

THIS AGREEMENT made and entered into this 1st day of January 2023, by and between the City of Marshall, a Minnesota municipal corporation, ("City") and Southwest Sanitation, Inc. a Minnesota corporation, ("Contractor:"), collectively known as "Parties".

RECITALS

WHEREAS, the Parties have had a contractual relationship to date in which Contractor has provided refuse and recycling disposal services at the Red Baron Arena and Expo; and

WHEREAS, the Parties desire to continue these services pursuant to this Agreement.

NOW THEREFORE, it is hereby agreed by and between the City and Contractor as follows:

1. Scope of Services. The Contractor, for and in consideration of the payment of the monthly payments herein specified, and by the City to be made, hereby covenants, and agrees to furnish all equipment and labor necessary to pick up and remove Municipal Solid Waste (MSW) and single sort recyclables for the Red Baron Arena & Expo, located at 1651 Victory Drive, Marshall, MN 56258. These services specifically include:

- (1)3 Cubic Yard Rear-load container for MSW and emptied 3 times per week; and
- (1)3 Cubic yard Rear-load container for single sort recyclables and emptied 2 times per week.

2. Term of Contract. Contractor shall provide the services under this Agreement for the period of time from January 1, 2023, through July 31, 2026.

3. Fee. The Contractor agrees to provide the same services at the same price Contractor provided to City in 2016 for the length of this contract. The annual fee for providing the services herein will not to exceed \$9,728.27, including fees and taxes. Contractor will provide monthly billings to City in an amount that equal to 1/12 of the annual amount of \$9,728.27, with the last month of the annual billing to be in an amount that equals the difference between \$9,728.27 and the sum of the cumulative monthly billings to date. The fee for monthly prices assume pick up of each container "as needed". The City may request additional units or services during the term of the contract at any of the above or similar locations and the Contractor shall be paid for such additional services at the same rate as for similar type containers at the same or similar locations. If City makes such a request for additional services of this nature, Contractor shall provide City with an estimate of the additional fee based on the rate agreed upon herein.

4. Responsibilities of Contractor.

4.a. On call status. Contractor is "on-call," and additional pick-ups may be required on a monthly basis. Any additional pick-ups will be included in the price quoted above. Weekly service shall not include construction debris.

4.b. Independent Contract. Parties agree that no employment relationship is created from this Agreement and Contractor agrees to pay all laborers employed by Contractor in the performance of this contract, including providing worker's compensation as provided by state law. The City and Contractor expressly agree that Contractor is independent and not an employee, agent, or joint venture with the City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes.

4. c. Anti-discrimination. Contractor agrees that in the hiring of common or skilled labor for the performance of any work under this contract, the Contractor, shall not by reason of race, creed, or color, discriminate against any person or persons who are citizens of the United States and who are qualified. That Contractor shall not in any manner discriminate against or intimidate or prevent the employment of any such person or persons or on being hired, prevent, or conspire to prevent, any such person or persons from the performance of work under this contract on account of race, creed or color, religion, sex, or national origin. That any violation of this paragraph shall be a misdemeanor, and that this contract may be cancelled or terminated by the City and all money due, or to become due hereunder, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

4.d. Disposal. Municipal Solid Waste removed by the Contractor shall be disposed in the Lyon County landfill and in accordance with the Lyon County solid waste plan and Lyon County ordinances. Single Stream Recycling to be removed by the Contractor and transported to licensed Processing Facilities of its choosing.

5. Indemnification. The Contractor agrees to hold City harmless from all damages and claims for damages that may arise by reason of any negligence or violation of the law on the part of said Contractor, his agents, or employees, while engaged in the performance of this contract and that said contract will take all precautions necessary to protect the public against injury. The Contractor agrees to indemnify and hold harmless said City from and against any and all claims, suits and actions occasioned by or arising from this contract.

6. Insurance. The Contractor shall provide to the City an insurance certificate, issued by an insurance company of good standing and authorized to do business in Minnesota, evidencing the following policies and limits of liability: Commercial General Liability, Automobile Liability, and Worker's Compensation. Prior to the effective date of the Agreement, the Contractor will furnish the City with Certificates of Insurance acceptable to the City as evidence of the required insurance coverage requirements. The City must be named as an additional insured on the Commercial General Liability Certificate of Insurance. Any policy obtained and maintained under this section shall provide that it shall not be canceled, materially changed, or not renewed without thirty (30) days' notice thereof to the City.

7. Right to First Negotiation. Unless Contractor breaches or terminates this contract within the first two years, the contractor shall have the right of first negotiation on a three (3) year renewal unless otherwise required to be competitively bid under state law. Parties agree to begin negotiations with the contractor pursuant to this clause one hundred eighty (180) days prior to the expiration of the contract.

8. Responsibilities of City. As further consideration under this Agreement, the City agrees to the following:

8.a. Signage. City agrees that Contractor can place the following signage in the following locations in the Red Baron Arena & Expo and subject to City's signage requirements for similar signage in those locations:

- Install marketing mural behind the away team bench on the Action Arena, measuring 12ft by 4ft.
- Place one dasher board sign on Lockwood Arena in compliance with signage regulations for that area.
- Place one sign on each championship field at the Schwan's Regional Sports Complex, in compliance with signage regulations for that area.

9. General Provisions

9.a. Assignment. Neither the Agreement nor any claims, rights, duties, or obligations under this Agreement may be delegated or assigned by the Contractor at any time. Any assignment of the rights, duties, claims or obligations under the Agreement, or any claims between the parties to this Agreement arising from the Agreement, shall be null and void.

9.b. Termination. The City may terminate this Agreement automatically on the occurrence of any of the following events: failure of Contractor to perform work described in a timely fashion; Contractor's bankruptcy or insolvency; or the sale or merger of Contractor's business and/or change in majority ownership. Additionally, this Agreement may be terminated by mutual agreement by either party upon thirty (30) days written notice without cause. All provisions of this Agreement allocating responsibility or liability between the City and Contractor shall survive the completion of the services hereunder and/or termination of this Agreement.

9.c. Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule, in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and the remaining provisions of this Agreement will continue in full force without being impaired or invalidated in any way.

9.d. Governing Law. All issues concerning this Agreement will be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Minnesota. All legal proceedings shall be venued in Lyon County.

9.e. Headings. The headings of the several sections contained herein are for convenience only and do not define, limit or construe the content of such sections.

9.f. Audit. Pursuant to Minn. Stat. 16C.05, Subd. 5, the City agrees that the City or the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the City and involved transactions relating to this Agreement. The City agrees to maintain these records for a period of six years from the date of termination of this Agreement.

9.g. Data Practices. All data collected, created, received, maintained, disseminated, or used for any purposes in the course of this Agreement is governed by Minn. Stat. 13.01, or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy.

9.h. Attorneys Fee and Costs. If any legal action is commenced by any party to enforce any provision of this Agreement, the losing party will pay to the prevailing party all actual expenses, including reasonable costs and attorneys' fees, incurred by the prevailing party. The prevailing party is the party who receives substantially the relief sought, whether by judgment, summary judgment, dismissal, settlement or otherwise.

9.i. Force Majeure. In the event that either party is delayed or hindered in or prevented from the performance required under this Agreement by a force majeure event such as strikes, lockouts, labor troubles, diseases, pandemics, public health emergencies, acts of war, terrorism, fire, floods, weather, or other acts of God, neither party will be responsible to the other for a failure to perform under this Agreement and shall be excused for the period of time equivalent to the delay caused by such permitted delay, so long as the party affected diligently pursues performance as soon as reasonably possible with due diligence.

9.j. Modifications. Each party agrees that any modification of this Agreement will be effective only if it is in writing signed by both parties.

9.k. Notices. Any notices given under this Agreement by either party to the other shall be by email or in writing and may be affected by email verification, by personal delivery with signed receipt, or by registered or certified mail with postage prepaid and return receipt requested. Notice delivered through email, personally, or by mail will be deemed communicated as of the date of actual receipt. Mailed notices shall be addressed to and sent to the address below:

City of Marshall

Southwest Sanitation

Address: _____

Address: 110 N 11th St
Marshall MN 56258

9.l. Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement, which cancels, supersedes, and revokes all prior negotiations, representation and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement, including without limitation any prior agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made, orally or otherwise, by any party, or by anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement the day and year first above written.

Contractor: Southwest Sanitation INC.

By: 
Scott Ritter; Owner

City of Marshall, Minnesota

ATTEST:

By: _____
Bob Byrnes; Mayor

By: _____
Steven Anderson, City Clerk