



MEMORANDUM

TO: Jackie Moore
FROM: Adam Wason
DATE: 10/12/18
RE: Solid Waste and Recycling Processing Fees

Funding Source: 730-16-160000-53950

Total Dollar Amount of Contract: Not to Exceed \$405,972.00 in 2019

Expiration Date of Contract: 1/1/2022

Renewal Date for Contract: N/A

Department Head Initials of Approval: Adam Wason 

Due Date For Signature: October 16, 2018

Record Destruction Date (Legal Dept to fill in): 1/31/2032

Legal Department Internal Tracking #: 18-617

PREVIOUSLY REVIEWED BY & RETURN SIGNED CONTRACT TO THIS ATTORNEY: Jackie Moore

ATTORNEY IS TO RETURN SIGNED CONTRACT TO THIS DEPARTMENTAL EMPLOYEE: Adam Wason

Summary of Contract:

Republic Services provided the only response to a City of Bloomington RFQ for trash and recycling processing services that was issued in September 2018. The proposal received is a 3 year contract, with the option to renew. It includes a recurring 90 day period to evaluate recycling processing pricing based on the Midwest market. The proposed processing fee for single-stream recycling is \$26.40 per ton for years one, two and three. The proposed municipal solid waste processing fee for the first year is \$43.00 per ton; for years two and three the municipal solid waste processing fee shall not to exceed 3% of the Consumer Price Index. Monthly tonnage reports will be available for single-stream recycling processed at the 96th Street Transfer Station in Indianapolis, as well as the municipal solid waste disposed of at the Hoosier Disposal Transfer Station located in Monroe County.

PROJECT NAME: Disposal of Municipal Solid Waste and Single-Stream Recycling
Collected by the City

**AGREEMENT FOR DISPOSAL SERVICES OF MUNICIPAL SOLID WASTE AND
SINGLE-STREAM RECYCLING**

This Agreement, entered into on this 16th day of October, 2018, by and between the City of Bloomington Public Works Department through the Board of Public Works (hereinafter referred to as "Department"), and Republic Services, (hereinafter referred to as "Contractor"),

WITNESSETH:

WHEREAS, the Department wishes to retain Contractor's services for disposal of the municipal solid waste and recycling collected by the City's Sanitation Division of the Public Works Department; and

WHEREAS, it is in the public interest that such Services be undertaken and performed; and

WHEREAS, Contractor is willing and able to provide such Services to the Department;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1. Scope of Services: Contractor shall provide required Services for the Department as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.

Contractor shall diligently pursue its work under this Agreement and shall complete the Services as described in Exhibit A in a timely manner. Contractor shall perform all Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with the Public Works Sanitation Division Director or her or his designee(s).

Contractor agrees that any information or documents supplied by the Department pursuant to Article 3, below shall be used by Contractor for this project only, and shall not be reused or reassigned for any purpose.

Article 2. Standard of Care: Contractor shall be responsible for completion of the Services in a manner to meet high professional standards consistent with the Contractor's profession in the location and at the time of the rendering of the services. Contractor shall perform all services under this Agreement in a skillful and competent manner in accordance with normally accepted solid waste and recycling disposal standards that a Contractor would exercise under the same or similar circumstance.

Article 3. Responsibilities of the Department: The Department shall provide all necessary information regarding the requirements for the Services. The Department shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department shall designate who is authorized to act on its behalf with respect to this Agreement.

A. Representative

The Department hereby designates Adam Wason, Director of the Public Works Department or his or her designee(s), ("Wason"), to serve as the Department's representative for the project. Wason shall have the authority to transmit instructions, receive information, interpret and define the Department's requirements and make decisions with respect to the Services.

B. Decisions

Provide all criteria and full information as to Department's requirements for the Services and make timely decisions on matters relating to the Services.

Article 4. Term of Agreement:

Initial Term: This Agreement shall begin on January 1, 2019, and terminate on December 31, 2021, provided neither party gives written notice to the other of its intent to terminate this Agreement as set forth in this Agreement.

Renewal Term: Following the Initial Term, the Department has the option, in its sole and absolute discretion, to renew this Agreement for an additional three (3) years, provided that neither party gives written notice to the other of its intent not to renew this Agreement at least sixty (60) days prior to the expiration the Initial Term. The Renewal Term, if entered, would begin on January 1, 2022, and end on December 31, 2024. The Department or its designee(s) will notify Contractor of its intention to exercise the option to renew this Agreement at least ninety (90) days prior to the end of the Initial Term.

Article 5. Compensation: Upon submittal of approved claims, the Department shall compensate Contractor as set forth in Exhibit B – Schedule of Compensation. Exhibit B is attached hereto and incorporated herein by reference as though fully set forth. The total compensation paid under this Agreement for the first year of the Initial Term, including fees and expenses, shall not exceed the amount of Four Hundred Five Thousand, Nine Hundred Seventy-Two Dollars (\$405,972.00). The compensation sum includes salaries, payroll taxes and insurance, employee fringe benefits, general overhead costs, profit, and project related expenses. Payments will be made for the services completed only.

The total compensation paid under this Agreement for the second and third years of the Initial Term, including fees and expenses, shall be determined respectively based upon the Consumer Price Index (CPI) for the previous year. At no time shall compensation for either year increase by more than Three Percent (3%) CPI.

In accordance with Indiana Code § 5-22-17-4, an agreement that contains a provision for escalation of the price of the agreement may be renewed if the price escalation is computed using a commonly accepted index named in the agreement. Total compensation paid under this Agreement for the Renewal Term, if entered, shall be provided in an Addendum to this Agreement.

The Department and Contractor acknowledge and agree that a quarterly evaluation of recycling pricing based upon the Midwest market shall be conducted throughout the term of this Agreement. The Department and Contractor further agree that the compensation paid to Contractor for processing single-stream recycling shall be decreased in the following quarter by an amount equivalent to the decrease demonstrated by the quarterly evaluations. In no instance shall the amount of compensation paid to Contractor for processing single-stream recycling increase as a result of said evaluations.

Additional assignments or additional services not set forth in Exhibit A, changes in work, or incurred expenses in excess of the rates set forth in Exhibit B must be authorized in writing by the Department or the Department's designated representative(s) prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses. Claims for additional work or expenses must be submitted within thirty (30) days of the completion of the work or expenditure and must be accompanied by a statement of itemized costs.

A. Timing and Format for Billing:

Invoices shall be submitted monthly for Services completed at the time of billing and are due upon receipt. Invoices shall be considered past due if not paid within forty-five (45)

calendar days of the due date. Such invoices shall be prepared in a form supported by documentation as the Department may reasonably require.

Tasks shall be invoiced separately, either as separate lines on a single invoice, or on separate invoices at the Department's direction.

B. Billing Records:

Contractor shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

Article 6. Appropriation of Funds: Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Department are at any time not forthcoming or are insufficient, through failure of any entity, including the Department itself, to appropriate funds or otherwise, then the Department shall have the right to terminate this Agreement without penalty as set forth in Article 8 herein.

Article 7. Schedule: Contractor shall perform the Services according to the schedule set forth in Exhibit C, Schedule. Exhibit C is attached hereto and incorporated herein by reference as though fully set forth. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

Article 8. Termination: In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to the Contractor. The Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department, and the Department shall pay the Contractor for all the Services performed and materials or supplies purchased and/or stocked up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to the Contractor's compensation and the schedule of services.

Upon termination or suspension of this Agreement, all materials or supplies purchased and/or stocked by Contractor in connection with this Agreement shall become the property of the Department.

Article 9. Identity of Contractor: Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the duties described in this Agreement is the qualification and experience of the principal personnel whom Contractor has represented will be responsible therefor. Contractor thus agrees that the work to be done pursuant to this Agreement shall be performed by the principal personnel described in Exhibit D, Principal Personnel, and such other personnel in the employ under contract or under the supervision of Contractor. Exhibit D is attached hereto and incorporated herein by reference as though fully set forth. The Department reserves the right to reject any of the Contractor's personnel or proposed outside professional subcontractors, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 10. Independent Contractor Status: During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department.

Article 11. Indemnification: To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of bodily injury or property damage (collectively "Claims") but only to the extent that such Claims are found on a comparative basis of fault to be caused by any negligent act or omission of Contractor or Contractor's officers, directors, partners, employees, or subcontractors in the performance of services under this Agreement.

Article 12. Insurance: During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect:

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

c. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as additional insured under both the General Liability Insurance and Automobile Liability Insurance policies, and the policies shall stipulate that the insurance will operate as primary insurance and that no other insurance effected by the City will be called upon to contribute to a loss hereunder.

Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under the Agreement. Approval of the insurance by the Department shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from service or operations performed pursuant to this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Department required proof that the insurance has been procured and is in force and paid for, Department shall have the right at Department's election to forthwith terminate the Agreement.

Article 13. Conflict of Interest: Contractor declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. The Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 14. Waiver: No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 15. Severability: The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire

Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 16. Assignment: Neither the Department nor the Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Contractor may assign its rights to payment without the Department's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 17. Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and the Contractor.

Article 18. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe County Circuit Court, Monroe County, Indiana.

Article 19. Non-Discrimination: Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment.

Article 20. Compliance with Laws: In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations, including any and all regulations for protection of the environment. When appropriate, Contractor shall advise Department of any and all applicable regulations and approvals required by the Federal Environmental Management Agency (FEMA). Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction on the project are in conflict, Contractor shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Department in a timely manner of the conflict, attempts of resolution, and planned course of action. Contractor shall comply with the City's Living Wage Ordinance throughout the term of this Agreement.

Article 21. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

Department:

City of Bloomington
Public Works Department
Attn: Adam Wason, Director
410 N. Morton Street, Suite 120
Bloomington, Indiana 47404

Contractor:

Republic Services
Attn: Kenny DePasse
6660 S. Old State Road 37
Bloomington, IN 47401

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and the Contractor.

Article 22. Intent to be Bound: The Department and the Contractor each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 23. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.

Article 24. Verification of New Employee' Employment Status: Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists.) Contractor shall sign an affidavit, attached as Exhibit E, affirming that Contractor does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8U.S. Code Chapter 12 or by the U.S. Attorney General.

Contractor and any of its subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or any of its subcontractors learns is an unauthorized alien. If the Department obtains information that the Contractor or any of its subcontractors employs or retains an employee who is an unauthorized alien, the Department shall notify the Contractor or its subcontractors of the Agreement violation and require that the violation be remedied within thirty (30) days of the date of notice. If the Contractor or any of its subcontractors verify the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that

the Contractor or its subcontractor did not knowingly employ an unauthorized alien. If the Contractor or its subcontractor fails to remedy the violation within the thirty (30) day period, the Department shall terminate the Agreement, unless the Board determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the Department may allow the Agreement to remain in effect until the Department procures a new Contractor. If the Department terminates the Agreement, the Contractor or its subcontractor is liable to the Department for actual damages.

Contractor shall require any subcontractors performing work under this Agreement to certify to the Contractor that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the Department.

Exhibit E is attached hereto and incorporated herein by reference as though fully set forth.

Article 25. No Collusion: Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit F, affirming that Contractor has not engaged in any collusive conduct.

Exhibit F is attached hereto and incorporated herein by reference as though fully set forth.

This Agreement may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

Owner

Contractor

City of Bloomington
Department of Public Works

Republic Services

By: [Signature]
Kyla Cox Deckard, President

[Signature]
Brian Short, Director of Operations for
Public Services

By: [Signature]
Beth H. Hollingsworth, Vice President

By: [Signature]
Dana Palazzo, Secretary

By: [Signature]
Adam Wason, Director
Public Works Department

By: [Signature]
John Hamilton, Mayor Mick Renneison, Deputy Mayor
(for)

CITY OF BLOOMINGTON
Legal Department
Reviewed By: Jackie Moore
DATE: 10.15.18

CITY OF BLOOMINGTON
Controller
Reviewed by: [Signature]
DATE: 10/15/18
FUND/ACCT: 730-16-385

EXHIBIT A
SCOPE OF SERVICES

Contractor shall perform all services as provided below:

MUNICIPAL SOLID WASTE:

1. Dispose of Municipal Solid Waste for the First Year of the Initial Term of this Agreement at the rate of \$43.00 per ton;
2. Dispose of Municipal Solid Waste for the Second Year and the Third Year of the Initial Term of this Agreement at a rate not to exceed Three Percent (3%) CPI, respectively;
3. Dispose of Municipal Solid Waste for the First Renewal Term of this Agreement, if entered, at the rate of ---;
4. Dispose of Municipal Solid Waste for the Second (and final) Renewal Term of this Agreement, if entered, at the rate of ---; and
5. Provide the Department with monthly tonnage reports regarding the Municipal Solid Waste disposed of at Hoosier Disposal Transfer Station.

SINGLE-STREAM RECYCLING:

6. Dispose of Single-Stream Recycling Materials collected by the City at a Processing Fee of \$26.40 per ton for all three (3) years of the Initial Term of this Agreement, unless this Processing Fee is reduced one (1) or more times as a result of a ninety (90) day evaluation of recycling pricing based on the Midwest market, as provided in this Agreement;
7. Provide the Department with Monthly tonnage reports for single-stream recycling tons processed at the 96th Street Transfer Station;

EXHIBIT B
SCHEDULE OF COMPENSATION

The total compensation for the first year of the Initial Term of this Agreement, from January 1, 2019, to December 31, 2019, including any and all fees and expenses, shall not exceed the amount of Four Hundred Five Thousand, Nine Hundred Seventy-Two Dollars (\$405,972.00).

Compensation paid for the second year of the Initial Term of this Agreement, from January 1, 2020, through December 31, 2020, shall not exceed a three percent (3%) CPI increase over the total compensation paid for the first year of the Initial Term of this Agreement.

Compensation paid for the third and final year of the Initial Term of this Agreement, from January 1, 2021 through December 31, 2021, shall not exceed a three percent (3%) CPI increase over the total compensation paid for the second year of the Initial Term of this Agreement.

This Agreement may be renewed for calendar years 2022 through 2024. Total compensation paid during the Renewal Term, if entered, will be provided for by an Addendum to this Agreement.

EXHIBIT C
SCHEDULE

Contractor shall begin providing services on January 1, 2019, in accordance with the conditions stated in this Agreement and shall continue providing such services through December 31, 2021, (the Initial Term) unless terminated before in accordance with the conditions contained in this Agreement.

This Agreement may be renewed for calendar years 2022 through 2024, as provided in this Agreement.

**EXHIBIT D
PRINCIPAL PERSONNEL**

CONTRACTOR will provide the following key team members to provide the services described in Exhibit A. Key team members may not be changed without the approval of the Department.

Position / Responsibility

Name

Director of Operations for Public Services
Governmental Affairs

Brian Short
Kenny DePasse

EXHIBIT E
AFFIDAVIT REGARDING E-VERIFY

STATE OF INDIANA)
) SS:
COUNTY OF Vigo)

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the Muni manager of Republic services.
2. The company named herein that employs the undersigned:
 - has contracted with or is seeking to contract with the City of Bloomington to provide services; OR
 - is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein is enrolled in and participates in the E-verify program.

Kenny DePasse Muni manager
Printed Name, Title

STATE OF INDIANA)
) SS:
COUNTY OF Vigo)

Before me, a Notary Public in and for said County and State, personally appeared Kenny DePasse and acknowledged the execution of the foregoing this 18th day of December, 2018.

Autumn Cincic
Notary Public
Autumn Cincic
Printed name

My Commission Expires: 7/9/26
County of Residence: Vigo

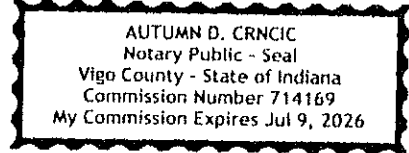


EXHIBIT F
NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
) SS:
COUNTY OF Vigo)

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

OATH AND AFFIRMATION

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.

Dated this 16 day of December, 2018.

Republic services
(Name of Organization)

By: Kenny DePasse Municipal Manager
Printed Name, Title

STATE OF INDIANA)
) SS:
COUNTY OF Vigo)

Subscribed and sworn to before me this 18th day of December, 2018

Autumn Cenci
Notary Public
Autumn Cenci
Printed name

My Commission Expires: 7/9/26
County of Residence: Vigo

