



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		5-24-2010		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Nancy Corwin x7137				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of an interim contract by and between Republic Waste Services, Inc. D/B/A Allied Waste Services and the City of Plano for residential recycling processing services, approving its execution by the City Manager or his designee, and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s): SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND				
<p>COMMENTS: Approval of the Interim Recycling Processing Contract recognizes increased processing expenses for recycling materials, which will be partially offset by an increase in the percentage of net revenues paid to the City of Plano. As a result, the city will receive approximately \$117,000 less in recycling revenue in FY 2009-10; however, year to date revenues from recycling have surpassed budgeted amounts by \$114,564 due to improved recycling markets.</p> <p>STRATEGIC PLAN GOAL: Generation of revenues through recycling relates to the City's goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
Staff recommends approval of resolution to ratify an interim contract by and between Republic Waste Services, Inc. D/B/A Allied Waste Servies and the City of Plano for residential recycling processing services.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution, Interim Contract				

A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of an interim contract by and between Republic Waste Services, Inc. D/B/A Allied Waste Services and the City of Plano for residential recycling processing services, approving its execution by the City Manager or his designee, and providing an effective date.

WHEREAS, Allied Waste Services has been providing residential recycling processing services for the City since July 31, 1999; and

WHEREAS, the contract with Allied Waste Services for the residential recycling processing services expired on March 27, 2009 and an Interim Contract lasting six (6) months has been proposed to allow Allied Waste Services to continue its residential recycling processing services while final terms and conditions are being negotiated; and

WHEREAS, the City Council has been presented an Interim Contract by and between Republic Waste Services, Inc. d/b/a Allied Waste Services and the City of Plano, for residential recycling processing services, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Interim Contract"); and

WHEREAS, upon full review and consideration of the Interim Contract and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be ratified and approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Interim Contract, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, is hereby in all things ratified and execution by the City Manager or his designee on behalf of the City of Plano is hereby approved.

Section II. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 24th day of May, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**INTERIM CONTRACT
BETWEEN CITY OF PLANO AND REPUBLIC WASTE SERVICES, INC.
D/B/A ALLIED WASTE SERVICES
FOR RESIDENTIAL RECYCLING PROCESSING SERVICES
CONTRACT # 2010-9-D**

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

THIS INTERIM CONTRACT is made and entered by and between **REPUBLIC WASTE SERVICES, INC. d/b/a ALLIED WASTE SERVICES**, a [redacted] corporation, hereinafter referred to as “Contractor”, and the **CITY OF PLANO, TEXAS**, a home-rule municipality, hereinafter referred to as “City”, to be effective upon approval of the Plano City Council and subsequent execution by the Plano City Manager or his designee.

WHEREAS, Allied Waste Services has been providing residential recycling processing services for the City since July 31, 1999; and

WHEREAS, the contract with Allied Waste Services for the residential recycling processing services expired on March 27, 2009 and negotiations between the City and Contractor for a new contract have not been finalized; and

WHEREAS, City and Allied Waste Services have agreed to enter into this interim contract for residential recycling processing services while final terms are being negotiated.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree to

**I.
DEFINITIONS**

Unless otherwise specified herein, the following terms shall have the following meanings:

1.1 “Collect,” “Collected,” and “Collection” shall mean and refer to the picking up and transporting of Recyclable Materials, to the appropriate Processing Facility, identified herein, in compliance with applicable federal, state and local laws, statutes, ordinances, rules and regulations.

1.2 “Commingled Materials” shall mean all Recyclable Materials, as herein defined.

1.3 “Agreement Year” shall mean a twelve (12) month period of time commencing upon the Effective Date hereof and, thereafter, any anniversary of the Effective Date.

1.4 “Equipment” shall mean all vehicles, containers, machinery, tools and equipment, as well as related supplies and materials, reasonably necessary for the Contractor’s performance hereunder.

1.5 “Gross Revenue” shall mean revenue received from the sale of Recyclable Materials provided by City hereunder before deductions for Processing Allowances are made.

1.6 “Net Revenue” shall mean Gross Revenue minus Processing Allowances. No other deductions are permitted.

1.7 “Process”, “Processed” and “Processing” shall mean all necessary steps and actions to prepare Recyclables for market, including actual sale of such Recyclables.

1.8 “Processing Allowances” shall mean the amount of money deducted from Gross Revenues as full compensation to Contractor for all costs of Processing Recyclables hereunder, shall be \$51.00 per ton for Single-Stream Recyclables processing.

1.9 “Processing Facility” and “Facility” shall mean the facility located at 4200 E. 14th Street, Plano, Texas.

1.10 “Recyclables”, “Materials”, and “Recyclable Materials” shall mean the following individual commodities: glass bottles and jars (all colors), aluminum cans, bi-metal and steel food and beverage cans, including aerosol cans, corrugated containers, newspapers with inserts, magazines, other types of clean and dry paper products, High Density Polyethylene (HDPE) & Polyethylene (PET) plastics with 1 & 2 symbols, and any materials added pursuant to the terms of this Contract; provided however, in no event shall such terms include hazardous materials as defined by applicable federal, state or local law.

1.11 “Recycling” shall mean the reclamation and/or recovery of all recyclable matter from the City’s solid waste residential customers, including but not limited to, glass, paper, plastic, tin, and aluminum.

1.12 “Single-Stream Recyclables” shall mean all recyclables collected in one stream, with no sorting required prior to processing.

II.
TERM OF CONTRACT

The term of this Interim Contract shall be from April 1, 2010 to October 31, 2010.

CONTRACTOR and CITY herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for services provided under this contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

III.
SCOPE OF WORK

Contractor shall provide all supervision, labor, materials and equipment necessary for processing and marketing of all residential Recyclables collected by City and delivered to Contractor's facility by the City of Plano in accordance with the terms and conditions of this Contract.

IV.
COLLECTION

4.01 Collection Schedule. Contractor shall allow City to deliver Recyclable Materials for Processing at the Facility five (5) days a week (Monday through Friday) between the hours of 7:00 a.m. and 7:00 p.m., except for specified holidays and on Saturday when otherwise required by this contract. City shall provide Contractor with its holiday schedule at the beginning of each calendar year. Contractor agrees and understands that if a holiday occurs, collection schedules shall be moved forward to the next day thereby requiring Saturday Processing by Contractor. Contractor will be given a 30 day notice of any proposed permanent collection schedule changes. Permanent collection schedule changes shall be agreed upon in writing by the parties. Based upon need as determined by City, City may require Contractor to provide Processing services on a day or days other than those designated as a part of a regular collection schedule or holiday schedule, provided however that to the extent practicable, City shall give Contractor at least seven (7) days prior written notice with respect to such day or days. Notice shall be provided as specified herein. Notwithstanding the foregoing, City shall not require Processing services on Sundays.

4.02 Receipt of City Collected Materials. Contractor shall utilize reasonable efforts to minimize the time to weigh and off-load all City vehicles arriving at the Facility. All vehicles shall be received on a first-come first-served basis, and in no event shall Allied Waste Services grant any preferences to their vehicles in prioritizing receipt of vehicles. Notwithstanding the foregoing, at no time shall the wait time for a City vehicle exceed thirty (30) minutes from the time of weigh-in by such vehicle to the time that

unloading is complete. Contractor will provide a weight ticket to each City driver for each load delivered to Contractor. All scales and equipment used by Contractor to weigh such loads shall be calibrated and adjusted accordingly for accuracy at least one time per year by persons who are qualified to perform such tasks and who are deemed satisfactory by City, and Contractor shall be required to provide proof of such calibration and accuracy each year on the anniversary date of this agreement.

4.03 Load Rejections. Contractor shall immediately notify City's Environmental Waste Services Superintendent if a load received from one of the City's collection vehicles appears to have a non-recyclable contamination rate higher than fifteen (15) percent. Contamination occurs when a material, other than a Recyclable Material as defined in this agreement, is included as part of a load of Recyclable Materials. If Contractor determines that a load is questionable, Contractor shall move it to an area that does not interfere with the normal processing operation, so that further inspection can be made by the City. Since the contamination rate of a load will be a subjective judgment, the load will not be refused unless a Supervisor from the City is present at the Processing Facility and is in agreement that the load is unacceptable. City's representative shall arrive within one hour of notice by Contractor. If City's representative fails to arrive within the one-hour time frame, Contractor may reject the load; however, Contractor shall notify City's Environmental Waste Services Superintendent of the rejection by 7:00 p.m. of the same day. Such notice shall contain a detailed explanation of Contractor's reasons for rejection. In the event that the parties are unable to resolve a dispute regarding the contamination rate of a load deemed questionable by Contractor, Contractor shall sort the contents of the questionable load by commodity, and weigh and Process each such commodity individually, except that materials claimed to be contaminants may be weighed without sorting or Processing. If after sorting, weighing and Processing as specified above, the contamination rate for the load is higher than fifteen (15) percent, City shall pay all costs for disposal of the contaminants. However, if the contamination rate for the load is equal to or less than fifteen (15) percent, Contractor shall pay all costs for disposal of the contaminants.

If the parties agree that a load is contaminated, as defined herein, Contractor shall be responsible for all disposal costs for the first two contaminated loads received from City during each calendar month. City shall be responsible for all disposal costs for all other contaminated loads in excess of two (2) loads per calendar month. Payment for disposal costs by City shall be in lieu of Processing Allowances for such contaminated loads. City may, at its option, independently arrange for disposal of contaminated load(s) within twenty-four hours of Contractor's request to so dispose or may reimburse Contractor at the current disposal rate at North Texas Municipal Water District landfill.

4.04 Maintenance of Facility. Between the hours of 5:00 p.m. and 7:00 p.m. Monday through Friday, and Saturday when required hereunder, Contractor must secure at its expense, a police officer to direct traffic on the public streets in order to facilitate travel in and out of the Facility. The Processing Facility floor shall be kept clear of buildup of materials, including but not limited to newspapers, in order to allow the safe backing of City vehicles into the receiving area. Contractor shall maintain the Processing Facility in a neat and orderly manner at all times.

4.05 Nuisance Abatement. Contractor shall take all reasonable precautions to prevent littering of materials and to prevent odors at the Facility (hereinafter "nuisance"). Contractor shall operate the Facility in a manner that will not create a nuisance. If either Contractor or City receives a complaint regarding a nuisance arising out of or related to Contractor's operations, Contractor shall respond within twenty-four (24) hours of receipt of such complaint. Contractor shall provide the Environmental Waste Services Superintendent a written explanation to each such complaint providing a detail of its investigation into the incident upon which the complaint was based ("Incident") and the actions that Contractor has taken to resolve the Incident including, when necessary, all future actions Contractor will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the satisfaction of the complainant within fifteen (15) days, Contractor shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to approval by City's Solid Waste Manager. If future action is necessary, Contractor shall include a schedule for completion of its plan to correct or prevent the incident, such schedule is subject to City approval. If Contractor determines that no action is necessary and this is not satisfactory to the complainant, Contractor must provide documentation to the City within (15) fifteen days of notice to the complainant so that City can make a determination as to what, if any, type of action by the Contractor is necessary. All complaints received from the public shall be recorded and the action taken documented as provided herein. The City's Environmental Waste Services Superintendent shall receive a copy of all documentation required by this paragraph for review.

4.06 Location of Facility. City's selection of Contractor's services for Processing of Recyclables has been based largely upon the location of Contractor's Facility and the cost effectiveness of that location for City's Recycling program. Should Contractor close or move its Facility to a location outside of the City of Plano, City would incur additional costs for its Recycling operation. Therefore, if at any time during the term or any renewals of this Agreement, Contractor intends to close or move the Processing Facility, the new location of the alternative Processing Facility must be provided to City in writing at least ninety (90) days prior to the date of closing or the date of the move, and such new location must be acceptable to City. If City determines that the new location is unacceptable, in that the new location would increase City's collection and transportation costs, City and Contractor agree to re-negotiate Processing Fees under this Agreement during the ninety (90) day notice period. City agrees to negotiate in good faith; however, if the parties cannot reach an agreement, City may terminate this Agreement without penalty.

V.

MATERIALS PROCESSED / MARKETING

5.01 Recyclable Materials. City shall deliver all residential Recyclable Materials collected by City or its contractors to the Processing Facility. Contractor shall process all residential Recyclable Materials collected by City. Processing shall include all necessary steps and actions to prepare Recyclables for market, including actual sale of such Recyclables, excluding residuals not able to be captured by separation. Title to all

Recyclables shall pass to Contractor when such Recyclables are unloaded at the Processing Facility.

5.02 Marketing. The parties hereto understand that the market for Recyclable Materials may fluctuate throughout the term of this Contract. The term "market" shall mean any market including but not limited to local, state, national, and international markets regardless of whether a profit is made. If for three consecutive months, the market price for any one or more of the Recyclables drops to the point that any or all of the Materials can no longer be sold, whether with or without a profit, City shall, at its option:

- (a) Remove one or more of such Materials from City collection; or
- (b) After Processing by Contractor, contract with a third party to transport and store the Materials; or
- (c) After Processing by Contractor, contract with a third party to transport and dispose of the Materials; or
- (d) After Processing by Contractor, utilize any other market for the Materials; or
- (e) Divert newspapers to City's composting operation; or
- (f) After Processing by Contractor, in the event that the market price for any one or more of the Recyclables is \$0.00 or negative so that marketing of the Materials would cause the Contractor to incur costs, City will pay the actual market cost for each respective commodity. No fees or charges, other than Processing Allowances, will be paid.

Contractor shall continue to Process Materials as long as City continues to pay Contractor the Processing Allowances, regardless of the profitability of such Processing. Except as otherwise provided herein, Contractor shall, throughout the term of this Agreement, continue to transfer materials to end markets.

Deduction of Processing Allowances shall be full compensation to Contractor for Processing services. If at any time during the term of this Contract, the market for Recyclables is such that Processing Allowances cannot be fully deducted from Gross Revenues, thereby obligating the City to pay Contractor Processing Allowances, payment of Processing Allowances or any other fees by City shall not exceed \$80,000 during any fiscal year of City. If payment to Contractor exceeds \$80,000 during a fiscal year of the City, Contractor may elect to waive Processing Allowances or this Contract shall terminate.

5.03 Materials Processed. If at any time during the term of this Agreement, City desires to add or remove materials from Processing, the parties shall in good faith negotiate the proposed addition or removal of recyclable materials and any increase or decrease of Processing Allowances.

VI. CONSIDERATION

6.01 Percentage of Revenue. In consideration of City's delivery of Recyclable Materials at no cost to Contractor for subsequent Processing and sale by Contractor, Contractor shall pay City 80% of Net Revenues. Contractor shall receive 20% of Net Revenues. Contractor shall make payment to City one time per month beginning thirty (30) days after the effective date of this agreement. Payment shall be made to City by the 15th of each month. After the 25th of each month, interest shall accrue at the maximum rate allowed by law.

6.02 Calculation of Revenues for Commingled Recyclables. Because Commingled Recyclables consist of a variety of different types of recyclable commodities for which market demand and market price vary and because the amount of revenue generated under this agreement is determined by the market price obtained for each commodity, the method for determining the amount of revenue paid for Commingled Recyclable Materials shall be based upon the proportionate share of each individual commodity. In order to determine the appropriate calculation of revenues for Commingled Recyclable Materials, Contractor shall conduct an annual analysis as described in Paragraph 6.03. Based on the results of the analysis, Contractor shall determine the percentage of total tonnage attributable to each commodity provided by City's Recyclables. The percentage of total tonnage attributable to a commodity shall be multiplied times the respective market price for such commodity. The total value of the market price for each commodity shall be added together to determine the total amount of Gross Revenues received by Contractor for Commingled Recyclable Materials.

6.03 Analysis of Commingled Materials. Contractor shall determine the percentage of tons of Commingled Materials attributable to each Recyclable Material collected by City. In order to make such determination, Contractor shall sort by individual commodity the materials contained in all City recycling trucks for one day a week for a period of three weeks. After sorting each week, the weight of each commodity shall be documented. At the end of the three-week period, the average weight of the three separate sorts will be used to determine the percentage of total Commingled tonnage attributable to each such commodity for that year.

VII. PROCESSING ALLOWANCE INCREASE

7.01 There will be no CPI adjustment during the period covered by this interim contract.

VIII. TOURS

Contractor shall provide educational tours to any Plano organization or group on an appointment basis. The City may request tours outside of the normal educational tours and such tours shall be conducted by the Contractor on behalf of the City.

IX.
PERFORMANCE BOND

Contractor shall furnish a performance bond to the City guaranteeing Contractor's faithful performance of the contract. The performance bond shall be in the amount of **TWO MILLION DOLLARS AND NO/100 (\$2,000,000.00)** and shall be valid for the term of this contract. The premium for such bond shall be paid by Contractor. A certificate from the surety company showing that the bond premiums are paid in full shall accompany the bond. The surety on the bond shall be duly authorized to issue bonds within the State of Texas and shall provide an original Power of Attorney evidencing the authority of persons signing the bond on behalf of surety. The bond is attached hereto and incorporated herein as Exhibit "A".

X.
AUDITS AND RECORD KEEPING

10.01 Right to Audit. Audits shall be conducted at the discretion of City. Contractor agrees that City shall, until the expiration of three (3) years after each payment to City under this contract or after termination of this Contract, whichever occurs last, have the right to examine any pertinent books, documents, papers and records of Contractor involving transactions relating to this contract. Contractor agrees that City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Contractor at least seven (7) days advance notice of intended audits. City shall pay costs incurred for the auditing services of a third party and for City staff involved in the audit; however, under no circumstances will City pay any out of pocket expenses incurred by Contractor. All marketing information shall be deemed proprietary and confidential but shall be available to City for audit purposes. Accordingly, unless otherwise required by law or court order, City shall not disclose such information to any third party.

10.02 Record Keeping. Contractor shall maintain detailed records and files on the weight of each material processed, its market destination, buyer, price paid, revenue generated and other appropriate information, including any written agreements with brokers or purchasers of the Recyclable Materials. In addition to providing information pursuant to the audit provisions of this agreement, Contractor shall provide proof of transfer of Materials to end markets upon request of City. Upon request, Contractor shall submit to City an annual audit financial statement detailing revenue along with the supporting schedule(s) from which the figures and other information on such statement was derived. All marketing information shall be deemed proprietary and confidential but shall be available to City for audit purposes. Accordingly, unless otherwise required by law or court order, City shall not disclose such information to any third party.

10.03 Production of Documentation. Within fourteen business (14) days of City's request for documentation, Contractor shall submit to City all such requested documentation.

10.04 Interest. If as a result of its audit, City determines that Contractor has failed to pay the full amount of money due under the terms of this Contract, Contractor shall pay all such amounts, including interest thereon, in full, within ten (10) days of demand by City. Interest shall accrue at the maximum rate allowed by law and shall begin accruing from the time that such moneys were initially due and payable to City under the terms of this Contract.

XI.

PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall comply with all safety rules and policies for the Processing Facility. Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the Facility and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

XII.

FORCE MAJEURE/LOSSES FROM NATURAL CAUSES

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, which directly and substantially affects its ability to perform the obligations of this agreement, then such party shall be excused from performance hereunder for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence. Notwithstanding the foregoing, in the event of a work stoppage or strike which directly and substantially interferes with Contractor's performance under this Contract, Contractor shall take all reasonable steps to continue to provide services as required hereunder during the work stoppage or strike.

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, from the action of the elements, from any unforeseen circumstances in the prosecution of the same, from unusual obstructions or difficulties which may be encountered in the prosecution of the work, or from any of the causes listed in this paragraph, shall be sustained and borne by the Contractor at its own cost and expense.

XIII.

INDEMNIFICATION

13.01 THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY

ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

13.02 CONTRACTOR AGREES TO RELEASE, DEFEND, INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED BY CONTRACTOR IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN SO DESIRED BY CITY, CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. IF CONTRACTOR FAILS TO DO SO TO THE SATISFACTION OF THE CITY, THEN MAY, AT CITY'S OPTION, EITHER PAY DIRECTLY ANY UNPAID BILLS OF WHICH CITY HAS WRITTEN NOTICE OR WITHOLD FROM CONTRACTOR'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY SUFFICIENT TO LIQUIDATE ANY AND ALL SUCH LAWFUL CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED, WHEREUPON PAYMENTS TO THE CONTRACTOR SHALL BE RESUMED IN FULL, IN ACCORDANCE WITH THE TERMS OF THIS CONTRACT, BUT IN NO EVENT SHALL THE PROVISIONS OF THIS SENTENCE BE CONSTRUED TO IMPOSE ANY OBLIGATION UPON CITY BY EITHER CONTRACTOR OR ITS SURETY.

13.03 CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE

COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

XIV.

COMPLIANCE WITH APPLICABLE LAWS

Contractor shall at all times observe and comply with all applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and shall indemnify and save harmless City against any claim arising from the violation of any such laws, ordinances and regulations whether by Contractor or Contractor's employees, agents, subcontractors, or other third parties for whom Contractor is legally liable. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, Contractor shall bear all costs arising therefrom.

XV.

VENUE

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

XVI.

ASSIGNMENT AND SUBLETTING

Contractor agrees to retain control and to give full attention to the fulfillment of all of its duties and obligations under this Contract. This Contract will not be assigned or sublet without the prior written consent of City, and no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

XVII.

INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and

consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

XVIII.

INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance as set forth in Exhibit "B", a copy of which is attached hereto and incorporated herein.

XIX.

AFFIDAVIT OF NO PROHIBITED INTEREST

Contractor acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "C".

XX.

SEVERABILITY

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. Provided however, if any paragraph, section, subdivision, sentence, clause, or phrase of this Contract which is material to the obligations of the parties hereunder, is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, either party may terminate this Contract by giving the other party thirty (30) days prior written notice.

XXI.

TERMINATION

City reserves the right to terminate this Contract pursuant to Paragraph II above or immediately upon breach of any term or provision of this contract by Contractor; or if at any time during the term of this contract, Contractor closes or moves the Processing Facility to a site unacceptable to City and parties fail to successfully renegotiate as provided in Section 4.06, or if Contractor fails to take action as required under Section 4.05, or if Contractor fails to take action to resolve a complaint under section 4.05 after having been directed in writing by City to take action to resolve such complaint; or if, except as expressly authorized under the terms of this Agreement, Contractor fails to transfer Recyclables to end markets, or if Contractor shall fail to commence the work in accordance with the provisions of this contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this contract, or fail to use an adequate number of personnel or equipment to complete the

work or fail to perform any of its obligations under this contract, then City shall have the right, if Contractor shall not cure any such default after thirty (30) days written notice thereof, to terminate this contract and complete the work in any manner it deems desirable, including engaging the services of a third-party therefor. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy, the cost to City of the performance of the balance of the work is in excess of the amount that would have been paid to Contractor for such work under the terms of this contract, Contractor shall be liable for and shall reimburse City for such excess.

**XXII.
ENTIRE AGREEMENT**

This Contract and its attachments embodies the entire agreement between the parties and may only be modified in writing if executed by both parties.

**XXIII.
CONTRACT INTERPRETATION**

Although this Contract is drafted by City, should any part be in dispute, the parties agree that the Contract shall not be construed more favorably for either party.

**XXIV.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XXV.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXVI.
NOTICE**

All notices, communications and reports required or permitted under this Contract, excluding routine reports and correspondence, shall be personally delivered or shall be sent by certified or registered mail, or hand delivered, to the respective representatives for the parties as designated below, unless and until either party is otherwise notified in writing by the other party of a change of address or designee. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

CITY OF PLANO:

City of Plano
d/b/a Sustainability & Environmental
Services Dept.
Attn: Nancy Nevil
4120 W. Plano Parkway
Plano, Texas 75093
(972) 964-4160 (Phone)
(972) 461-7396 (Fax)

CONTRACTOR:

Republic Waste Services, Inc.
Allied Waste Services

Attn: District Vice President
Plano Recyclery
4200 E. 14th Street
Plano, TX 75074
(972) 422-2341 (Phone)
(972) 424-5683 (Fax)

Attn:
Municipal Marketing Manager
P. O. Box 1309
450 E. Cleveland Road
Hutchins, TX 75141
(972) 225-0964 (Phone)
(972) 225-6582 (Fax)

IN WITNESS WHEREOF, the parties have executed this Interim Contract by signing below.

**ALLIED WASTE SYSTEMS, INC.
d/b/a TRINITY WASTE SERVICES**

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2010 by _____, _____ of **REPUBLIC WASTE SERVICES, INC.**, a [redacted] corporation, on behalf of such corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2010 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

Notary Public in and for the
State of Texas

EXHIBIT "B"
Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability; and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.

B. Minimum Limits of Insurance

Contractor shall maintain limits not less than:

Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for a) Premises – Operations; b) Broad Form Contractual Liability; c) Products and Completed Operations; d) Use of Contractors and Subcontractors; e) Personal Injury; f) Broad Form Property Damage; g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.
- b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than B:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Contractors whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
