

TOWN OF SOUTH HADLEY¹

CONTRACT # _____

STATE CONTRACT # (if applicable) _____

DATE: _____

This Contract is entered into on, or as of, this date by and between the Town of South Hadley, 116 Main Street, Room 109, South Hadley, MA 01075 (the "Town"), and

Allied Waste Services of Massachusetts, LLC d/b/a Republic Services of Springfield
["Contractor"]

Dan Higgins, Municipal Services Manager
385A Dunstable Road, Tyngsboro, MA 01879

978 226-9414 978 649-3408
[Telephone Number] [FAX Number]

dhiggins@republicservices.com
[email address]

1. This is a Contract for the procurement of the following:

Solid Waste and Recycling Services as detailed in the Solid Waste Plan Invitation dated January 28, 2020 and in the February 16, 2018 Request For Proposal. Specifically, the contractor will provide municipal solid waste, recycling, yard waste and C&D hauling in conformance with the Technical Approach and Operations Plan attached as Exhibit A.

2. The Contract price to be paid to the Contractor by the Town is:

3. Payment will be made as follows:

3.1 If any portion of the contract price is to be paid by a private citizen(s) no work shall be performed until a sum has been deposited with the Town Treasurer, upon an estimate made by the board, committee or officer having charge of the work, sufficient to cover the payment for the portion of the said work chargeable to the private citizen(s).

3.2 Fees and Reimbursable Costs combined shall not exceed the amount set forth on Exhibit B and as more fully set forth in the Contractor Documents.

3.3 There shall be no further costs, fees or reimbursable charges due the Contractor under this

¹ Contract Long Form - Services more than \$35,000.00 - NOT TO BE USED FOR ENGINEERING AND ARCHITECT CONTRACTS.

Contract unless said fees and/or costs are so set forth in writing. The Town will not pay any surcharge or premium on top of the direct out of pocket expenses, if any.

3.4 Payments shall be made to the Contractor as follows: The Contractor shall invoice the Town on a monthly basis for the costs incurred for services performed under this Agreement and the Town shall pay said invoice within thirty days of receipt of said invoice.

4. Security (*Surety is not required for contracts for the purchase of goods and most services*)

4.1 In the event the contract price exceeds the sum of \$10,000.00, the Contractor must provide security in the form of a bond or otherwise, conditioned upon the faithful performance of this Contract. [[may be deleted if *no* construction involved]]

5. Definitions:

5.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to ensure that the goods or services are complete and are as specified in the Contract.

5.2 Contract Documents: All documents relative to the Contract including (where used) Solid Waste Plan Invitation and all attachments thereto, Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, all Addenda issued during the bidding period and Contractor's Responses to the Solid Waste Plan Invitation. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

5.3 The Contractor: The "other party" to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term "Contractor" shall be understood to refer to any other such label used.

5.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.

5.5 Goods: Goods, Supplies, Services or Materials.

5.6 Recyclable Material: Recyclable Material consists of any material or substance at Town's locations that can be put to beneficial re-use or sold in recognized markets for purposes other than disposal, including, and with limitation to items that are accepted at the Town's designated Recycling end site, the Springfield MRF, and per the guidelines outlined by the MassDEP at RecycleSmart.org and as more fully set forth in Exhibit A.

5.7 Solid Waste: Solid Waste is any nonhazardous solid waste generated at Town's locations that is not excluded by the provisions of this Contract. Solid Waste shall not include any Unacceptable Waste and as more fully set forth on Exhibit A.

5.8 Subcontractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or

Specifications of this work but does not include one who merely furnishes material not so worked.

5.9 **Unacceptable Waste:** Waste Materials specifically excludes hazardous, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or listed or characteristic hazardous waste as defined by applicable federal, state, or local laws, regulations or permits (collectively, “Applicable Law”) or any otherwise regulated waste and as more fully set forth on Exhibit A.

6.0 **Waste Material:** Waste Material is all nonhazardous Solid Waste and/or Recyclable Material that is not excluded by this Contract. Waste Material does not include any Unacceptable Waste.

6.1 **Work:** The services set forth in Exhibit A, Technical Approach and Operations Plan.

6. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before June 30, 2023, unless extended, in writing, upon mutual agreement of the parties, and subject to the availability and appropriation of funds as certified by the Town Accountant. Time is of the essence for the completion of the Contract. The Town and Contractor can mutually agree to extend the contract for up to two additional one-year terms, subject to a 4% price increase plus the increase in the Prevailing Wage for each extension period.

The Contractor has proposed to implement automated collections service per the Contractor’s proposal dated February 24, 2020; the Contractor and the Town may agree to implement said services provided: 1. that automated service is agreed to for a three-year minimum term and 2. the prices set forth herein shall not change.

7. Subject to Appropriation:

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for damages, penalties or other charges to the Town. In the event this is a multi-year contract, this Contract shall be subject to annual appropriation and in the event funds are not so appropriated, this Contract shall terminate immediately without liability for damages, penalties or charges to the Town.

8. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

9. Termination and Default:

9.1 **Without Cause.** The Town may terminate this Contract on thirty (30) calendar days’ notice when in the Town’s sole discretion it determines it is in the best interests of the Town to do so, by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail,

certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

9.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on seven (7) days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

9.3 Default.

a. The following shall constitute events of a default by the Contractor under the Contract:

(1) any material misrepresentation made by the Contractor to the Town; and (2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of state law and/or regulations, and Town bylaw and/or regulations.

10. Suspension or Delay

The Town may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the Services without cause for such period of time as the Town may determine to be appropriate for its convenience. In the event of any such suspension, delay or interruption, the Contractor's time for performance may be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Services, or if another provision of this Contract is applied to render an equitable adjustment.

11. The Contractor's Breach and the Town's Remedies:

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of South Hadley shall have all the rights and remedies provided in the Contract documents, the right to cancel, terminate, or suspend the Contract in whole or in part, as well as the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including "Damages" including but not limited to costs, attorney's fees or other damages resulting from said breach ("Damages") as well as specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and Damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

12. Statutory Compliance:

- 12.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of the General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

General Laws Chapter 30B – Procurement of Goods and Services.

General Laws Chapter 30, Sec. 39, *et seq.* - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq.* Public Buildings Contracts.

- 12.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

- 12.3 The Contractor shall comply with all Federal, State and local laws, rules, wage regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the supply of such Work.

The Contractor shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of the Contractor to comply with the previous sentence. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and, except in the case of a violation resulting from Unacceptable Waste, it shall protect and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

13. Conflict of Interest:

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

14. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

15. Non-Discrimination/Affirmative Action

The Contractor shall carry out the obligations of this Agreement in compliance with all requirements imposed by or pursuant to federal, State and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973 and Mass. G. L. c. 151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the Commonwealth of Massachusetts and the Town as they may be amended from time to time. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, ace, sex, religion, physical or mental handicap or sexual orientation.

15.1 As used in this section “affirmative action” means positive steps to ensure all qualified persons equal employment opportunity without regard to race, color, religion, sex or national origin at all stages of the employment process: recruitment, section, placement, promotion, training, layoff and termination. It may include, but is not limited to, the following:

- (a) Inclusion in all solicitation and advertisements for employees of a statement that the Contractor is an “Equal Opportunity Employer”;
- (b) Placement of solicitations and advertisements for employees in media that reaches minority groups;
- (c) Notification in writing of all recruitment sources that the Contractor solicits the referral of applicants without regard to race, color, religion, sex or national origin;
- (d) Direct solicitation of the support of responsible and appropriate community, state and federal agencies to assist recruitment efforts;
- (e) Participation in, or establishment of, apprenticeship or training programs where outside programs are inadequate or unavailable to minority groups;
- (f) Modification of collective bargaining agreements to eliminate restrictive barriers established by dual lines of seniority, dual rates of pay or dual lines of promotion or progression which are based on race, color, religion, sex or national origin; and
- (g) Review selection, placement, promotion, training, layoff and termination procedures and requirements to ensure that they do not intentionally or unintentionally discriminate against qualified persons because of race, color, religion, sex or national origin.

15.2 The Contractor, if applicable, shall include in all compliance and progress reports submitted to the town a report which shall include: (a) A certificate stating that he or she is currently in compliance with the provisions of G.L. c. 152B and setting forth the Affirmative Action he or she is currently undertaking and will undertake during the contract period to provide equal employment opportunity for all qualified persons without regard to race, color, religion, sex or national origin; and (b) A statement in writing supporting information signed by an authorized officer or agent on behalf of any labor union or other agency which refers workers or provides or supervises apprenticeship or other training programs which the Contractor deals, to the effect that the union or other agency’s practices and policies do not discriminate on the basis of race, color, religion, sex or national origin; provided, in the event that the union or other agency shall refuse to execute such a statement, the Contractor need only so certify in writing.

15.3 A copy of any such report as described above, shall be filed in the office of the Town Clerk and shall upon said filing become a public record.

15.4 The Contractor will take Affirmative Action to ensure that employees are solicited and employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin.

15.5 The Contractor will in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

15.6 In determining whether steps taken by the Contractor constitute Affirmative Action, the Town shall take into account the relevant characteristics of the Contractor including, but not limited to, the number of employees and the location of the principal and branch offices.

16. Assignment:

The Contractor shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the Town, which shall not be unreasonably withheld, conditioned or delayed, so long as the assignee is of sufficient experience and financial strength to continue the contract as contemplated hereunder and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the Town.

17. Condition of Enforceability Against the Town:

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Selectboard or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

18. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of South Hadley unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

19. Contractor's Personnel:

The Contractor shall utilize only its employees and shall not utilize any third-party contractors without prior written approval of the Town.

20. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of South Hadley shall be individually or personally liable on any obligation of the Town under this Contract.

21. Indemnification:

The Contractor shall indemnify, defend and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands,

losses, costs, expenses, recoveries and judgments of every nature and description (including attorneys' fees) to the extent arising out of or in connection with the work being performed or to be performed, or out of any negligent or willful act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Contractor further agrees to reimburse the Town for damage to its property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, excluding normal wear and tear but including damages caused by his, its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the Town's own negligence or willful misconduct.

21.1 The Contractor further agrees to indemnify and hold harmless the Town, including the agents, employees and representatives of either, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

21.2 The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials

21.3 In any and all claims against the town or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's Compensation Acts, disability benefit acts or other employee benefit acts.

21.4 The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from or arising in whole or in part out of any act, omission, or neglect on the part of the Contractor or of any Subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.

The foregoing provisions shall not be deemed to be released, waived, limit or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

22. Insurance

22.1 Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the Town a certificate evidencing such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by the Town.

22. Intentionally Omitted.

22.3 Other Insurance Requirements

- a. Comprehensive commercial general liability insurance with limits of at least \$1 Million per occurrence and \$3 Million annual aggregate for property damage and \$1 Million per person and \$3 Million per occurrence for bodily injury, which shall include the Town of South Hadley as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor's employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.
- b. Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least \$500,000 per person, and \$1 Million per accident.
- c. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, including and not limited to Professional liability insurance where applicable.
- d. All policies shall identify the Town as an additional insured (except Workers' Compensation). The Contractor shall notify the Town immediately upon the cancellation or material amendment to any policy. Renewal Certificates shall be filed with the Town at least ten (10) days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town upon the execution of this Agreement, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. **Failure to provide the notices required in this Section or to continue in force such insurance shall be deemed a material breach of this Contract and shall be grounds for immediate termination.** Said insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the "MIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the

location and operations to which the insurance applies, and the expiration date. All insurance shall be written on an occurrence basis. Coverage shall be maintained without interruption from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.

- e. The Contractor shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Town.

23. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced for the Town under this Contract shall not be subject to copyright, except by the Town, in the United States or any other country. The Town shall have unrestricted authority to, without payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town at the termination of this Contract. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the Town before making any statement bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium.

24. No Employment

The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its employees, agents, servants nor any person for whose conduct the Contractor is responsible shall be considered an employee or agent of the Town for any purpose and shall not file any claim or bring any action for any worker's compensation unemployment benefits and compensation for which they may otherwise be eligible as a Town employee as a result of work performed pursuant to the terms of this Contract.

25. Audit, Inspection and Recordkeeping

At any time during normal business hours and with reasonable advanced notice to the Contractor, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript all records, contracts, invoices, payrolls, and other relevant financial data directly relating to all matters covered by this Agreement.

26. Payment

The Town agrees to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed.

27. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written Agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

28. Severability

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

29. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

30. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth on page 1 or furnished from time to time in writing hereafter.

31. Binding on Successors:

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither the Town nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.

32. Entire Agreement:

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

33. Supplemental Conditions:

The foregoing provisions apply to all contracts to which the Town of South Hadley shall be a party.

If this Contract is for Construction, the following provisions will apply:

See SUPPLEMENT attached hereto.

34. Title and Right of Refusal:

Title to and liability for Waste Materials shall pass to Contractor when placed in Contractor's vehicle. Title to and liability for any Unacceptable Waste shall at no time pass to Contractor. Contractor may, in its sole discretion, reject any Unacceptable Waste. If Unacceptable Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire waste container that contains the Unacceptable Waste. In such situations, Contractor shall contact the Town and the Town shall promptly undertake appropriate action to ensure that such Unacceptable Waste is removed and properly disposed of by the depositor or generator of the Unacceptable Waste. In the event Unacceptable Waste is present but not discovered until after it has been collected by Contractor, Contractor may, in its sole discretion, remove, transport, and dispose of such Unacceptable Waste at a facility authorized to accept such Unacceptable Waste. Subject to the Town's providing all such reasonable assistance to Contractor, Contractor shall release Town from any liability for any such costs incurred by Contractor in connection with such Unacceptable Waste, except to the extent that such Unacceptable Waste is determined to be attributed to the Town.

35. Force Majeure:

Except for Town's obligation to pay amounts due to Contractor, any failure or delay in performance under this Agreement due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, riots, terrorist acts, epidemic or pandemic, compliance with Applicable Laws or governmental orders, fires, bad weather and acts of God, shall not constitute a breach of this Agreement, but shall entitle the affected party to be relieved of performance for that period of time which it is prevented or prohibited from working. The collection or disposal of any increased volume resulting from a flood, hurricane or similar or different Act of God over which Contractor has no control, shall not be included as part of Contractor's service under this Agreement. In the event of an extraordinary increased volume due to a Force Majeure event, Contractor and the Town shall negotiate the additional payment to be made to Contractor. Further, the Town shall grant Contractor variances in routes and schedules as deemed necessary by Contractor to accommodate collection of the increased volume of Waste Materials. Notwithstanding the foregoing, in the event there may be a cause to exercise a Force Majeure in one section of Town, that does not relieve the Contractor from performing services hereunder in the remainder of the Town.

36. Exhibits and Attachments:

Exhibit A – Technical Approach and Operations Plan

Exhibit B – Price List

Exhibit C – List of Municipal Facilities

Attachments:

Republic Services Proposal dated March 18, 2020

Republic Services Proposal dated February 24, 2020

Invitation for Solid Waste Plan dated January 28, 2020

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CERTIFICATION OF GOOD FAITH

The undersigned certifies under pains and penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

The Contractor by:

 Print Name

 Title/Authority

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A

_____, authorized signatory for
name of signatory

_____, whose
name of contractor

principal place of business is at _____,

_____ does hereby certify under the pains and penalties of perjury that

_____ has paid all
name of contractor

Massachusetts taxes and has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature

Date

Name

Federal Tax ID # or Social Security #

EXHIBIT A
TECHNICAL APPROACH AND OPERATIONS PLAN
SCOPE OF WORK

1. Requirements

- 1.1 The Contractor shall furnish all labor, equipment, collection, transport required for removal and transportation and collection of the solid waste in the Town of South Hadley including curbside collection of non-recyclable municipal Solid Waste , and recyclable materials (Acceptable Recyclables”) at all residences, some businesses and municipal buildings in the Town. It will also include furnishing specific multi-unit residential structures and municipal buildings with separate containers for Solid Waste collection, transport, disposal, and sale of the materials described in this Scope of Work, including but not limited to transportation, operation, fuel, and maintenance of equipment, supervision, inspection, registration, licensing, and insurance. Collected Solid Waste will be transported to a disposal facility as appropriate and designated and approved by the Town, namely the Town’s Transfer Station, or other facility designated by the Town and approved by the Department of Environmental Protection (hereinafter “DEP”). The Contractor shall comply with all applicable Federal, State, and local laws and regulations, and shall obtain all required licenses and permits. Contractor agrees to purchase and maintain new vehicles dedicated to the Town of South Hadley to meet this contract.
- 1.2.1 Collection of solid waste, recyclables, and yard waste within the Town shall not begin earlier than 7:00 A.M., and shall not normally continue beyond 5:00 P.M. The Town and the Contractor may mutually agree in writing upon other collection times or disposal schedules. Curbside collection of solid waste and recyclables shall occur 26 weeks of the year, on an every other week basis. Curbside collection of yard waste shall occur for one pick up period (usually 2 weeks used to cover all routes) in the fall and one pick up period (usually two weeks used to cover all routes) in the spring. However, in the event the Town determines it would like an additional time for yard waste pick up, the Contractor will provide same on a mutually agreeable schedule and the rates noted on the Rate Sheet Attached hereto as Exhibit 2
- 1.2.2 Residents may contract directly with the Contractor for weekly collection of solid waste and recyclables at a rate of \$180 per week. Said agreement for a so called “subscription service” shall be on an as requested service by a resident to the Contractor and the resident shall be billed directly by the contractor for said service. The Town has no responsibility to pay the Contractor for a subscription service.
- 1.3 At the times noted above in section 1.2, collection of solid waste, recyclables, and yard waste normally shall be collected Monday through Friday, and no solid waste shall be collected on Sunday or on any legal holiday of the Commonwealth of Massachusetts. If a legal holiday occurs in any given week, residential solid waste shall be collected one day later at all locations during the period of that

week that follows the holiday, with the final day's collection made on Saturday. Deviations from this schedule must be approved in writing by the Town Administrator. Notwithstanding the foregoing the Contractor may pick up on Saturday in order to cover any missed days in the previous week.

In the event solid waste pick up is delayed due to inclement weather, the Contractor must provide the Town Administrator or his/her designee with 24 hours notice of said delay by electronic mail. Trash pick up will resume at the earliest possible time and date after the inclement weather. In all events, the Contractor shall be required to add additional haulers should trash pick up days need to be doubled in order to pick up solid waste in accordance with the Contractor's obligations hereunder.

- 1.4 The Contractor shall exercise every reasonable care in collection of solid waste, recyclables and yard waste, and shall remove any waste accidentally spilled on private or public property.
- 1.5 The Contractor shall meet, either virtually or in person, with the Town Administrator or designee in June, prior to the beginning of each contract year, and at least monthly during the duration of the contract. The Contractor or the Town Administrator may request additional meetings, if necessary.
- 1.6 The Contractor shall notify the Town Administrator of any irregularities or problems encountered during collection. The Town Administrator or his/her designee will investigate these irregularities as well as any complaints by citizens concerning the performance of the Contractor. The Contractor shall make available to residents a telephone number at which direct complaints may be received between the hours of 8:00 a.m. through 5:00 p.m. Monday through Friday, except legal holidays. In addition, contractor shall maintain a written log of all complaints received and their resolution and said log shall be provided to the Town on at least a monthly basis or as otherwise requested by the Town.

2. Solid Waste

- 2.1 The contractor shall provide all necessary labor and equipment to collect, transport, and dispose of residential and municipal solid waste generated by the Town. Residential solid waste shall be collected at curbside every other week from each single family residence, multiple family residence containing two, three, or four residential, some businesses, and all municipal units, and selected condominium units in the Town of South Hadley. The Town may, at its discretion, relocate dumpsters/toters within the Town or add additional dumpsters/toters or adjust the size of dumpsters as needed. At the execution hereof, the Contractor shall pick up municipal facilities as set forth on Exhibit C.
- 2.2 The Contractor will maintain the Collection Schedule as set forth in section 1.3 and 2.3. Any changes in the Collection Schedule must have the prior written approval of the Town Administrator and the Contractor shall notify in writing all

affected residences of any changes in Collection Schedule a minimum of two weeks prior to the change. In the event

- 2.3 Solid waste normally shall be collected Monday through Friday, and no solid waste shall be collected on Sunday or on any legal holiday of the Commonwealth of Massachusetts. If a legal holiday occurs in any given week, residential solid waste shall be collected one day later at all locations during the period of that week that follows the holiday, with the final day's collection made on Saturday. Deviations from this schedule must be approved in writing by the Director of Public Health. Notwithstanding the foregoing the Contractor may pick up on Saturday in order to cover any missed days in the previous week.

- 2.5 The Contractor shall collect only those items from curbside that have been approved by the Board of Health through its Solid Waste Regulations, which may be reviewed and revised by the Board of Health from time to time. The Board of Health, in its sole discretion, shall also regulate the number of items that shall be collected from each residence, and any fees that must be paid for said items. The Contractor shall apprise himself of the Board's Regulations, as they may be revised from time to time, and shall not collect unauthorized items or items for which the required fee has not been paid. The Contractor shall notify the Department of Public Health, of any violations of the curbside collection regulations on a daily basis or as practical.

3. Recyclable Materials

- 3.1 The Contractor shall provide all necessary labor and equipment to collect, transport and process recyclable materials generated by the Town. Residential recyclable material shall be collected every other week on the same day as the solid waste residential collection from each single family residence, multiple family residences containing two, three, or more residential and municipal units, and selected condominium units in the Town of South Hadley. Recyclable materials shall be collected from dumpsters/toters at defined municipal locations in accordance with locations and schedule outlined attached hereto as **Exhibit C** and incorporated herein. The Town may, at its discretion, relocate dumpsters/toters within the Town or add additional dumpsters/toters or adjust the size as needed.

- 3.2 Recyclable material shall be transported by the Contractor to an approved recycling process facility with notification made to the Town. Said material once picked up by the Contractor shall remain the property of the Contractor and it shall be responsible for any tip fees that may be incurred from the processing facility.

- 3.3 The Contractor shall collect all authorized recyclable materials from all residences, regardless of amount. The types and specifications of recyclable materials that shall be collected shall be specified by the Board of Health in its sole discretion in the Board of Health's Regulations. The Contractor shall notify

the Department of Public Health, of any violations of the curbside collection regulations on a daily basis or as practical.

4. Yard Waste

- 4.1 The Contractor shall provide the Town with at least 2 yard waste collections each year, one in the spring (usually 2 weeks used to cover all routes) and one in the fall (usually 2 weeks used to cover all routes), specific dates to be determined by the Town. The Town may request more yard waste collections and the cost for same shall be as set forth in Exhibit B. Contractor will collect the yard waste from the resident, at the curb, on the service day of trash collection in accordance with Board of Health Regulations.

5. Transfer Station Hauling

5.1 The Contractor shall pick up and dispose of MSW and C&D which are dropped at the Transfer Station at 10 Industrial Drive by Town residents at the rate as set forth on Exhibit B.

**EXHIBIT B
PRICE LIST**

July 1, 2020 to June 30, 2021:

\$514,900 Manual Curbside Collections for 26 weeks
\$8,060 per week for each Yard Waste Collection week
\$70,000 Town Buildings & Schools set forth on Exhibit C.

\$83.00 MSW Disposal per ton to the 10 Industrial Drive Transfer Station
\$88.00 C&D Disposal per ton to the 10 Industrial Drive Transfer Station

\$215.00 Roll Off Hauls from 10 INDUSTRIAL DRIVE to Holyoke Transfer Station
\$225.00 Roll Off Hauls from 10 INDUSTRIAL DRIVE to Springfield MRF

\$180.00 Annual Charge to Residents for additional 26 weeks of MSW Collections subscription service to be paid directly by resident to Contractor and as requested by Resident.

July 1, 2021 to June 30, 2022:

\$535,500 Manual Curbside Collections
\$8,380 per week for each Yard Waste Collection week
\$72,800 Town Buildings & Schools set forth on Exhibit C

\$86.50 MSW Disposal per ton to the 10 Industrial Drive Transfer Station
\$91.50 C&D Disposal per ton to the 10 Industrial Drive Transfer Station

\$224.00 Roll Off Hauls from 10 Industrial Drive to Holyoke Transfer Station
\$234.00 Roll Off Hauls from 10 Industrial Drive to Springfield MRF

\$190.00 Annual Charge to Residents for additional 26 weeks of MSW Collections subscription service to be paid directly by resident to Contractor and as requested by Resident.

July 1, 2022 to June 30, 2023:

\$556,900 Manual Curbside Collections
\$8,720 per week for each Yard Waste Collection week
\$75,700 Town Buildings & Schools set forth on Exhibit C

\$90.00 MSW Disposal per ton to 10 Industrial Drive Transfer Station
\$95.25 C&D Disposal per ton to 10 Industrial Drive Transfer Station

\$233.00 Roll Off Hauls from 10 Industrial Drive to Holyoke Transfer Station
\$243.00 Roll Off Hauls from 10 Industrial Drive to Springfield MRF

\$200.00 Annual Charge to Residents for additional 26 weeks of MSW Collections subscription service to be paid directly by resident to Contractor and as requested by Resident.

The Contractor or the Town may request that the above rates will be prorated up or down for changes in service levels at an amount greater or less than 5% of those at the execution of this contract at the same rates set forth herein.

EXHIBIT C
SOLID WASTE AND RECYLCING DUMPSTER/TOTER LOCATIONS

Solid waste and recycling shall be collected at locations specified according to the following schedule:

<u>Location</u>	Container Size	Collection Days
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Dumpsters and recycling will be collected from all schools once a week during the summer unless directed by the Director of Public Health, otherwise pick up will be daily.

This schedule may be altered with the mutual consent in writing of the Town and the Contractor.

