

**AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
BFI WASTE SERVICES OF TEXAS, LP, DBA ALLIED WASTE SERVICES OF SAN
ANTONIO // REPUBLIC SERVICES OF SAN ANTONIO
FOR
MUNICIPAL COMMERCIAL GARBAGE COLLECTION, DISPOSAL AND
RECYCLING SERVICES
(RFP 16-099)**

**STATE OF TEXAS
COUNTY OF BEXAR**

This Integration Agreement (hereinafter referred to as the “Agreement”), made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager (hereinafter referred to as “City”), and

BFI Waste Services of Texas, LP dba Allied Waste Services of
San Antonio // Republic Services of San Antonio
4542 SE Loop 410
San Antonio, TX 78222

a limited partnership chartered under the laws of the State of Delaware (hereinafter referred to as “Republic Services” or “Contractor”), said Agreement being executed by Ryan Whiteside, General Manager and pursuant to Ordinance No. 2017-11-30-_____, passed and approved by the City Council on November 30, 2017.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Proposals for “Municipal Commercial Garbage Collection, Disposal and Recycling Services for the City of San Antonio” (RFP 16-099, 6100007926) issued by the City on September 7, 2016;
2. Exhibit II, Addendum I, dated September 15, 2016;
3. Exhibit III, Addendum II, dated September 30, 2016;
4. Exhibit IV, Addendum III, dated October 12, 2016;
5. Exhibit V, Addendum IV, dated October 27, 2016;
6. Exhibit VI, Addendum V, dated November 4, 2016;
7. Exhibit VII, Addendum VI, dated December 2, 2016;
8. Exhibit VIII, Addendum VII, dated January 6, 2017;
9. Exhibit IX, Addendum VIII, dated February 9, 2017;
10. Exhibit X, Addendum IX, dated March 9, 2017;
11. Exhibit XI, Addendum X, dated April 7, 2017;
12. Exhibit XII, Addendum XI, dated April 19, 2017;

13. Exhibit XIII, Addendum XII, dated May 3, 2017;
14. Exhibit XIV, Addendum XIII, dated May 10, 2017;
15. Exhibit XV, Addendum XIV, dated May 19, 2017;
16. Exhibit XVI, Addendum XV, dated May 25, 2017;
17. Exhibit XVII, Addendum XVI, dated June 1, 2017;
18. Exhibit XVIII, Addendum XVII, dated June 29, 2017;
19. Exhibit XIX, Addendum XVIII, dated July 14, 2017;
20. Exhibit XX, City request for Best and Final Offer (BAFO), dated October 17, 2017;
21. Exhibit XXI, BAFO Attachment B1 – Garbage Collection and Disposal Services and BAFO Attachment B2 – Recycling Services, Price Schedules, submitted by Republic Services in response to the BAFO (the “Response”);
22. Exhibit XXII, Copy of enabling Ordinance No. 2017-11-30-_____

Referenced Documents: Further, Republic Services’ Response to the RFP, its addendum and the BAFO are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFP and its addendum govern Republic Services’ response; this Integration Agreement governs both the RFP and the response; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

Compensation: As authorized by the Ordinance, total annual budget sums shall not exceed \$910,000.00 unless City Council action is taken to amend the enabling Ordinance.

If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement without prejudice at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

In consideration of Contractor’s performance in a satisfactory and efficient manner, as determined solely by the Deputy Chief Financial Officer, Finance Department (hereinafter “Deputy”), of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed nine hundred and ten thousand dollars (\$910,000.00) annually as total compensation.

It is understood and agreed by the Parties that the City does not guarantee any minimum volume of work, and that Contractor will be paid for actual work performed and for allowable expenses, provided that Contractor shall present City with an invoice for all expenses and services monthly within 14 days of the end of the month. Payment shall be made no more than 30 calendar days following receipt and approval of each invoice.

Work Start Date: Work shall start immediately upon instruction to Republic Services from the Deputy, or his designee, but no sooner than December 1, 2017, for performance of various City projects described in the RFP's scope of services or the contract documents identified above.

Term of Performance and Termination Date: The term of this agreement is for two years and shall commence, after approval by the City Council as signified by the passage of an Ordinance, on the date recited in the enabling Ordinance, and terminate on November 30, 2019. At the City's sole option, the Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

Clarifications to the RFP: The Parties wish to clarify or amend some of the terms of the RFP. The following changes to the RFP are agreed to by the Parties and hereby adopted:

Section 004 – Scope of Services, Equipment Requirements, 4.0.16, as amended by Addendum XVIII, Republic Services is required to furnish appropriate replacement equipment, including compactors at the current locations as outlined in the RFP BAFO Attachment B1 and B2. The Parties agree that if, during the transition period, Republic Services is required to provide a compactor at a location, and a compactor is not available by February 1, 2018, then Republic Services will provide an open-top container at the location, and shall provide haul services at no charge to the City, until a compactor is installed at the location. City will be invoiced a monthly rental rate of the open top container in RFP BAFO Attachment B1 and B2.

Section 004 – Scope of Services, Recycling, 4.1.7, as amended by Addendum XVIII, is amended to provide that, in addition to the initial 60 day Audit and the annual Audits, Republic Services shall perform any additional Audits requested by the City at any time during the term of the Agreement, for either all six groups or for specific locations. These additional Audits shall be performed in accordance with the procedures provided in section 4.1.7.

Section 004 – Scope of Services, Recycling, 4.1.8, as amended by Addendum XVIII, is clarified to provide that for mixed paper and OCC pricing, the OBM Report, Pulp and Paper Week, Southwest region, will be used and the City will receive 70% on the high side of the applicable range.

The Parties agree that no additional processing fees and no additional residual fees will be charged to the City, other than as provided in the RFP. For contamination fees, the Parties agree that Republic Services will charge the recycling haul rate plus the trash haul rate for applicable container size for that location.

The Parties agree that representatives from Republic Services and the City Departments will meet at least monthly at the commencement of the contract for the first three months, and thereafter meet quarterly or as required by the city departments during the term of the Agreement for a status update and to address issues relating to the RFP services. The City department representative shall schedule and coordinate the meetings at a time and location agreeable to the Parties.

Glossary – The following definitions are added to Exhibit 10 of the RFP:

“Force Majeure” Any failure or delay in performance due to contingencies beyond a party’s reasonable control, including strikes, riots, terrorist acts, compliance with Applicable Laws or governmental orders, fires, inclement weather and acts of God, shall not constitute a breach of this Agreement.

“Hazardous Waste” means waste defined as, or of a character or in sufficient quantity to be defined as, a “Hazardous Waste” by the Resource Conservation and Recovery Act, as amended, or any state or local laws or regulations with respect thereto, or a “toxic substance” as defined in the Toxic Substance Control Act, as amended, or any regulations with respect thereto, or any reportable quantity of a “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any regulations with respect thereto. The term “Hazardous Waste” also includes any waste whose storage, treatment, incineration or disposal requires a special license or permit from any federal, state or local government entity, body or agency and any substance that, after the effective date of this Agreement, is determined to be hazardous or toxic by any judicial or governmental entity, body or agency having jurisdiction to make that determination.

RFP, Exhibit 2, Insurance Requirements, shall be modified as follows:

- Delete “in the Description of Operations block of the Certificate” from (A) lines 3 and 4.
- Insert the words “of the insurer” between “agent” and “and signed” in the 4th line of (A).
- Replace the word “mailed” with “sent” in the 7th line of (A)
- Delete the words “subject to Contractor’s right to maintain reasonable deductibles in such accounts as are approved by the City” from (C).
- Insert “(claims made basis)” in the Amounts section of the chart for Environmental Impairment.
- Replace the words “the policies, declaration page, and all required” with “all applicable blanket-form” in the 2nd line of (E).
- Insert the words “blanket-form” before “endorsement” in the 2nd line of the first bullet of (F).
- Replace the words “suspension or non renewal in” with “cancellation” in the 1st line of the 4th bullet of (F).
- Insert “, other than workers’ compensation.” At the end of the 4th bullet of (F).

Notice: Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Finance Department

P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Contractor, to:

BFI Waste Services of Texas dba Allied
Waste Services of San Antonio // Republic
Services of San Antonio
4542 SE Loop 410
San Antonio, TX 78222

Assignment and Subcontracting: Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

It is City's understanding, and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: Alamo Environmental, Inc. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the Deputy, and in accordance with the Small Business Economic Development Advocacy (SBEDA) Program prior to the provision of any services by said subcontractor.

Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Deputy.

Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Deputy, which consent shall not be unreasonably withheld. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with the termination provisions above, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

Nonwaiver of Performance: Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the Deputy. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

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 respondent 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 the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

Termination: For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated above, or earlier termination pursuant to any of the provisions hereof. This Agreement may be terminated without cause by City upon 30 calendar days written notice. Upon written notices City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of the sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided above in Assignment and Subcontracting, which shall constitute an Event for Cause under this Agreement.

Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate. At such time, City shall pay Contractor only all charges and fees for the services performed on or before such termination date, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new

Agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- Failure to comply with the SBEDA terms and conditions.
- Bankruptcy or selling substantially all of company's assets.
- Failing to perform or failing to comply with any covenant herein required.
- Performing unsatisfactorily.

Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with records retention requirements. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

Amendments: Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and signed by the Deputy. Substantive changes, to include an increase in the amount of compensation, shall require additional City Council approval.

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL: Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

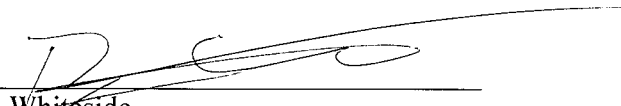
"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

Entire Agreement: This Agreement, together with its authorizing ordinance and its exhibits as listed above, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties.

Agreed, Consented to, and Executed this 16th day of November, 2017.

BFI Waste Services of Texas dba Allied Waste Services of
San Antonio // Republic Services of San Antonio

BY: 
Ryan Whiteside
General Manager

CITY OF SAN ANTONIO

BY: _____
Printed name: _____
Title: _____
CITY MANAGER, or her designee

APPROVED AS TO FORM:

Office of the City Attorney
Andrew Segovia, City Attorney

By: _____
Assistant City Attorney

Exhibit I, a Request for Proposals for “Municipal Commercial Garbage Collection, Disposal and Recycling Services for the City of San Antonio” (RFP 16-099, 6100007926) issued by the City on September 7, 2016;

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Exhibit XX, City request for Best and Final Offer (BAFO), dated October 17, 2017;

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Exhibit XXII, Copy of enabling Ordinance No. 2017-11-30-_____