to the subject matter hereof and that all representations made by any officer, agent or employee of the respective parties, unless included herein, are null and void and of no effect. Alterations, amendments, changes or modifications to this Agreement may be made but the same shall be valid only if they are contained in an instrument, which is executed by all the parties with the same formality as this Agreement.

**5.14 Venue.** This Agreement shall be deemed to have been made in and shall be construed and interpreted in accordance with the laws of the City of Grand Junction and the State of Colorado. Venue for any action arising out of or occurring under this Agreement shall be in the District Court for Mesa County, Colorado, except any claims under federal law may be brought in the United States District Court for the District of Colorado.

**EXECUTED** by the Parties as of the date(s) set forth below.

**CITY OF GRAND JUNCTION**, a Colorado home rule municipality

BY:  DATE: 2.25.25  
Michael P. Bennett  
City Manager

ATTEST:

By:  DATE: 2/26/25  
Selestina Sandoval  
City Clerk

**BRUIN WASTE MANAGEMENT LLC**

BY:  DATE: 02/26/2025  
Jeffrey R Kendall  
Managing Member