

BILL NO. S-20-11-17

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONTRACT FOR RESIDENTIAL SOLID WASTE DISPOSAL – Resolution #107-91-20-2 between REPUBLIC SERVICES OF INDIANA, LP and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONTRACT FOR SOLID WASTE DISPOSAL – Resolution #107-91-20-2 by and between REPUBLIC SERVICES OF INDIANA, LP and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for Four (4) year contract for Solid Waste Disposal for the City of Fort Wayne, Indiana. Annual rates are subject to contract escalations:

involving a total cost for SOLID WASTE DISPOSAL: \$23.70 PER Ton. Estimated total cost for 2021 Solid Waste Disposal is TWO MILLION THREE HUNDRED THIRTY-SIX THOUSAND EIGHT HUNDRED TWENTY AND 00/100 DOLLARS – (\$2,336,820.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

107-9-1-20-2 - Residential Solid Waste Disposal Contract (#7326452)

Owner: Public Works

Solicitor: Fort Wayne IN, City of

10/15/2020 02:00 PM EDT

Section Tit Line Item Item Code Item Descr UoofM						Quantity	Engineer Estimate		Republic Services of Ir Advanced Disposal Se Bunn, Inc			
							Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
Solid Waste Disposal Contract								\$0.00		\$27.95	\$38.07	\$50.00
	1	1	Base Bid - 1 TON			1			\$27.95	\$27.95	\$38.07	\$50.00
BID ALTERNATE 1								\$0.00		\$23.70	\$39.32	\$85.00
	2	2	Entire City TON			1			\$23.70	\$23.70	\$39.32	\$85.00
Base Bid Total:								\$0.00		\$27.95	\$38.07	\$50.00

CITY OF FORT WAYNE DIVISION OF PUBLIC WORKS



FW PUBLIC WORKS

Board of Public Works

In Your Neighborhood

Residential Solid Waste Disposal Contract

Thomas C. Henry, Mayor

BOARD OF PUBLIC WORKS

Shan Gunawardena, Chair

Kumar Menon, Member

Chris Guerrero, Member

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1. DEFINED TERMS:

CITY – Refers to the City of Fort Wayne, Indiana, and its Board of Public Works. Geographically, the term City refers to the City of Fort Wayne, Indiana, and any geographical area annexed thereto effective during the term of this Contract.

CITY COLLECTION CONTRACTOR – The vendor in contract with the City of Fort Wayne to collect solid waste from residential dwellings ranging in size from one to four living units for disposal.

CONTRACT SECURITY – A Performance Bond in amount(s) as required by the City to secure performance of the Contractor under the Contract.

CONTRACT YEAR – January 1 through December 31 of each calendar year.

CONTRACTOR – The individual, firm, partnership, joint venture, or corporation performing Solid Waste Disposal.

DISPOSAL – Legally authorized deposit of waste, Refuse, Yard Waste materials under contract with the receiving site and in accordance with all laws, regulations and rules of the Disposal Site or any governmental agency.

DISPOSAL SITE – A properly licensed depository for the processing or final Disposal of Refuse, including but not limited to, sanitary landfills, transfer stations, incinerators, composting facilities and waste processing and separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction.

E-VERIFY PROGRAM – An electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99- 603). *As added by P.L. 171-2011, SEC. 16 and included in IC 22-5-1.*

GARBAGE – Animal or vegetable waste resulting from the handling, preparation, cooking, serving or consumption of food and including food containers.

MUNICIPAL SOLID WASTE – Solid Waste resulting from or incidental to municipal, community, residential, commercial, institutional, or recreational activities, and includes Garbage, Rubbish, Refuse, ashes, street cleanings, and other Solid Waste other than Industrial Waste.

PERFORMANCE BOND – Bond from a Surety that guarantees compensation to the City in the event that it must assume the obligations and/or duties of the Contractor in order to continue the service as defined by the Contract's Specifications.

REFUSE – Discarded waste materials in a solid or semi-liquid state, consisting of Garbage, Rubbish or a combination thereof.

RUBBISH – Solid Waste consisting of combustible and non-combustible materials, yard waste and garden wastes.

SOLID WASTE – Refuse, Rubbish, Garbage and yard waste.

SUBCONTRACTOR – An individual, firm or corporation having a direct contract with Contractor for the performance of a part of the Work.

SURETY – A party who is legally liable for the debt, default, or failure of a Contractor under a Performance Bond or other bond.

TON – A short ton of 2,000 pounds.

TRANSFER STATION – A solid waste storage facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a landfill or other final disposal facility.

UNACCEPTABLE WASTE – means highly flammable substances, Hazardous Waste, infectious wastes, liquid wastes, special wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, materials that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, or in the reasonable discretion of Contractor and the City, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility. Freon-containing appliances, infectious wastes, tires, and remodel debris over 60 pounds.

WORK – Acceptance and final disposal of residential Solid Waste delivered by the City and/or its Collection Contractor.

2. CONTRACT TERM

Initial Term and Extension

The Initial Term of this Contract shall be for a period of four (4) years, beginning January 1, 2021 and ending on December 31, 2024, with an option to renew at the determination of the City, for a period not to exceed three (3) one (1) year extensions, conforming to the same terms and conditions established with this initial Contract. The Contractor agrees that the initiating date of service under the Contract shall be January 1, 2021. The City shall provide written notice of its intention or desire to extend the Contract to the Contractor no later than one hundred eighty

(180) days prior to the expiration of the Initial Term.

Due to the initiation date of the Contract falling on a holiday, the Work will commence January 2, 2021, and follow the holiday schedule for hours of operation.

Termination by the City

The City may, through the Board of Public Works acting on behalf of the City, after giving the Contractor and the surety written notice, and to the extent permitted by law, terminate the Contract

3. CONTRACT PRICING

Pricing shall be \$23.70 per ton and shall include all costs and administrative procedures for the Disposal of the waste. This pricing includes all fees such as Transfer Station fees, Federal, State, and local environmental fees, fuel surcharges, and any other fees. All fees for transportation must be included in the per Ton rate where a transfer station is used. If Contractor's Disposal Site as the final disposing destination is outside the radius of ten (10) miles from the center point of the City, the Contractor must include the use of a transfer station to accept Solid Waste from the City Collection Contractor. The transfer station must be located inside the radius described. The center point of the City is located at these coordinates: Longitude -85° 07' 01.28"; Latitude 41° 04' 55.81". Exhibit A, which is attached and incorporated, shows the map location of the center point of the City.

4. ANNUAL PRICE ADJUSTMENT DURING TERM OF CONTRACT

The Contract Price will be adjusted annually during the term and any extensions using the Consumer Price Index for All Urban Consumers ("CPI-U") expenditure category Water and sewer and trash collection services. The per ton rate shall be adjusted by the unadjusted percent change from January of the previous year to January of the current year.

There will be a ceiling on the adjustment of five percent (5%) and floor on the adjustment of zero percent (0%).

The Contract Price may be adjusted in the event of any increase of federal, state or local environmental tipping fees and/or disposal taxes and/or fees. However, variable fees, such as fuel related fees and taxes, are excluded.

5. SCOPE OF WORK

Contractor shall dispose of all waste, excluding unacceptable waste, brought to the Contractor by the City Collection Contractor. Contractor shall furnish the City with the name and location of the waste Disposal Site which will receive the waste generated by this Contract, including any Transfer Stations used to reach the final Disposal Site. Contractor shall additionally furnish the City with a copy of a contract executed by the Contractor and said waste Disposal Site and/or Transfer Station(s) agreeing to receive all waste generated under the terms of this Contract for the duration of

this Contract. The proposed Solid Waste Disposal Site and Transfer Station(s) shall meet all the requirements of the State of right in its sole discretion to approve any facilities used by the Contractor for transfer and Disposal and any change in Solid Waste Disposal methods regardless of the initiating party.

The hours of operation of the Disposal Site and any Transfer Station(s) used under the Contract shall be at least 6:00 a.m. – 6:00 p.m., Monday through Friday and 8:00 a.m. until noon Saturday. Contractor must accept trucks during this entire time frame in that City Collection Contractor has until 6 p.m. during the week and 12:00 noon on Saturdays to arrive at the facility. In any week of a major holiday, the Saturday operating hours shall be at least 6:00 a.m. – 6:00 p.m.

The following holidays when falling on a weekday will be observed as non-collection days by the Contractor:

**New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day**

In the event a holiday falls on a Sunday and the holiday is observed by the City on Monday, there will be no collections on Monday. All collections will be one (1) day late that week with Friday collections on Saturday. Contractor will be open on that Saturday 6:00 a.m. – 6:00 p.m.

The Disposal Site or Transfer Station must maintain average daily performance standards for vehicle turn times of no more than thirty (30) minutes for City Collection Contractor from the time the vehicle reaches the Disposal Site (enters the scale wait line) to the time the vehicle is allowed to dump its load and the time in which it takes to weigh out. The City reserves the right to periodically monitor these times with no notice to the Disposal Site. In the event the Disposal Site does not meet this time frame on a consistent basis and causes delays in the collection process, further action may be taken by the City against the Contractor, which may include but is not limited to, a reduction in rates, to be determined by the City, or a diversion of waste to another disposal site.

Contractor shall keep the disposal site in professional working order to allow the safe disposal of waste from City Collection Contractor vehicles, including watering down and properly maintaining access roads to provide safe driving conditions at the disposal site.

The Contractor shall work under the direction of the Solid Waste Department. Complaints and directions necessary for satisfactory service will be handled through the Solid Waste Department.

6. OWNERSHIP OF WASTE

Ownership of Solid Waste shall transfer to Contractor at the time the Solid Waste is delivered to the Contractor's facility.

7. PERFORMANCE BOND

Contractor shall execute and deliver a Performance Bond to the City in an amount equal to one hundred percent (100%) of the annual contract price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Performance Bond amount for each succeeding Contract Year shall be the proposed amount for such Contract Year and shall be renewed by the Contractor and maintained throughout the entire Term of the Contract and any extensions.

All Performance Bonds shall be in the forms prescribed by the Bidding Documents and be executed by such Sureties as (a) are licensed to conduct business in the State of Indiana, and (b) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on the Audit Staff Bureau of Accounts, U.S. Treasury Department." All Bonds signed by an agent must be accompanied by a certified copy of the authority to act. Said Bond shall provide that a modification, omission, or addition to the terms and conditions of the Contract or specifications; a defect in the Contract; or a defect in the proceedings preliminary to the letting and awarding of the Contract does not discharge the Surety. If the Surety on any Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in Indiana, Contractor shall within ten (10) days thereafter substitute another Bond and Surety, both of which must be acceptable to the City. Performance Bond shall be sent to the following address annually by December 31:

City of Fort Wayne Public Works Department
Citizens Square
200 East Berry Street, Suite 210 Fort Wayne, IN 46802

8. SUBCONTRACTORS

The Contractor shall be permitted to subcontract any portion of the Contract with written permission from the City, which permission shall not be unreasonably withheld, conditioned or delayed. If written permission is granted by the City, Contractor shall maximize prime responsibility for equipment and labor necessary to complete such Contract as may be entered into. The City requires same qualification, experience, bonding and insurance of Subcontractor(s) as prime Contractor. The City reserves the right to approve or reject Subcontractor(s) and will hold the prime Contractor responsible for coordination. Bids submitted with different divisions of parent company or affiliated companies in common performing services shall be acceptable.

9. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City and its officials, departments, divisions, representatives, agents, boards, commissions and employees (each a "Releasee" and together "Releasees") from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature, including attorney's fees, which the City may suffer or incur by reason of bodily injury, including death, to any person or persons,

or by reason of damage to or destruction of any property, including the loss thereof, to the extent arising out of the Contractor's negligence or willful misconduct in the performance of the Work to be performed pursuant to the Contract, or which the City may sustain or incur in connection with any litigation, investigation, or other expenditures incident thereto, including any suit instituted by the City to enforce the obligation of this agreement of indemnity, whether due in whole or in part to any act, omission, or negligence of the City or any of the City's representatives or employees and whether it is alleged that the City, the City's representatives or employees in any way contributed to the alleged act, omission or negligence and whether it is alleged that the City is liable to any person or entity by reason of a non-delegable duty.

It is the intent of the parties hereto that the Contractor shall indemnify the City under this indemnification clause to the fullest extent permitted by law, provided, however, that the Contractor may not be obligated to indemnify the City for injury or damage caused by the sole negligence of the City if such indemnity shall be contrary to law, in which event it is the intent of the Contractor and the City that this agreement of indemnity shall in all other respects be and remain effective and binding on the parties hereto. Contractor agrees to be held alone responsible for all injuries to persons and for all damages to the property of the City or others, caused by or resulting from the negligence of Contractor, his/her employees, agents or Subcontractors during the progress of, or connected with the prosecution of the Work, whether within the limit of the work or elsewhere.

10. POLLUTION LIABILITY

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the City and its Releasees from and against all claims, damages, losses, and expenses, including attorney's fees, which the City may suffer or for which it may be held liable, arising out of or resulting from the death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders resulting from the Contractor's disposal of waste to the extent arising from Contractor's negligence or willful misconduct. This indemnification shall survive the expiration or termination of this Contract. By entering this Contract, the parties do not waive any immunity provided by law.

11. NONLIABILITY

The City shall not be liable for any injuries to the property of Contractor or any loss or damage sustained by Contractor caused by or resulting from any activity and/or incidents that are in any way connected with the performance or Work or any other matter pursuant to the Contract by Contractor or any activity and/or incidence that is incidental thereto.

12. INSURANCE

Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and shall provide set forth below which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by the

Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Worker's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage for the provisions of Section 2 (Indemnification). The Contractor shall not commence Work under the Contract until he/she has obtained all insurance required and such insurance has been approved by the City; nor shall the Contractor allow any Subcontractor to commence Work on his/her Subcontract until all similar insurance required of the Subcontractor has been obtained and approved. All insurance shall be by insurers and for policy limits acceptable to the City, and before commencement of Work hereunder, the Contractor agrees to furnish the City certificates of insurance to be supplemented by blanket-form notice endorsements to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

This is to certify that the policies of insurance described herein have been issued to the insured to which this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days' prior written notice will be given the certificate holder.

For the purpose of the Contract, the Contractor shall carry the following types of insurance and such insurance shall be maintained during the life of the Contract in at least the limits specified below:

COVERAGES

MINIMUM LIMITS OF LIABILITY

- | | |
|--|---|
| (a) Worker's Compensation Insurance, Including Occupational Disease and Employer's Liability Insurance, sufficient to cover all employees in Contractor's employ during the Term of Contract and any renewal period. | Statutory coverage as required by Indiana Law |
| (b) Comprehensive General Liability Insurance, including Products and Completed Liability Operations Liability Insurance, property Damage and personal injury coverage | \$2,000,000 per occurrence/
\$5,000,000 aggregate
\$5,000,000 Products/Completed Operations Aggregate Limit |

- | | |
|---|--|
| (c) Excess Umbrella Insurance | \$5,000,000 aggregate |
| (d) Comprehensive Automobile Liability Insurance with respect to both personal injury and property damage | \$2,000,000 per occurrence combined single limit |
| (e) Environmental Impairment Liability Insurance for environmental pollution liability including coverage for bodily injury, property damage, including loss of use of damaged property or property that has not been physically injured or destroyed; cleanup costs; and defense or settlement of claims, all in connection with any loss arising from the insured site. Coverage shall apply to sudden and non- sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any watercourse or body of water, which results in bodily injury and property damage. | \$10,000,000 per occurrence |

If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and the retroactive date.

The deductible affecting required insurance coverage shall be determined and carried at the sole responsibility of the Contractor.

The City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decision or the claims history of the industry as well as of the Contractor. The City shall be required to provide prior notice of ninety (90) days.

The City shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto.

The certificate(s) of insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an additional insured – primary and non-contributory, waiver of subrogation and a certificate holder, and include thirty (30) days' advance notification to the City of cancellation or non-renewal, except for Workers' Compensation and Excess/Umbrella coverage which thirty (30) days' advance notice will be provided by Contractor. All certificates of insurance shall be sent to the following address:

City of Fort Wayne Public Works Department Citizens Square
200 E. Berry St. Suite 210 Fort Wayne, IN 46802

Failure on the part of the Contractor to comply with the insurance requirements shall not relieve him/her of the liability under such requirements. For purpose of this Contract, the Contractor shall cause the City to be an additional insured on any and all such policies of insurance referred to herein, as the City's interest may appear. The Contractor shall furnish to the City, prior to thirty (30) days of the beginning of the Contract, certificates of insurance evidencing all the foregoing insurance requirements, as applicable. Failure to do so is cause for termination of the Contract.

13. CONTRACTOR'S RESPONSIBILITY

SUPERVISION

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques and procedures of refuse disposal. Contractor shall be responsible to see that the finished Work complies accurately with the intent of the Contract Documents.

EMPLOYEE CONTROL

All of the Contractor's employees shall be competent and able to perform the duties assigned to them for all Work covered by this Contract. The Contractor must employ only neat, orderly, courteous, sober, competent and efficient employees and shall remove any employee who refuses or neglects to obey or carry out his/her instructions. The Contractor shall prohibit drinking of alcoholic beverages by its employees while on duty or in the course of performing their duties under this Contract.

COMPLIANCE WITH LAWS-PERMITS

The Contractor shall procure at its own expense, and keep current, all permits, licenses, and bonds necessary for the conduct and completion of the Work and/or required by municipal, state and federal regulations and laws. The Contractor shall give all notices, pay all fees, and comply with all federal, state and municipal laws, ordinances, rules and regulations bearing on the conduct and completion of the Work. This Contract, as to all matters not particularly referred to and defined therein, shall notwithstanding, be subject to the provisions of all pertinent state statutes and ordinances of the City, which ordinances are hereby made a part hereof with the same force and effect as if specifically set out herein.

SAFETY AND PROTECTION

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to, all employees on the Work and other persons who may be affected including City employees and Collection Contractors hired by the City.

14. ASSIGNMENT OF CONTRACT

Unless expressly agreed to elsewhere in the Contract, Contractor shall not assign any rights under or interests in the Contract without the written consent of the City; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such written consent (except to the extent that the effect of this restriction may be limited by law) by the City, and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

15. DISPUTES

The City and Contractor agree to first use the following process to resolve disputes about issues related to the performance of this Contract. If an issue arises requiring resolution, either party shall initiate this dispute resolution process by notifying the other party and scheduling a meeting. The meeting shall serve as a fact finding opportunity to identify the issue, clarify the problem, review the applicable Contract provisions relating to the issue, discuss alternative remedies, and agree upon a means of dispute resolution. The parties shall make a good faith effort to complete the agreed-upon tasks within fifteen (15) days of the initial dispute resolution meeting, or specify an alternative schedule and deadline for resolving the issue. Negotiation of a dispute shall not be grounds for the Contractor to abandon the performance of the terms of the

Contract. Nothing in this Section shall be construed or implied to reduce, eliminate or otherwise affect the rights of the City or Contractor to use any and all other means of legal remedies through a Court of general jurisdiction in Allen County, Indiana.

16. NONDISCRIMINATION

In compliance with federal law and I.C. § 5-16-6-1, and I.C. § 22-9-1-10, Contractor hereby agrees:

That in the hiring of employees for the performance of Work under the Contract or any Subcontract hereunder, no Contractor or Subcontractor shall by reason of race, age, religion, color, sex, national origin, ancestry, or handicap, discriminate against any person who is qualified and available to perform the work to which the employment relates as defined by law except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient operation or as provided by law.

That no Contractor, Subcontractor, or any person on the Contractor's behalf, shall, in any manner, with respect to tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, discriminate against or intimidate any employee hired for the performance of Work under the Contract on account of race, age, religion, color, sex, national origin, ancestry, or handicap.

That the Contract may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms and conditions of this section of the Contract.

17. CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY

The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any contractors doing business with the City. A copy of this policy is available for inspection in the Office of Risk Management, Citizens Square, 200 E. Berry St., Suite 470, Fort Wayne, Indiana 46802. The Successful Bidder will be furnished a copy of said policy, and, as a condition of being awarded the Contract, the Successful Bidder shall execute an acknowledgment of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management Department of the City of Fort Wayne. Any Contractor Drug Policy must comply in all pertinent areas with City of Fort Wayne Drug Policy.

18. INDEPENDENT CONTRACTOR RELATIONSHIP

City and Contractor are and shall remain as independent contractors with respect to each other. The persons provided by Contractor to perform the Services shall be Contractor's employees and shall be under the sole and exclusive direction and control of Contractor. They shall not be considered employees of the City for any purpose. Contractor shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Contractor shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social

Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Contractor shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, so as to enable any disabled person furnished by Contractor to perform the essential functions of the job. Contractor agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Contractor's failure to comply with this paragraph.

19. WAIVER

No action or inaction by the City shall constitute a waiver of any right or remedy.

20. CONFLICT OF INTEREST

Contractor certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Contractor's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.

21. EMPLOYER CERTIFICATION

In accordance with I.C. §22-5-1.7, Contractor understands and agrees to enroll and verify work eligibility status of all newly hired employees of the Contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Contractor further understands that they are not required to verify work eligibility of status of newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists. Contractor certifies that they do not knowingly employ any unauthorized aliens.

22. DEFAULT

If the Contractor fails to commence the Work on January 2, the established initiation date for Work under the Contract. City shall have the option to: (1) recover the cost the City expends to perform the Work under the Contract; and/or (2) terminate the Contract.

If the Contractor materially and substantially fails to perform the Work under this Contract, which includes, but is not limited to the following: Contractor failing to remain in compliance with required permits; violating any municipal, state or federal law, rule, regulation, ordinance or specification bearing materially on the performance of this Contract; failing to maintain performance bond; failing to accept and dispose of Solid Waste. Such decision to terminate Contract shall not be made arbitrarily or capriciously and the City must provide Contractor with ten (10) days' notice of any alleged grounds for termination in order for Contractor to have the opportunity to rectify the problem. If Contractor continues to have material failures pursuant to this Contract, the City, in its sole right, may consider that as a material and substantial breach.

23. PAYMENT

Contractor shall invoice the City by the 10th of every month, in arrears. The City shall have thirty (30) days after receipt of a properly prepared invoice to make payment. Invoicing shall include a spreadsheet that contains the following: Scale Ticket Number, Date/Time In, Date/Time Out, Vehicle Number, Weight In, Weight Out, and Net Tons Charged for each vehicle. In addition, Contractor shall provide, upon request, copies of all scale tickets. Contractor must supply any additional information upon request by the City.

24. MISCELLANEOUS

If any provision of this Contract is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Contract shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Contract embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Contract, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This Contract shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.

THIS CONTRACT, made and entered into this 19 day of November, 2020, by and between the City and the Contractor.

WITNESSETH, THAT the Contractor and the City for the consideration stated herein agree as follows:

APPROVAL OF CONTRACT, this Contract, although accepted on behalf of the City by its Mayor and by the Board of Public Works, shall not be binding or obligatory upon the City unless and until it shall have first been approved by the Common Council of the City of Fort Wayne, and should the Common Council of the City of Fort Wayne fail to approve the same within forty-five (45) days after the date hereof, this Contract shall become void and of no effect and the rights and obligations of the parties thereupon extinguished.

IN WITNESS WHEREOF, the City and the Contractor, by their respective duly authorized agents, hereto affix their signature and seals at Fort Wayne, Indiana, as of this 19 day of November, 2020.

CITY OF FORT WAYNE, INDIANA

BY: Thomas C. Henry
Thomas C. Henry, Mayor

CITY OF FORT WAYNE, INDIANA
BY: ITS BOARD OF PUBLIC WORKS

Shan Gunawardena
Shan Gunawardena, Chair

ABSENT

Kumar Menon
Kumar Menon, Member

Chris Guerrero
Chris Guerrero, Member

ATTEST:

Michelle Fulk
Michelle Fulk – Vondran, Clerk

CONTRACTOR:

BY: Republic Services of Indiana, LP

Gerald DePold
Gerald Depold, General Manager

ACKNOWLEDGMENT

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 17th day of November, 2020, personally appeared the within named Gerald DePold who being by me first duly sworn upon his oath says that he is the General Manager of and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of said Contractor for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Denise R Scholz
Notary Public

Denise R Scholz

Printed Name of Notary

DENISE R. SCHOLZ
NOTARY PUBLIC
SEAL

My Commission Expires: 11/30/2025

Resident of Allen County.

Allen County, State of Indiana
My Commission Expires November 30, 2025

ACKNOWLEDGMENT

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 19th day of November, 2020, personally appeared the within named Thomas C. Henry, Shan Gunawardena, Kumar Menon, Chris Guerrero, and Michelle Fulk-Vondran, by me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, and Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Michelle R. Nelson
Notary Public

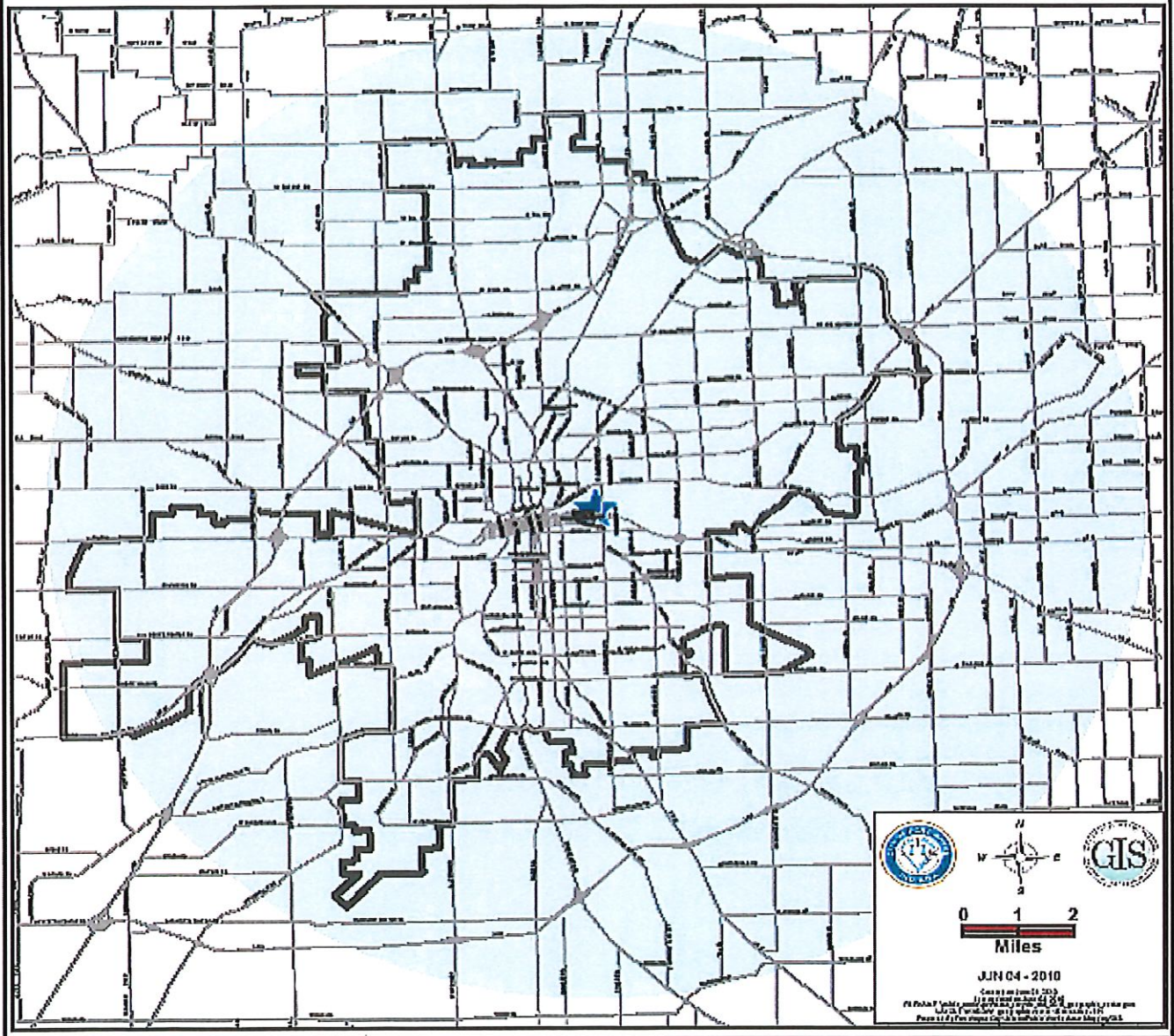
Michelle R. Nelson
Printed Name of Notary



Resident of _____ County.

EXHIBIT A

City of Fort Wayne Geographic Center **10 Mile Radius Buffer**



E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7, Contractor agrees and shall enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program. E-Verify means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208). Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). Contractor is not required to verify the work eligibility status of all newly hired employees of Contractor through the E-verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

Republic Services of IN, LP

Name of Company

By:

Title

Gerald DePold, General Manager

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said State and County, personally appeared the within named Company by Name, Title, who being first duly sworn upon his/her oath states that he/she is a duly authorized agent of the Contractor, and as such duly authorized to execute the foregoing Declaration, and acknowledged the same as his/her voluntary act and deed.

WITNESS my hand and seal this 10th day of November, 2020.

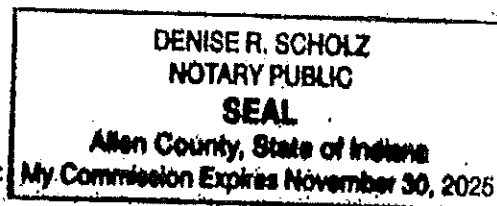
My Commission Expires: 11/30/2025

Denise R. Scholz
Signature of Notary Public

Resident of Allen County

Denise R. Scholz

Printed Name



CONTINUATION CERTIFICATE

The Evergreen National Indemnity Company (hereinafter called the Surety) hereby continues in force its Bond No. 880240 in the sum of Eight Hundred Eighty Two Thousand Dollars and 00/100 (\$882,000.00) Dollars, on

behalf of Republic Services of Indiana, Limited Partnership dba National Serv-All

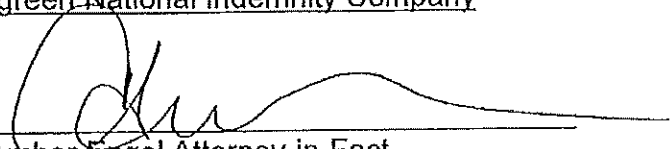
in favor of City of Fort Wayne

subject to all the conditions and terms thereof through December 31, 2021 at location of risk.

This Continuation is executed upon the express condition that the Surety's liability shall not be cumulative and shall be limited at all times by the amount of the penalty stated in the bond.

IN WITNESS WHEREOF, the Surety has caused this instrument to be signed by its duly authorized Attorney-in-Fact and its corporate seal to be hereto affixed this 30 day of October, 2020.

Evergreen National Indemnity Company
Surety

By: 

Amber Engel Attorney-in-Fact

EVERGREEN NATIONAL INDEMNITY COMPANY
MAYFIELD HEIGHTS, OH
POWER OF ATTORNEY

POWER NO. 880240

KNOW ALL MEN BY THESE PRESENTS: That the Evergreen National Indemnity Company, a corporation in the State of Ohio does hereby nominate, constitute and appoint: Amber Engel

its true and lawful Attorney(s)-in-Fact to make, execute, attest, seal and deliver for and on its behalf, as Surety, and as its act and deed, where required, any and all bonds, undertakings, recognizances and written obligations in the nature thereof, PROVIDED, however, that the obligation of the Company under this Power of Attorney shall not exceed Fifteen Million Dollars and 00/100 (\$15,000,000.00)

This Power of Attorney is granted and is signed by facsimile pursuant to the following Resolution adopted by its Board of Directors on the 23rd day of July, 2004:

"RESOLVED, That any two officers of the Company have the authority to make, execute and deliver a Power of Attorney constituting as Attorney(s)-in-fact such persons, firms, or corporations as may be selected from time to time.

FURTHER RESOLVED, that the signatures of such officers and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile; and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company; and any such powers so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Evergreen National Indemnity Company has caused its corporate seal to be affixed hereunto, and these presents to be signed by its duly authorized officers this 1st day of June, 2017.

EVERGREEN NATIONAL INDEMNITY COMPANY



By: _____

Matthew T. Tucker, President

By: _____

David A. Canzone, CFO

Notary Public)
State of Ohio)

SS:

On this 1st day of June, 2017, before the subscriber, a Notary for the State of Ohio, duly commissioned and qualified, personally came Matthew T. Tucker and David A. Canzone of the Evergreen National Indemnity Company, to me personally known to be the individuals and officers described herein, and who executed the preceding instrument and acknowledged the execution of the same and being by me duly sworn, deposed and said that they are the officers of said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of said Corporation, and that the resolution of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Cleveland, Ohio, the day and year above written.



PENNY M HAMM
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
04-04-2022

Penny M. Hamm, Notary Public

My Commission Expires April 4, 2022

State of Ohio)

SS:

I, the undersigned, Secretary of the Evergreen National Indemnity Company, a stock corporation of the State of Ohio, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth herein above, is now in force.

Signed and sealed in Mayfield Hts, Ohio this 30th day of October, 2020 .



Wan C. Collier, Secretary

Wan C. Collier, Secretary

CITY OF FORT WAYNE, INDIANA

Republic Services of Indiana, LP

(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. FINANCIAL INTERESTS;
2. POTENTIAL CONFLICTS OF INTERESTS;
3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$25,000 or more. Vendors shall disclose the financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration of an award of contract by the City. This Disclosure Statement must be completed and submitted together with Vendor's contract, bid, proposal, or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1. Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☐

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☐

Name: _____

Name: _____

Address: _____

Address: _____

- b. For each individual listed in Section 1a. show his/her type of equity ownership: sole proprietorship ☐ stock ☐ partnership interest ☐ units (LLC) ☐ other (explain) _____

- c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent): ownership interest: _____%

Section 2. Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services.

Yes ☐ No ☐

- b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years. Yes _____ No. _____
- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years. Yes _____ No. _____
- d. Relationship to Member of Immediate Family holding appointive City office currently or in the the previous 3 years Yes _____ No _____

Section 3. DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes X No _____.
- b. If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact using space below (attach additional pages as necessary).

City of Fort Wayne - Recycle Processing

- c. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No. X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Section 4. CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;

- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Vendor has read, understands and shall comply with the applicable requirements of the City of Fort Wayne, Indiana Ethics Ordinance; and
- f. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- g. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

<u>Republic Services of Indiana, LP</u>	<u>6231 MacBeth Road, Fort Wayne, IN 46809</u>
(Name of Vendor)	Address
	()
	Telephone
	<u>gdepold@republicservices.com</u>
	E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) <u>Jerry Depold</u>	Title <u>General Manager</u>
Signature <u>Gerald DePold</u>	Date <u>11/9/20</u>

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.



FW PUBLIC WORKS
**Solid Waste
& Recycling**
In Your Neighborhood

Interoffice Memo

Date: November 19, 2020

To: Common Council Members

From: Matt Gratz, Solid Waste Dept.

Re: Solid Waste Disposal Contract Res. # 107-9-1-20-2

This contract is a 4 year contract with Republic Services for the disposal of Solid Waste collected by our Residential Collection Contractor. This contract takes effect January 1, 2021. The cost per ton for 2021 will be \$23.70 per ton. This price is substantially less than the per ton rate the City is currently paying Republic which is \$27.54 per ton. In 2021 we estimate total tons disposed to be 98,600 tons at a cost of \$2,336,820. This contract has an annual escalation clause based upon the Consumer Price Index for All Urban Consumers expenditure category Water and Sewer and Trash Collection Services. Republic Services will dispose of the waste brought to their landfill located at 6231 MacBeth Rd.

Implications of not being approved: The current disposal contract with Republic Services ends December 31, 2020. There are no extensions remaining on this contract. If the contract is not approved, the City's Residential Collection Contractor will not have a place to dispose of waste collected. Per the collection contract the City is to provide the disposal facility for all waste collected.

If Prior Approval is being Requested, Justify: N/A

Selection and Approval Process:

This contract was publicly bid through the Board of Works following Indiana Code for bidding Solid Waste Disposal Contracts. Three companies bid on the project: Bunn Box, Advanced Disposal, and Republic Services. Republic Services was the low bid and meets all requirements of the bid specifications. They are a licensed landfill fill in the State of Indiana with the capacity to handle the waste in this contract.

The Board of Works approved this contract on November 19, 2020.

Council Introduction Date: November 24, 2020

CC: BOW
Diane Brown