

AGREEMENT FOR SOLID WASTE AND RECYCLING SERVICES

This Agreement for Solid Waste and Recycling Services (this "Agreement") is made and entered into by and between the City of Sanger Texas, a home-rule Texas Municipal Corporation ("the City") and Allied Waste Systems, Inc. dba Republic Services of Lewisville, a Texas Limited Liability Corporation ("Contractor"), located in Lewisville, Texas (collectively, "the Parties").

WITNESSETH:

WHEREAS, the City seeks to contract for Solid Waste and Recycling Services for the benefit of the citizens of the City of Sanger; and

WHEREAS, the City has received a proposal from Republic Services to provide Solid Waste and Recycling Services; and

WHEREAS, the City has selected the bid from Republic Services as the best value for the providing Solid Waste and Recycling Services;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and the City, agree as follows:

1. Scope of Services. Contractor shall be bound by the terms and conditions described in the Request for Proposal issued by the City attached hereto and incorporated herein by reference as Exhibit A and Contractor's response ("the Proposal") attached hereto and incorporated herein by reference as Exhibit B.

2. Commencement of Operations. Contractor shall begin immediately upon receipt of a fully executed copy of this Agreement and the receipt of a Notice to Proceed from the City of Sanger.

3. Compensation. In consideration for the work performed by Contractor, the City to the amounts and manner indicated on the documents attached hereto and incorporated herein in Exhibit B with a yearly increase of four percent (4%)..

4. **WARRANTY AND DEGREE OF CARE**. **CONTRACTOR WARRANTS THE MATERIALS USED SHALL BE FREE OF DEFECT OR FAILURE FOR A PERIOD OF AT LEAST ONE YEAR FROM THE DATE OF COMPLETION OF THE SERVICES AND THAT ALL SERVICES PROVIDED BY CONTRACTOR SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THE SPECIFICATIONS OF THIS AGREEMENT AND IN ACCORDANCE WITH THE DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY COMPETENT CONTRACTORS IN TEXAS APPLICABLE TO THE TYPE OF SERVICES CONTEMPLATED HEREUNDER. IN**

THE EVENT ANY DEFECT IS DISCOVERED OR DEVELOPS IN MATERIALS PROVIDED BY CONTRACTOR OR WORK PERFORMED BY CONTRACTOR WITHIN ONE YEAR AFTER COMPLETION OF THE SERVICES, CONTRACTOR WILL REPAIR OR REPLACE ANY SUCH MATERIALS OR WORK SO THAT IT IS NOT DEFECTIVE AND MEETS THE REQUIREMENTS OF THIS AGREEMENT.

5. Confidentiality and Ownership of Documents. Contractor shall keep confidential information and documents provided by the City confidential and shall not release them without the consent of the City. Upon completion of the Renovations and payment of the Compensation owed, all documents created for the City pursuant to this Agreement shall be the property of the City and shall be provided to the City by Contractor.

6. **INDEMNIFICATION.** CONTACTOR SHALL DEFEND, INDEMNIFY, AND HOLD CITY (OR ANY OF CITY'S REPRESENTATIVES OR EMPLOYEES), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS OR EXPENSE TO ALL PERSONS (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) TO THE EXTENT ARISING OUT OF RESULTING FROM OR OCCURRING IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES THAT IS (I) ATTRIBUTABLE TO ANY BODILY OR PERSONAL INJURY, SICKNESS, DISEASES OR DEATH OF ANY PERSON OR ANY DAMAGE OR INJURY TO OR DESTRUCTION OF REAL OR PERSONAL PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE THEREOF, AND (II) CAUSED IN WHOLE OR IN PART BY NEGLIGENT, STRICT LIABILITY OR OTHER ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR OR SUPPLIER, THEIR RESPECTIVE AGENTS OR EMPLOYEES OR ANY OTHER PARTY FOR WHOM ANY OF THEM MAY BE LIABLE REGARDLESS OF WHETHER SUCH IS CAUSED IN PART BY THE NEGLIGENT, STRICT LIABILITY OR OTHER ACT OR OMISSION OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER. COMPANY SHALL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT TO THE EXTENT OF CITY'S NEGLIGENCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE EXTENT THAT ANY EMPLOYEE OF COMPANY ASSERTS A CLAIM AGAINST THE CITY THAT WOULD HAVE BEEN BARRED UNDER WORKERS' COMPENSATION INSURANCE, COMPANY SHALL BE SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY AND HOLD CITY (OR ANY OF CITY'S REPRESENTATIVES OR EMPLOYEES), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS OR EXPENSE FOR ANY SUCH CLAIMS NOTWITHSTANDING THE FACT THAT COMPANY IS A NON-SUBSCRIBER TO WORKERS' COMPENSATION INSURANCE IN THE STATE OF TEXAS. SAID INDEMNITY AND

HOLD HARMLESS AGREEMENT SHALL ALSO APPLY TO CLAIMS ARISING FROM ACCIDENTS TO COMPANY, ITS AGENTS OR EMPLOYEES, WHETHER OCCASIONED BY COMPANY OR ITS EMPLOYEES, THE CITY OR ITS EMPLOYEES OR BY ANY OTHER PERSON OR PERSONS. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH COMPANY AND THE CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO COMPANY OR THE CITY UNDER TEXAS LAW. THE CITY SHALL BE RESPONSIBLE FOR ITS NEGLIGENCE AND COMPANY SHALL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT TO THE EXTENT OF THE CITY'S NEGLIGENCE. THE INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER THE WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

7. Insurance. Contractor shall be solely responsible for any insurance required under the terms of the agreement, including, but not limited to, payment of premium and deductibles whether or not the City is an additional insured, via blanket form endorsement, under the policies, except workers compensation, or other state-approved program/employer's and for any additional insurance it deems necessary. City does not and shall not carry insurance policies covering the contractor. Contractor must notify City in writing at least thirty (30) days prior to any non-renewal of or material change in the insurance coverage(s) required by this contract. Contractor shall ensure that the insurance coverage required under the contract is obtained and maintained to cover its work hereunder. City shall retain the right, at any time, to review coverage, and amount of insurance coverage, via an ACORD 25 Certificate of Insurance. The procuring of the required policy or policies of insurance shall not be construed to limit contractor's liability to fulfill the requirements under this contract. Notwithstanding said policy or policies of insurance, Contractor shall be obligated for the full and total amount of any damages, injury, or loss caused by the action or inaction of the successful Contractor in connection with this contract. All insurance certificates and ACORD 25 certificates shall be received and approved by City before the Contractor will be allowed to commence or continue work. Notice of accident (occurrence) and claim shall be given to the insurance company and City as soon as practicable after notice to the insured of any incident (occurrence) or claim. The obligations of Contractor pursuant to this section shall survive the expiration or termination of this contract. Failure to comply with any term of this section is a breach of this contract and may result in the termination of this contract.

A. Workers' Compensation and Employers' Liability:

- i. State of Texas: \$1,000,000 Each Accident
- ii. Employer's Liability: \$100,000 Each Accident
\$500,000 Disease-Policy Limit

\$100,000 Disease-Each Employee

iii. Waiver of Subrogation via blanket-form endorsement

Contractor shall furnish the City with an original Accord 25 certificate of insurance supplemented with the applicable blanket form endorsements, but not limited to, the additional insurance endorsements, evidencing that such coverages are in effect. Such Certificate: (1) will also be supplemented with blanket form endorsements, except Workers Compensation, or other state approved program/Employer's Liability, stipulated to provide (30) days prior written notice of cancellation to the City; (ii) shall show the City as an additional insured on page two of the certificate and the certificate shall be supplemented with additional blanket-form endorsements on all policies other than Worker's Compensation, or other state approved program ; and, (iii) shall contain waivers of subrogation in favor of the City (excluding Worker's Compensation policy) except with respect to the sole negligence or willful misconduct of the City.

B. Commercial General Liability:

- i. Bodily Injury & Property
- ii. Damage General
Aggregate Limit:
\$1,000,000
- iii. Personal & Advertising
Injury Limit \$500,000
- iv. Each Occurrence Limit
\$1,000,000

C. Commercial Automobile Liability Limits:

- i. Bodily Injury & Property
Damage Combined
Single Limit: \$1,000,000

Contractor shall procure and maintain in force during the terms of this contract, at its own cost, the above minimum insurance or other state approved coverage.

8. Non-Discrimination. Contractor hereby agrees to refrain from any activity in the performance of this Agreement that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease, in accordance with present federal and state laws.

9. Definitions

- i. Unacceptable Waste. Unacceptable Waste means: (1) Hazardous Waste; (2) radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, or toxic waste as defined by Applicable Law; or (3) any otherwise regulated waste.
- ii. Hazardous Waste. Hazardous waste includes, but is not limited to, any amount of waste listed or characterized as hazardous by the United States

Environmental Protection Agency or any state agency pursuant to RCRA, and including future amendments thereto, and any other Applicable Law.

- iii. Recyclable Material. Recyclable Material consists of any material or substance at City Locations that can be put to beneficial re-use or sold in recognized markets for purposes other than disposal, including, without limitation, uncontaminated non-hazardous corrugated cardboard, white paper, newsprint, and other paper; plastics and plastic film; ferrous and non-ferrous metals; and glass.
- iv. Solid Waste. Solid Waste is any nonhazardous solid waste generated at City Locations that is not excluded by the provisions of this Agreement. Solid Waste shall not include any Unacceptable Waste.
- v. Waste Material. Waste Material is all Solid Waste and Recyclable Material that are not excluded by this Agreement. Waste Material does not include any Unacceptable Waste.
- vi. Applicable Law. Applicable Law means any applicable law (whether statutory or common), including statutes, ordinances, regulations, rules, governmental orders, governmental decrees, judicial judgments, constitutional provisions, and requirements of any kind and nature promulgated or issued by any governmental authority claiming or having jurisdiction.
- vii. Title to Waste. Contractor shall acquire title to Waste Materials when they are loaded into Contractor's truck. Title to and liability for any Unacceptable Waste shall remain with the customer and shall at no time pass to Contractor.
- viii. Right of Refusal: If anything listed as an Unacceptable Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire pick-up that contains those items. In such situations, Contractor shall contact the City and the City shall promptly undertake appropriate action to ensure that such items are removed and properly disposed of by the depositor or generator of the items. In the event such items are present but not discovered until after it has been collected by Contractor, Contractor may, in its sole discretion, remove, transport, and dispose of such items at a facility authorized to accept those items, in accordance with Applicable Law and charge the depositor or generator for all direct and indirect costs incurred due to the removal, remediation, handling, transportation, delivery, and disposal of those items. The City shall provide all reasonable assistance to Contractor to conduct an investigation to determine the identity of the depositor or generator of

those items and to collect the costs incurred by Contractor in connection with such items. Subject to the City's providing all such reasonable assistance to Contractor, Contractor shall release City from any liability for any such costs incurred by Contractor in connection with excluded items, except to the extent that the items are determined to be attributed to the City.

- ix. Specifications for all Recyclable Material. Recyclable Material shall comply with any and all specifications provided by Contractor in order to meet quality thresholds for commodity markets and be free of contamination. To the extent any type of Recyclable Material is received within the City limits is rejected by the recycling facility or is not of the intended quality or grade, Contractor will notify the City and City shall pay any damages, costs, and penalties incurred by Contractor due to such rejection or lesser quality or grade, to include transportation and disposal costs for the residual material. If market conditions develop that limit or inhibit Contractor from selling some or all of the Recyclable Materials, Contractor may (i) suspend or discontinue any or all Recycling services, or (ii) dispose of the Recyclable Material in a landfill and update the City's rates accordingly.

- x. Changes in Market Conditions. If market conditions develop that limit or inhibit Contractor from selling some or all of the Recyclable Material, Contractor may at its option and upon notice to City (i) redefine Recyclable Material, (ii) suspend or discontinue any or all Services, or (iii) dispose of the Waste Material in a landfill and update the pricing to City accordingly. Any such actions, if taken, may be reversed, or further changed as market conditions dictate.

- xi. Wavier of Claims. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

- xii. Equipment: Except as otherwise indicated in the Contract, any equipment Contractor furnishes shall remain Contractor's property. The City shall be liable it the extent allowable by law for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Contractor's handling of the equipment). The City shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move, or alter the equipment. The City shall provide safe, unobstructed access to the equipment on the scheduled collection day. The Contractor may charge an additional fee for any additional collection service required by the failure to provide access.

- xiii. Damage to Pavement: Contractor shall not be responsible for any damages

to City's pavement, curbing or other driving surfaces resulting from Contractor's providing service at City locations, except to the extent caused by Contractor's negligence.

10. Termination of Contract. In the event of a failure by either Party to perform any material provision of the contract, a Party shall give written notice of such failure to the breaching Party along with a thirty (30) day notice (the "cure period") to correct such breach. The Party may terminate the contract after such a cure period if the Party has not adequately corrected such breach in accordance with the contract and the Party so notifies the breaching Party in writing of such termination action. Upon the effective date of termination as contained in the notice, the Party shall, unless the notice directs otherwise, immediately discontinue all Services in connection with the contract. At such time, the Party shall pay the Party only for charges and fees in which Services performed or Provide Services in or before such termination date.

- i. In the event that the City or the Contractor fails to perform any of the material provisions of the contract, the appropriate Party shall promptly notify the other Party of its noncompliance, stating with particularity the facts relating thereto and the period of time the Party has to comply. Thereafter, if the event or condition is not corrected or otherwise made to comply with the terms of the contract within the period of time specified by the Party, the same is a violation of the contract, subject to the non-compliance penalty set forth in the contract. This remedy is hereby expressly made cumulative of other remedies available to the Parties, at law or in equity, for the breach of the contract.
- ii. In the event such termination occurs due to the acts of the Contractor, the City may exercise its rights under the successful Contractor's performance bond and procure the services of another waste services provider to complete the work covered under the contract for the remainder of the time period covered by the initial term of the contract or extension thereof.
- iii. If the City determines, and notifies the Contractor, that such default poses an immediate threat to the health or safety of any person or to any property interest, and if the Contractor has not cured such default within twenty-four (24) hours after receipt of such notice, the City shall have the right to perform or cause to be performed all or part of the work necessary to cure such default. In the event that the City performs such work, or caused it to be performed, the Contractor shall compensate the City for the cost thereof.

- iv. The City shall have the right to deduct any such compensation due to the City from any sums otherwise due and owing to the Contractor. The City may withhold all or part of any sums which would otherwise be due to the Contractor, but that relate to such default, either until such time as such default is cured or if such default cannot be cured, forever.

11. Independent Contractor. Contractor shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Contractor hereby certifies that it shall be and is in compliance with all such regulations, laws and requirements. Contractor shall also require its subcontractor to provide the same certification to the City.

12. No Third-Party Benefit. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties, any right or remedy under or by reason of this Agreement.

13. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas as to all matters, including but not limited to matters of validity, construction, effect and performance, without regard to conflict of law principles. All actions regarding this Agreement shall be in a court of competent subject matter jurisdiction Denton County, Texas.

14. Severability. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Code of the City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein.

15. Notices/Insurance/Bonds. All notices, bonds, consents, demands, insurance, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of the City, to:

City of Sanger
Attention: City Manager

P.O. Box 1729
Sanger, TX 76266

With courtesy email copy to jnoblitt@sangertexas.org

In case of Contractor, to:

Cheryl Brock
551 Huffines Blvd
Lewisville, TX 75056

With courtesy email to: cbrock@republicservices.com

Entire Agreement. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof. In the event of a dispute under this agreement, the applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) this Agreement; (2) the Request for Proposal; (3) the Response to the Request for Proposal from the Contractor.

16. Amendment. No amendment to this Agreement shall be effective unless in writing signed by both parties.

17. Compliance with Laws. Contractor shall comply with all applicable federal, state, and local laws applicable to the renovations to be performed under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals and effective as of the __day of _____, 202_ (“the Effective Date”).

CONTRACTOR:

_____ LLC

By: _____

Name: _____

Title: _____

THE CITY OF SANGER

By: _____

Name: _____

Title: _____

Approved as to Form

Hugh Coleman
City Attorney
City of Sanger

Attest:

By: City Secretary

EXHIBIT LIST:

EXHIBIT “A” – City of Sanger Request for Proposal for Solid Waste and Recycling Services

EXHIBIT “B” – Republic Services Response to Request for Proposal for Solid Waste and Recycling Services