

3 AN ORDINANCE approving CONTRACT FOR  
4 RECYCLE PROCESSING between REPUBLIC  
5 SERVICES OF INDIANA LP, DBA NATIONAL  
6 SERV-ALL and the City of Fort Wayne, Indiana, in  
7 connection with the Board of Public Works.

8 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**  
9 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

10 **SECTION 1.** That the CONTRACT FOR RECYCLE  
11 PROCESSING by and between REPUBLIC SERVICES OF INDIANA LP,  
12 DBA NATIONAL SERV-ALL and the City of Fort Wayne, Indiana, in  
13 connection with the Board of Public Works, is hereby ratified, and affirmed and  
14 approved in all respects, respectfully for:

15 All labor, insurance, material, equipment, tools, power,  
16 transportation, miscellaneous equipment, etc., necessary for  
17 seven (7) year contract for RECYCLE PROCESSING for the  
18 City of Fort Wayne, Indiana. Annual rates are subject to contract  
19 escalations:


20 involving a total cost for RECYCLE PROCESSING : \$68.09 per ton.  
21 Estimated total cost for RECYCLE PROCESSING per year is EIGHT  
22 HUNDRED EIGHTY-SIX THOUSAND AND 00/100 DOLLARS –  
23 (\$886,000.00). A copy said Contract is on file with the Office of the City Clerk  
24 and made available for public inspection, according to law.  
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**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney

**DIGEST SHEET**

Department: Solid Waste Dept.

Resolution Number: 104-1-11-17-1

Title of Ordinance: Recycle Processing Contract

Description of Project (Be Specific):

Seeking approval of the Recycle Processing Contract with Republic Services for Fort Wayne Residents recyclable material. Cost is \$68.09 per ton. Contract begins January 1, 2018.

What Are The Implications If Not Approved:

Recycling Hauler contracted by the City will not have a facility to take recyclables to for processing. This contract is needed in conjunction with the recycling collection contract.

If Prior Approval Is Being Requested, Justify:

NA

Additional Comments:

  
\_\_\_\_\_  
Signature

5-3-17  
Date



# CITY OF FORT WAYNE

TOM HENRY, MAYOR

Date: May 3, 2017

To: Members of City Council

From: Matt Gratz *MG*  
Solid Waste Manager

Re: Recycle Processing Contract

The Solid Waste Department is seeking approval of the Recycle Processing Contract with Republic Services of Indiana LP, DBA National Serv-All, a Delaware limited partnership. This contract is to sort all the materials collected at the curb by the recycling collection contractor. The contract price is \$68.09 per ton. These rates are subject to annual contract escalations. The contract escalation is the same as is in the current waste contracts.

The cost of recycle processing for 2018 is estimated at over \$886,000. This amount is expected to increase annually due to contract escalations.

In addition, the City will receive 75% of the net revenue from the sale of the commodities. Markets are hard to predict, but at 2016 averages, this would equate to \$55.00 per ton. The City recycles roughly 13,000 tons of material annually.

If you have any questions concerning the contract, please contact me at 427-2474.

Thank You.

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An Equal Opportunity Employer

**SOLID WASTE DEPARTMENT  
CITY OF FORT WAYNE**

Contract

for

**Recycle Processing**

**Contract Initiation Date:**

**January 1, 2018**

**Thomas C. Henry, Mayor**

**BOARD OF PUBLIC WORKS**

**Robert P. Kennedy  
Chair**

**Mike Avila  
Member**

**Kumar Menon  
Member**

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**1. DEFINITION OF TERMS**

The following words have the following meanings, regardless of whether the terms are capitalized throughout this Agreement.

**ANNIVERSARY DATE** – The anniversary of service initiation date, which is January 1 of each year of the term of this contract.

**BIDDING DOCUMENTS** - Bid specifications, documents, and addendums that were publicly released by the City of Fort Wayne Board of Public Works, together with the bid submitted by the Contractor.

**BUNDLE** - Yard and garden trimmings, Refuse, Construction and Demolition Debris, or newspapers and magazines securely tied together with string, rope or twine forming an easily handled package not exceeding 3 feet in length or 60 pounds in weight.

**CITY** - The City of Fort Wayne, Indiana, acting by and through its Board of Public Works. Geographically, the term City refers to the City of Fort Wayne, Indiana, and any geographic area, which becomes annexed thereto effective during the term of this Contract.

**CITY DEPARTMENT FACILITIES** – Buildings and other facilities, or space within such buildings or facilities, owned or leased by the City from which Refuse, Recyclable Materials, Single-Stream Recyclable Materials, or all of the above are generated for collection.

**CONTAINERS**- (a.) Reusable Container - A receptacle made of plastic, metal, or fiberglass with a capacity not to exceed 33 gallons, a loaded weight of no more than 60 pounds, and a tight-fitting lid. (b.) Non-Reusable Container - See definition of Bags. (c.) Any container larger than 33 gallons holding debris in plastic bags not exceeding 60 pounds. Contractor-provided containers for residents must be distinguishable from commercial containers.

**CONTRACT** - This Solid Waste Department Contract for Recycle Processing, and any attachments, exhibits, and amendments hereto.

**CONTRACT DOCUMENTS** - The Contract and the Bidding Documents.

**CONTRACT SECURITY** – A Performance Bond as required by the City to secure performance of the Contractor under the Contract.

**96-GALLON CONTAINER** – A plastic, wheeled container and an attached lid, with a capacity of ninety-six (96) gallons.

**48-GALLON CONTAINER** – A plastic, wheeled container and an attached lid, with a capacity of forty-eight (48) gallons.

**CONTRACT YEAR** – January 1 through December 31 of each calendar year.

**CONTRACTOR (OR RECYCLING PROCESSING CONTRACTOR)** - Republic Services of Indiana LP, DBA National Serv-All, a Delaware limited partnership.

**DISPOSAL** - Legally authorized deposit of waste, Refuse, Recyclables, or Yard Waste materials under contract with the receiving site and in accordance with all laws, regulations and rules of the Disposal Site, Materials Recovery Facility, or any governmental agency.

**DISPOSAL SITE** - A properly licensed depository for the processing or final Disposal of Refuse, including but not limited to, sanitary landfills, transfer stations, incinerators, composting facilities and waste processing and separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction.

**FORCE MAJEURE EVENTS** - 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, and acts of God, shall not constitute a breach of this Agreement.

**GARBAGE** - Animal or vegetable waste resulting from the handling, preparation, cooking, serving or consumption of food and including food containers, but excludes Hazardous Waste and Unacceptable Waste.

**GUARANTOR** - Republic Services Inc., a Delaware corporation.

**HAZARDOUS WASTE** - Waste designated as hazardous by the United States Environmental Protection Agency or by the appropriate state agency as further defined under Title 329, Indiana Administrative Code, Section 2-2 as the same is now in effect or may hereinafter be amended.

**INDUSTRIAL WASTE** - Any waste generated by a manufacturing or industrial process that is not a regulated Hazardous Waste.

**INSOLVENCY** - A party's inability to pay its debts as they mature.

**MATERIALS RECOVERY FACILITY (MRF)** - A facility where Recyclable Materials and/or Single-Stream Recyclable Materials are separated and processed for marketing to end users or for beneficial use.

**MULTI-FAMILY DWELLING** - A building that contains two (2) to four (4) residential living units.

**MUNICIPAL SOLID WASTE** - Solid Waste resulting from or incidental to municipal, community, residential, commercial, institutional, or recreational activities, and includes Garbage, Rubbish, Refuse, ashes, street cleanings, and other Solid Waste other than Industrial Waste, Hazardous Waste and Unacceptable Waste

**NET REVENUE** - Revenue from commodity sales that a Contractor for the processing of Recyclable Materials and/or Single-Stream Recyclable Materials realizes from such commodities received under its Contract with the City, less transportation costs from the Contractor's Materials Recovery Facility or other recycling facility owned or operated by the Contractor to the purchaser's facility.

**PERFORMANCE BOND** - Bond from a Surety that guarantees compensation to the City in the event that the City must assume the obligations and/or duties of the Contractor in order to continue the service as defined by the Contract's Specifications.

**RECYCLABLE MATERIALS or RECYCLABLES** - Aluminum cans, aluminum foil and foil pans, steel, empty steel paint cans, tin, and bimetal cans; plastic (#'s 1, 2, 3, 4, 5, 6, and 7); glass containers (amber, clear, blue, and green in color); cardboard, fiberboard, newspapers, mixed paper, magazines, phone books, and catalogues.

**REFUSE** - Discarded waste materials in a solid or semi-liquid state, consisting of Garbage, Rubbish or a combination thereof, but excludes Hazardous Waste and Unacceptable Waste

**RESIDENTIAL UNIT** - A group of rooms located within a building or mobile home, and forming a single, inhabitable unit, with facilities which are, or intended to be, used for living, sleeping, cooking and eating. This definition also includes buildings containing four or fewer separate or contiguous single-family dwelling units whose owner has not elected to procure commercial waste removal by a registered hauler.

**RUBBISH** - Solid Waste consisting of combustible and non-combustible materials, Yard Waste and garden wastes, but excludes Hazardous Waste and Unacceptable Waste, Freon-containing appliances, infectious wastes, tires, and Construction and Demolition Debris over 60 pounds.

**SINGLE-FAMILY DWELLING** – A building that contains one (1) residential living unit.

**SINGLE-STREAM** – Commingled materials that are stored and collected together.

**SINGLE-STREAM RECYCLABLE MATERIALS or SINGLE-STREAM RECYCLABLES** - Aluminum, aluminum foil and foil pans, steel, empty steel paint cans, tin, and bimetal cans; plastic (#1, #2, #3, #4, #5, #6 and #7); glass containers (amber, clear, blue, and green in color); cardboard, fiberboard, newspapers, mixed paper, magazines, phone books, and catalogues.

**SOLID WASTE** - Refuse, Rubbish, Garbage and Yard Waste, but excludes Hazardous Waste and Unacceptable Waste

**SUBCONTRACTOR** – An individual, firm or corporation having a direct contract with Contractor for the performance of a part of the Work.

**SURETY** – A party who is legally liable for the debt, default, or failure of the Contractor under the Performance Bond or other bond.

**TON** – A short ton of 2,000 pounds.

**UNACCEPTABLE WASTE** - Highly flammable substances, Hazardous Waste, liquid wastes, special wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, material that is not Recyclable Material, and other materials deemed by state, federal, or local law, or in the reasonable discretion of Contractor, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility. This excludes moderate contamination of Garbage that exists in normal sorting process of Recyclables.

**WEATHER EMERGENCY**- Excessive snow, ice, temperature or other extreme weather condition where the Board of Commissioners of Allen County declare a Level 1 or Level 2 Weather Emergency; and as a result of which continuance of work in accordance with the Contract would pose a safety hazard to Contractor's employees or other persons.

**WORK** - The Recyclable services performed by Contractor pursuant to the terms of this Contract.

**2. INTENT AND PURPOSE**

It is the intent of the City of Fort Wayne to provide its residents a comprehensive integrated municipal solid waste and recycling management service consisting of a weekly pickup from each dwelling unit of refuse and a bi-weekly collection of recyclables, and to process for market those recyclables. Collection service is to be based upon total collection to be from all residential dwelling units within the boundaries of the City. The purpose of this agreement is to provide for the processing of the collected recyclables.

**3. TERM OF CONTRACT**

The term of this Contract shall be for a period of seven (7) years (the Initial Term), together with an option to renew for one (1) three (3) year extension, upon all of the same terms and conditions contained in the initial Contract upon mutual agreement. The City shall exercise the extension by providing contractor with written notice of City's intention to extend at least forty-five (45) days prior to the expiration of the Initial Term. The initial date of service under the Contract shall be January 1, 2018. Failure to commence Work on the initial date for Work under the Contract, unless such failure is caused by the City's actions or the actions of City's employees, representative, agents or other third-party contactors, shall result in liquidated damages of \$10,000 per calendar day. In the event funds for the continued fulfillment of the Contract by the City are insufficient or are not appropriated by the Common Council of the City of Fort Wayne, either party shall have the right to terminate the Contract without penalty upon not less than ninety (90) calendar days prior written notice to either party.

**4. SCOPE OF WORK**

The Recyclables Processing Contractor will process and market the following materials: aluminum, aluminum foil and foil pans, steel cans, empty steel paint cans, tin, and bimetal cans; plastics (#1 through #7); glass containers (amber, clear, blue, and green in color); cardboard, fiberboard, cartons, newspapers, mixed paper, magazines, phone books, and catalogues. In the event the Recyclables Processing Contractor would like to add or remove items from the program, the Recyclables Processing Contractor must provide in writing the reason why the item should be added or removed. The City will make a decision in writing within ninety (90) days of this request. The City will only allow changes to the program one (1) time within a two (2)-year period. Recyclables Processing Contractor will be responsible for all costs associated with notifying residents of the changes to the program. The City reserves the right to approve the notification process.

The hours of operation of the Materials Recovery Facility and any transfer station used under the Contract shall be at least 6:00 a.m. – 6:00 p.m., Monday through Friday and 8:00 a.m. until noon Saturday, unless otherwise approved by the City. In any week of a major holiday, the Saturday operating hours shall be at least 6:00 a.m. – 6:00 p.m. In the event that the City's Recycling Collection contractor has completed all deliveries prior to the required closing time for the day, and has confirmed such to the Processing Contractor, the Materials Recovery Facility may complete work and close for the day.

The following holidays when falling on a weekday will be observed as non-work days by the Contractor:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

In the event a holiday falls on a Sunday and the holiday is observed by the City on Monday, there will be no work on Monday. All collection and disposal will be one day late that week.

Contractor's Material Recovery Facility and any transfer stations shall meet all the requirements of the State of Indiana and the jurisdiction in which the disposal site is located. The City reserves the right in its sole discretion to approve any facilities used for transfer and processing and any change in processing methods regardless of the initiating party.

The Material Recovery Facility or transfer stations used must maintain average daily performance standards for vehicle turn times of no more than 30 minutes for City collection by Contractor from the time the vehicle reaches the facility (enters the scale wait line) to the time the vehicle is allowed to dump its load and the time in which it takes to weigh out. The City reserves the right to periodically monitor these times with no notice to the Material Recovery Facility or transfer station. In the event the facility does not meet this time frame and causes delay in the collection process, further action may be taken by the City against the Contractor as described in section 15 of the Contract Documents. Disputes concerning this matter between the Collection Contractor and the Processing Contractor will be reviewed and resolved by the City.

#### **5. CONTRACT PRICE**

Contract Price shall be \$68.09 per ton beginning January 1, 2018. The Contract Price will be adjusted annually by indices outlined in section 9 of the Contract.

Pricing shall include all costs and administrative procedures for the processing of recyclable materials. This pricing includes all fees such as Federal, State, and local environmental fees, fuel surcharges, and any other fees. The City will allow the Contractor to pass onto the City any new fees imposed by a governmental unit to a processing facility. The fees must have been legislated and billed to the Contractor during the term of the Contract.

#### **6. PAYMENT**

Recyclables Processing Contractor shall invoice the City by the 10<sup>th</sup> of every month, in arrears during the Term of the Contract. The City shall have thirty (30) days after receipt of a properly prepared invoice to make payment if payment is due to Recyclables Processing Contractor. Invoicing shall include a spread sheet that contains the following: Scale Ticket Number, Date/Time In, the Truck Number, and Net Tons Charged, Revenues received from sales of Recyclable Materials accepted from City's collection Contractor, Net Revenue due the City, and monthly payment due Recyclables Processing Contractor or City after accounting for Net Revenue sharing. In addition, Recyclables Processing Contractor shall provide, upon request, copies of all scale tickets. Recyclables Processing Contractor must supply any additional information upon request by the City.

#### **7. REVENUE SHARE**

The City shall receive a seventy-five percent (75%) share of the Net Revenue from sales of Recyclable Materials brought to the Materials Recovery Facility by the City's recycling collection contractor. The Contractor shall use its commercially best efforts to find the highest market prices for the sale of the Recyclables processed from the City. Contractor can market the material in combinations if this form of marketing brings in the highest form of revenue. Markets shall be the ultimate outlets for the recyclable commodities and/or those purchasers that offer the highest Net Revenue to the Contractor and the City. If the Contractor processes a material to market specifications but market price (as defined in the bid documents) is a negative value, the City will assume the full negative value or allow the material to be temporarily removed from the program.

#### **Auditing Methodology**

The Recyclables Processing Contractor shall determine the percentage of Tons of Single-Stream Recyclables attributable to each commodity collected from the City. In order to make such determination, Contractor shall sort by individual commodity the Single-Stream Recyclables, as applicable, contained in

selected collection vehicles from the City on designated days during each semi-annual analysis. Analysis shall be representative of the collection service areas of the City. After sorting, each commodity shall be weighed and the weight of each shall be used to determine the percentage of total Single-stream Recyclables tonnage attributable to each such commodity for the following six (6) months.

In order to determine the appropriate calculation of revenue payable to the City for Recyclables, Contractor shall conduct a semi-annual analysis using an automated auditing procedure in April and October of each calendar year on a date mutually determined by City and Contractor. For the purposes of this contract, an audit conducted by the Contractor in September 2017 under the previous contract shall be acceptable for the first three months of this Contract. The first audit conducted under this contract shall commence on or about April 25, 2018, and thereafter a schedule of April and October shall prevail. Failure to complete the audit within three (3) working days—either before or after—the agreed-upon audit date shall result in a penalty of one thousand dollars (\$1,000) per day that the audit is early or late. Contractor shall use the results of such analysis to determine the percentage of total tonnage attributable to each commodity provided by the Recyclables. The percentage of total tonnage attributable to each such commodity shall be multiplied by the market price for such commodity to determine the monthly amount payable to the City for the Recyclables during the six (6) month period commencing in the month of the calculation. Each monthly payment for the Recyclables shall be paid to City on or before the 25th day of the month in which payment is due. The total value of the market price for each commodity shall be combined to determine the total amount of Net Revenue received each month by Contractor for the Recyclables. Market pricing shall be determined by the average of the sales for the month for each individual commodity. If there are no sales of a commodity in the current month due to the lack of enough material to make a full load for shipping purposes, the price shall revert to the previous month's price. Residue and all costs associated with the disposal of residue will be the responsibility of the Contractor and shall not be passed on to the City. Contractor's monthly payment to the City shall include a report detailing the results of such analysis.

On the auditing schedule specified above, the Contractor shall semi-annually audit designated inbound vehicle loads of the Recyclables collected within the City by the Contractor. The City and Contractor shall agree in advance on the dates of each semi-annual audit, at which a representative of the City shall be present. Each semi-annual audit will be conducted by sorting the entire volume of the first load of material collected from each route on that day. Route collection days will be determined by mutual agreement of the City and the Contractor.

- a.) At least ten (10) days prior to each semi-annual audit, the Contractor shall meet with the City and the City's recycling collector to select the collection week ("A" or "B") and collection day and to coordinate such audit.
- b.) The collection week and day for each semi-annual audit shall be a different week and day from the immediately preceding semi-annual audit unless otherwise specified by the City.

Each collection vehicle to be used in each semi-annual audit will be weighed full and empty to capture the tare weight of such vehicle and the weight of the Recyclables. (Note: On-file tare weights are not acceptable for this procedure.) The vehicle load of material will be deposited in an area of the Materials Recovery Facility or transfer station that has been segregated from the tipping floor and cleaned, so that there is no contamination of the vehicle load by other materials on the tipping floor. Contractor shall clean the sorting line of all material from previous loads and/or activities and shall run the material collected from the designated City routes on the day of each semi-annual audit. Contractor shall utilize sorting equipment and manpower at standard efficiency to ensure material is sorted properly. All material processed from the sorting line shall be weighed by each commodity marketed and a percentage of the materials composition will be established.

The percentage will be calculated to two decimal places (Example: 7.46%). Contractor will prepare and submit to City a written report detailing the results of each semi-annual audit which shall include copies of all scale tickets used to weigh each commodity. The City will provide Contractor with written comments on the report within ten (10) days following receipt. If the City accepts the report, or if the City has not

provided Contractor with written objections to the report within ten (10) days following receipt thereof, the audit results, as accepted, will establish the basis to calculate payment to the City for the processing of the Recyclables until the next succeeding semi-annual audit is complete and accepted by the City. If the City objects to the audit report within such ten (10) day period, then the City may request an alternate audit (on a different collection day for material). The City and the Contractor will agree on the day for such alternate audit, and the results of such alternate audit will, if accepted by City, establish the basis of calculating payments to the City for the processing of the Recyclables until the completion and acceptance of the next semi-annual audit. If the City contests the results of such alternate audit, the City shall provide the Contractor with its written objections to the alternate audit within seven (7) days following receipt thereof. In such case, the City and the Contractor shall meet within forty-eight (48) hours following receipt of the City's written objections to resolve such dispute. If the dispute cannot be resolved by the parties within ten (10) days following their initial meeting, the City may elect to have the dispute resolved through an arbitrator selected by the mutual agreement of the City and Contractor.

#### **8. DIVERSION CREDIT**

The Allen County Solid Waste Management District offers a "diversion credit" for companies that meet certain criteria. The City of Fort Wayne will require the Contractor to apply for this credit as long as the credit is available. Contractor will be required to submit to the City Solid Waste Department the amount of money associated with this credit that the Contractor may receive. The money will be used by the Solid Waste Department at its discretion.

#### **9. ADJUSTMENT OF CONTRACT PRICE DURING TERM OF CONTRACT**

The unit price(s) as applicable, except for the fixed cost component, shall be adjusted annually by indices described below to be effective on the anniversary date of each Contract Year throughout the Term of Contract and any renewal terms(s). The first date of adjustment will be January 1, 2019. The adjustment will be subject to the performance of these indices during the 12 months preceding the date of each new Contract Year. The unit price(s) percentages are as follows: (1) Fixed zero percent (0%) and not subject to adjustment, (2) Fuel ten percent (10%), and (3) All Other Variable Costs ninety percent (90%).

The percentage of the Contract Price that is identified as "fixed" shall not be subject to adjustment throughout the term of Contract and any renewal term(s). The percentage of the Contract Price that is identified as "fuel" will be subject to adjustment by the Producer Price Index – Commodities, Not Seasonally Adjusted, No. 2 Diesel Fuel ("PPI"), a fuels and related products cost index published by the US Department of Labor, Bureau of Labor Statistics, and may be found at <https://www.bls.gov/ppi/>.

The percentage of the Contract Price that is identified as "all other variable costs" will be subject to adjustment by the Gross National Product Implicit Price Deflator ("GNPIPD"), which is published quarterly by the US Department of Commerce, Bureau of Economic Analysis and may be found at the following website: <http://www.bea.gov/iTable/iTableHtml.cfm?reqid=9&step=3&isuri=1&903=13> in IVB. Implicit Price Deflators for Gross Domestic Product Addendum. The annual adjustment of the fuel cost percentage of the Price will not be limited. The annual adjustment of the other variable costs percentage of the Contract Price is limited to a maximum of four (4) percent (or other lower amount if the GNPIPD change over the 12-month period of adjustment is less than four (4) percent). If the percentage change in the published GNPIPD or the PPI for the period of adjustment is a negative value, such negative value shall be applied as the adjustment in the Contract Year for which the Contract Price(s), as applicable, is (are) being adjusted.

If the GNPIPD or the PPI shall not be determined and published or if the GNPIPD or the PPI as either is constituted on the effective date of the Contract is thereafter substantially changed, there shall be substituted for such index another index which is determined and published on a basis similar to the GNPIPD or the PPI, as the case may be, as shall be mutually agreed upon by the City and the Contractor.

If the US Department of Commerce, Bureau of Economic Analysis changes the methodology for calculating the GNPPIPD, which causes historical data used to calculate the Contract Price adjustment for any Contract Year to be restated, such changes shall only apply to future adjustments and not to adjustments already implemented. If the US Department of Labor, Bureau of Labor Statistics changes the methodology for calculating the PPI, which causes historical data to be used to calculate the Contract Price adjustment for any Contract Year to be restated, such changes shall only apply to future adjustments and not to adjustments already implemented.

#### **10. CHANGES IN SCOPE**

As the approach to Solid Waste and recycling management continually evolves, the City intends to remain in the forefront of cost-effective, environmental management of its Municipal Solid Waste. The goal of the City's integrated Municipal Solid Waste and Recycling Management Plan is to minimize waste, preserve landfill space, recycle valuable resources, offer environmentally sound handling of refrigerants and provide a better solution to yard waste management.

Any changes in scope under the Contract are subject to Indiana law and this Contract. In the event that the City wants to develop a program outside the scope of the contract(s), the City would give the Contractor right of first refusal to negotiate with the City to provide such service or adopt such change in scope. Should the Contractor decline, the City reserves the right to seek competitive bids to complete the work.

#### **11. PERFORMANCE BOND**

Contractor shall execute and deliver a Performance Bond to the City in an amount equal to one hundred percent (100%) of the annual Contract Price, exclusive of any credits, rebates, or revenue sharing, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Performance Bond amount for each succeeding Contract Year shall be the proposed amount for such Contract Year and shall be renewed by the Contractor and maintained throughout the Term of the Contract.

All Performance Bonds shall be in the forms prescribed by the Bidding Documents and be executed by such Sureties as (i) are licensed to conduct business in the State of Indiana, and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Performance Bond signed by an agent must be accompanied by a certified copy of the authority to act. Said Performance Bond shall provide that a modification, omission, or addition to the terms and conditions of the Contract or specifications; a defect in the Contract; or a defect in the proceedings preliminary to the letting and awarding of the Contract does not discharge the Surety. If the Surety on any Performance Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in Indiana, Contractor shall within ten (10) days thereafter substitute another Performance Bond and Surety, both of which must be acceptable to the City.

#### **12. FORM OF GUARANTY AGREEMENT**

The Guaranty Agreement shall be executed by the Guarantor concurrently with the execution of the Contract by Contractor as a condition to the execution of the Contract by the City.

#### **13. INDEMNIFICATION**

The Contractor does hereby agree:

To indemnify, hold harmless and defend the City from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature, including reasonable attorney's fees, which the City may suffer or incur by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss thereof (collectively,

"Claims), to the extent of Contractor's (or its employees, agents or Subcontractors) negligent acts, omissions or willful misconduct in performing the Work pursuant to the Contract, or which the City may sustain or incur in connection with any litigation, investigation, or other expenditures incident thereto, including any suit instituted by the City to enforce the obligation of this Section 13. It is the intent of the parties hereto that the Contractor shall indemnify the City under this indemnification clause to the fullest extent permitted by law, but shall have no indemnification obligations for claims that arise from the negligence of the City; and

To be held alone responsible for all injuries to persons and for all damages to the property of the City or others, caused by or resulting from the negligent acts, omissions, or willful misconduct of Contractor, its employees, agents or Subcontractors during the progress of, or connected with the prosecution of the Work, whether within the limit of the work or elsewhere; and

To promptly repair any damage caused by Contractor, its employees, agents, or Subcontractors to yards, driveways, alleys, curbs, streets, garages, fences, etc., other than normal wear and tear caused by Contractor.

#### **14. SUBCONTRACTORS**

The Contractor will not be permitted to subcontract more than ten percent (10%) of the Contract. Contractor shall maximize prime responsibility for equipment and labor necessary to complete such Contract as may be entered into. The City requires same qualification, experience, bonding and insurance of Subcontractor(s) as the Contractor. The City reserves the right to approve or reject Subcontractor(s) and will hold the Contractor responsible for coordination of Subcontractor(s) performance of services hereunder. Contractor's covenants of indemnification hereunder shall in all events extend to the acts and omissions of any Subcontractor in the performance of the work.

#### **15. NONLIABILITY**

The City shall not be liable for any injuries to the property of Contractor or any loss or damage sustained by Contractor caused by or resulting from any activity and/or incidents that are in any way connected with the performance or Work or any other matter pursuant to the Contract by Contractor or any activity and/or incidence that is incidental thereto unless and to the extent such injuries or losses are caused by the negligence or willful misconduct of the City.

#### **16. INSURANCE**

Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and shall provide set forth below which may arise out of or result from Contractor's performance and furnishing of the services and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by the Contractor, any Subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the services, or by anyone for whose acts any of them may be liable.

The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Worker's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage for the provisions of Section 13 (Indemnification). The Contractor shall not commence Work under the Contract until it has obtained all insurance required and such insurance has been approved by the City; nor shall the Contractor allow any Subcontractor to commence Work under its Subcontract until all similar insurance required of the Subcontractor has been obtained and approved. All insurance shall be by insurers rated A-VIII (or higher) by A.M. Best and for policy limits acceptable to the City (as noted herein), and before commencement of Work hereunder, the Contractor agrees to furnish the City certificates of insurance to evidence that such insurance has been procured and is in force. The certificates shall be supplemented by a notice to others endorsement that will provide City with a thirty (30) day written notice in the event of policy cancellation (except for workers' compensation):

For the purpose of the Contract, the Contractor shall carry the following types of insurance and such insurance shall be maintained during the life of the Contract in at least the limits specified below:

COVERAGES

MINIMUM LIMITS OF LIABILITY

- |   |   |
|---|---|
| (a) Worker's Compensation Insurance, Including Occupational Disease and Employer's Liability Insurance, sufficient to cover all employees in Contractor's employ during the Term of Contract and any renewal period.  | Statutory coverage as required by Indiana Law                           |
| (b) Commercial General Liability Insurance, including property damage and personal injury coverage and products liability and completed operations  | \$2,000,000 per occurrence/ \$5,000,000 aggregate combined single limit |
| (c) Excess Liability Insurance  | \$5,000,000 aggregate   |
| (d) Comprehensive Automobile Liability Insurance with respect to both personal injury and property damage   | \$2,000,000 per occurrence combined single limit                        |
| (e) Environmental Impairment Liability Insurance (applicable only to the Disposal Contractor) for environmental pollution liability including coverage for bodily injury, property damage, including loss of use of damaged property or property that has not been physically injured or destroyed; cleanup costs; and defense or settlement of claims, all in connection with any loss arising from the insured site. Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any watercourse or body of water, which results in bodily injury and property damage -<br>Claims made coverage. | \$5,000,000 per occurrence  |

If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Contract.

The City and Contractor, reserve the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by both parties based upon changes in statutory law or court decision

The certificate(s) of insurance must show the City of Fort Wayne, its Divisions and Departments as an additional insured but only to the extent of the Contractor's negligence and not solely the gross negligence of the City and a certificate holder, and include 30 days' advance notification to the City of cancellation or non-renewal (except workers' compensation). All certificates of insurance shall be sent to the following address:

City of Fort Wayne  
Division of Public Works  
Citizens Square  
200 E. Berry Street Suite 210  
Fort Wayne, IN 46802

Failure on the part of the Contractor to comply with the insurance requirements shall not relieve it of the liability under such requirements. For purpose of this Contract, the Contractor shall cause the City to become an additional insured on any and all such policies of insurance referred to herein (as required herein), as the City's interest may appear. The Contractor shall furnish to the City, prior to thirty (30) days of the beginning of the Contract, certificates of insurance evidencing all the foregoing insurance requirements, as applicable. Failure to do so is cause for immediate termination of the Contract.

## **17. CONTRACTOR'S RESPONSIBILITY**

### **SUPERVISION**

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques and procedures of recyclables processing, commodity and residue transportation, and residue disposal. Contractor shall be responsible to see that the finished Work complies accurately with the intent of the Contract Documents.

## **18. EMPLOYEE CONTROL**

All of the Contractor's employees shall be competent and able to perform the duties assigned to them for all Work covered by this Contract. The Contractor must employ only neat, orderly, courteous, sober, competent and efficient employees and shall remove any employee from providing services hereunder who refuses or neglects to obey or carry out his/her instructions. The Contractor shall prohibit drinking of alcoholic beverages by its employees while on duty or in the course of performing their duties under this Contract.

### **Compliance with laws-permits**

The Contractor shall procure at its own expense, and keep current, all permits, licenses, and bonds necessary for the conduct and completion of the Work and/or required by municipal, state and federal/regulations and laws. The Contractor shall give all notices, pay all fees, and comply with all federal, state and municipal laws, ordinances, rules and regulations bearing on the conduct and completion of the Work. This Contract, as to all matters not particularly referred to and defined therein, shall notwithstanding, be subject to the provisions of all pertinent state statutes and ordinances of the City, which ordinances are hereby made a part hereof with the same force and effect as if specifically set out herein.

### **Safety and protection**

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to, all employees on the Work and other persons who may be affected thereby, other property in the City or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

### **Title to recyclable materials**

Title to Recyclable Materials shall pass to Contractor upon receipt by Contractor. Title to and liability for any Unacceptable Waste shall at no time pass to the Contractor. Contractor may, in its sole discretion, reject any Unacceptable Waste. If Unacceptable Waste is discovered before it is delivered to the Contractor, Contractor may refuse to accept the Unacceptable Waste. In such situations, Contractor shall contact the City and the City shall take appropriate action to ensure that such Unacceptable Waste is removed and properly disposed of. The City

shall provide all reasonable assistance to Contractor to conduct an investigation to determine the identity of the depositor or generator of any Unacceptable Waste and to assist Contractor in collecting from the generator or depositor the costs incurred by Contractor in connection with the Unacceptable Waste. Subject to the City providing reasonable assistance to Contractor as set forth herein, Contractor shall release the City from any liability for any such costs except to the extent that such Unacceptable Waste is determined to be attributed to the City. Notwithstanding the foregoing, Contractor will be responsible for disposal of garbage sorted out from the recyclables during normal processing activities.

#### **19. CONTROL AND PENALTIES**

The Contractor shall work under the direct supervision of the City's Solid Waste Department. In the event the Contractor fails to properly process Recyclables/Recyclable Materials in accordance with the terms of this Contract for a period of seven ( 7 ) working days ( Force Majeure Events excepted ), the City may, upon written notice to Contractor which identifies the nature of Contractor's improper processing, cause all such Recyclables/Recyclable Materials to be collected and processed by the City or, alternatively, the City may contract with any third party using such party's workforce and equipment, and any and all costs and expenses which may be incurred by the City shall be paid by the Contractor to the City immediately upon demand therefore or may be paid by the City as a charge against any monies due Contractor by the City, all at the City's election. If employees of the City are used to perform work that is the responsibility of Contractor hereunder, the City may charge Contractor the sum of \$100.00/hour per employee used to perform the work with a one ( 1 ) hour minimum charge for each occurrence.

#### **20. ASSIGNMENT OF CONTRACT**

The Contractor shall not assign the Contract or any part thereof without the prior written consent of the Common Council of the City of Fort Wayne (the "Common Council"), which shall not be unreasonably withheld, conditioned, or delayed.

#### **21. NONDISCRIMINATION**

In compliance with federal law and IC 5-16-6-1, and IC 22-9-1-10, Contractor hereby agrees:

- That in the hiring of employees for the performance of Work under the Contract or any Subcontract hereunder, no Contractor or Subcontractor shall by reason of race, age, religion, color, sex, national origin, ancestry, or handicap, discriminate against any person who is qualified and available to perform the work to which the employment relates as defined by law except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient operation or as provided by law.
- That no Contractor, Subcontractor, or any person on the Contractor's behalf, shall, in any manner, with respect to tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, discriminate against or intimidate any employee hired for the performance of Work under the Contract on account of race, age, religion, color, sex, national origin, ancestry, or handicap.
- That the Contract may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms and conditions of this section of the Contract.

#### **22. CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY**

Contractor's employees shall comply with both applicable policies of the City of Fort Wayne, that are made known to Contractor, and the Contractor.

#### **23. FORCE MAJEURE**

Neither the Contractor nor the City shall be liable for the failure to perform their duties nor for any resultant damage, loss, etc., if such failure is caused by a catastrophe, riot, war, governmental order or regulation, act of God or other similar act beyond the reasonable control of the Contractor or City. If such circumstances persist for more than

fourteen (14) days or if after their cessation the Contractor is unable to render full or substantial performance for a period of fourteen (14) days, Contractor or the City may terminate this Contract upon written notice given in thirty (30) days advance notice to the other party. In the event a Weather Emergency and the City Recycling Collection Contractor is delayed, the MRF must be open to accept Recyclables when collection resumes and follow the schedule as they apply to the collection contractor.

#### **24. DEFAULT**

If a party defaults in the performance of any of its obligations under the Contract and fails to cure such default within ten ( 10 ) days following written notice of default from the non-breaching party, the non-breaching party may:( a ) declare this Contract cancelled and terminated; or ( b ) if Contractor is allegedly in breach, the City may provide Contractor with the opportunity to present to the Board of Works or the Common Council ( as determined by the City ) either a written statement or an oral presentation which explains the reason(s) for the Contractor's default and failure to timely cure together with such additional information which the Contractor deems relevant to this issue. The time frame for the submission of such written statement or oral presentation shall be determined by the City, taking into account the then current meeting schedules of the Board of Works and the Common Council. In the event the Contractor's written submission or oral presentation is to or before the Board of Works, the Board of Works shall submit its recommended action with respect to the Contract to the City Council. Upon ( a ) receipt of the written statement from the Contractor or following Contractor's oral presentation, or ( b ) following the receipt of the Board of Works recommended action with respect to the Contract, or ( c ) in the event Contractor is given the opportunity but elects not to submit a written statement or make an oral presentation to the Board of Works or the Common Council, the City may ( a ) continue the Contract with Contractor or ( b ) cancel and terminate the Contract and proceed under the terms of the Performance Bond upon the affirmative vote of a majority of the members of the Common Council. The Contractor may challenge the Common Council's decision in a court of local jurisdiction.

The failure by either party to declare a default hereunder or to terminate the Contract in the event of a default and to proceed in the exercise and enforcement of its rights hereunder upon the occurrence of a default by the other party shall not operate as a waiver , modification or impediment to the party's future right to declare a default hereunder, to cancel and terminate this Contract or to exercise the party's rights and privileges granted hereunder upon the occurrence of any subsequent default by Contractor hereunder.

#### **25. CHANGE OF OWNERSHIP**

In the event of a sale of the majority of equitable ownership or substantially all of the assets of the Contractor the City may elect to terminate this Agreement.

#### **26. WAIVERS**

A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of Contract modifications as provided for elsewhere in this section.

#### **27. ILLEGAL AND INVALID PROVISIONS**

Should any term, provision, or other part of this Contract be declared illegal and/or unenforceable, such term or portion shall be stricken and the remainder of the Contract shall remain in full force and effect.

#### **28. JOINT AND SEVERAL LIABILITY**

If the Contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the Contractor shall be jointly and severally liable.

**29. BINDING EFFECT**

The provisions, covenants, and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

**30. AMENDMENT OF THE CONTRACT**

No modification or amendment of the terms hereof shall be effective unless written and signed by the authorized representatives of all parties.

**31. MERGER CLAUSE**

**PREVIOUS AGREEMENTS SUPERSEDED** - This Contract constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are to be without effect in the construction of any provision or term of this Contract if they alter, vary or contradict this Contract.

**32. CONSTRUCTION; VENUE**

This Contract shall be construed in occurrence with the laws of the State of Indiana. Contractor and the City agree that any legal action initiated by each party hereunder shall be heard by a court of applicable jurisdiction which is located in Allen County, Indiana.

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City and the Contractor.

WITNESSETH, THAT the Contractor and the City for the consideration stated herein agree as follows:

- I. **APPROVAL OF CONTRACT.** This Contract, although accepted on behalf of the City by its Mayor and by the Board of Public Works, shall not be binding or obligatory upon the City unless and until it shall have first been approved by the Common Council of the City of Fort Wayne, and should the Common Council of the City of Fort Wayne fail to approve the same within forty-five (45) days after the date hereof, this Contract shall become void and of no effect and the rights and obligations of the parties thereupon extinguished.

IN WITNESS WHEREOF, the City and the Contractor, by their respective duly authorized agents, hereto affix their signatures and seals at Fort Wayne, Indiana, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.


CITY OF FORT WAYNE, INDIANA

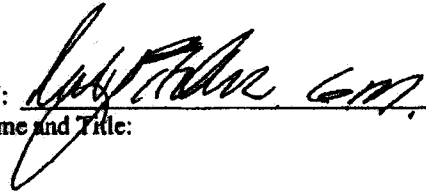
BY: \_\_\_\_\_  
Thomas C. Henry, Mayor


CITY OF FORT WAYNE, INDIANA  
BY: Its Board of Public Works

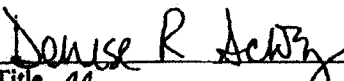
Robert P. Kennedy, Chair - Absent

Republic Services of Indiana, LP,  
Contractor

  
\_\_\_\_\_  
Mike Avila, Member

BY:   
\_\_\_\_\_  
Name and Title:

  
\_\_\_\_\_  
Kumar Menon, Member

ATTEST:   
Name and Title Administrative Assistant

Attest:   
\_\_\_\_\_  
Lyndsey Richards, Clerk

(Seal)

ACKNOWLEDGEMENT

State of Indiana )  
 ) SS:  
County of Allen )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, this 3 day of May, 2017, personally appeared the within named Robert P. Kennedy, Mike Avila, Kumar Menon, and Lyndsey Richards, by me personally known, who being by me duly sworn said that they are respectively the Chair, Members and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

My Commission Expires: 12/02/2020

Resident of Allen County.

Notary Public

*Lindsay K Haggerty*  
Printed Name of Notary  
Lindsay K Haggerty





## EXHIBIT A FORM OF GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of May 3, 2017, between Republic Services, Inc., a Delaware corporation a domestic company organized and existing under the laws of the State of Delaware (together with any permitted successors and assigns hereunder, the "Guarantor"), and the City of Fort Wayne, a municipal corporation organized and existing under the laws of the State of Indiana ("City").

### RECITALS

The City and Republic Services of Indiana LP, DBA National Serv-All, a limited partnership organized and existing under the laws of the State of Delaware and duly authorized to do business in the State of Indiana (the "Company"), have entered into a Contract for Recycling Processing services to the City, dated May 3, 2017, as amended from time to time (the "Contract") whereby the Company has agreed to perform said Recycling Processing services, all as more particularly described therein.

The City will enter into the Contract only if the Guarantor guarantees the performance by the Company of all of the Company's responsibilities and obligations under the Contract as set forth in this Guaranty Agreement (the "Guaranty").

In order to induce the execution and delivery of the Contract by the City and in consideration thereof, the Guarantor agrees as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION I.1. DEFINITIONS. For the purposes of this Guaranty, the term "Obligations" means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of the Contract. Any other capitalized word or term used but not defined herein is used as defined in the Contract.

SECTION I.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement; Authority. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of Indiana.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

**ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE  
GUARANTOR**

**SECTION II.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.**

The Guarantor hereby represents and warrants that:

(A) Existence and Powers. The Guarantor is a duly registered company organized and validly existing under the laws of the State of Delaware, with full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(B) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or by general equity principals of reorganization and other similar laws affecting creditors' rights generally and general principles of equity.

(C) No Conflict. Neither the execution or delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (1) to the Guarantor's knowledge conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, (2) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) to the Guarantor's knowledge will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby or by any Transaction Form.

(D) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required of the Guarantor for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

(E) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty.

(F) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(G) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Contract.

(H) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

### ARTICLE III GUARANTY COVENANTS

**SECTION III.1. GUARANTY TO CITY.** The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Contract (including all amendments and supplements thereto) to, or for the account of, City, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations.

**SECTION III.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR.** This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City (1) file suit or proceed to obtain a personal judgment against the Company or any other person that may be liable for the Obligations or any part of the Obligations, (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Contract or required to be given to the Company under Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Contract. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company and Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the City's right to proceed directly against the Guarantor, the City (or any successor) shall not be entitled to more than a single full performance of the obligations in regard to any breach or non-performance thereof.

**SECTION III.3. GUARANTY ABSOLUTE AND UNCONDITIONAL.** The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms and shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the City or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Contract up to the specified Terms of each agreement;
- (2) any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Guaranty or the Contract except

to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(3) any permitted transfer or assignment of rights or obligations under the Contract or any document relating thereto by any party (other than a permitted assignment to a replacement contractor in the event of a termination of the Company pursuant to Section 25 of the Contract), or any permitted assignment, conveyance or other transfer of any of their respective interests in the Managed Assets or in, to or under any of the Transaction Forms;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or any other person in the Contract;

(5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of the Contract or any document relating thereto;

(6) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or the Contract or any document relating thereto in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(7) Any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

(8) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(9) the failure on the part of the City to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the Contract;

(10) any failure of any party to the Contract or any document relating thereto to mitigate damages resulting from any default by the Company or the Guarantor thereunder;

- (11) the merger or consolidation of any party to the Contract or any document relating thereto into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;
- (12) any legal disability or incapacity of any party to the Contract or any document relating thereto; or
- (13) the fact that entering into the Contract or any document relating thereto by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (13) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Contract and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Contract.

**SECTION III.4. WAIVERS BY THE GUARANTOR.** The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the City of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Contract as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) any right to require a proceeding first against any person or the security provided by or under the Contract or document relating thereto except to the extent such Transaction Form specifically requires a proceeding first against any person (except the Company) or security;
- (7) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of the Contract or any document relating thereto;
- (8) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Company; and
- (9) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.4, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

**SECTION III.5. PAYMENT OF COSTS AND EXPENSES.** The Guarantor agrees to pay the City on demand all reasonable costs and expenses, legal or otherwise (including counsel fees), incurred by or on behalf of the City in successfully enforcing by legal proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the costs and expenses that the City incurs in performing any of its obligations under the Contract, or any document relating thereto where such obligations are a condition to performance by the Company of its Obligations.

**SECTION III.6. SUBORDINATION OF RIGHTS.** The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Contract or any document relating thereto and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

**SECTION III.7. SEPARATE OBLIGATIONS; REINSTATEMENT.** The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor, and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Contract, or document relating thereto or the Company's enforcement of such terms under Applicable Law.

**SECTION III.8. TERM.** This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed. This Guaranty shall be effective irrespective as to when the commencement date occurs.

#### **ARTICLE IV GENERAL COVENANTS**

**SECTION IV.1. MAINTENANCE OF CORPORATE EXISTENCE.** (A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Indiana, and (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws, and (2) any such transaction does not result in a material decline in Guarantor's credit standing, as defined in Section 17.1 of the Contract.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section 4.1.

**SECTION IV.2. ASSIGNMENT.** Without the prior written consent of the City, this Guaranty may not be assigned by the Guarantor, except pursuant to Section 4.1 hereof.

**SECTION IV.3. QUALIFICATION IN INDIANA.** The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of Indiana.

**SECTION IV.4. CONSENT TO JURISDICTION.** The Guarantor irrevocably: (1) agrees that any legal proceeding arising out of this Guaranty shall be brought in the State or federal courts in Fort Wayne, Indiana having appropriate jurisdiction; (2) consents to the jurisdiction of such court in any such legal proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such legal proceeding in any of such courts; and (4) waives its right to a trial by jury in any legal proceeding in any of such courts.

**SECTION IV.5. BINDING EFFECT.** This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

**SECTION IV.6. AMENDMENTS, CHANGES AND MODIFICATIONS.** This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and of the Guarantor.

**SECTION IV.7. NOTICES.** All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by first class mail and facsimile, to such addresses:

(a) If to the Guarantor:

Republic Services of IN, LP DBA National Serv-All  
Attn: Robert Borchers  
6231 MacBeth Rd.  
Fort Wayne, IN 46809

(b) If to the City:

Board of Public Works  
Attn: Michelle Nelson  
Citizens Square  
200 E. Berry Street, Ste 210  
Fort Wayne, IN 46802

With a copy to:

Carol Helton, City Attorney  
Citizens Square  
200 E. Berry Street, Ste 430  
Fort Wayne, IN 46802

Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee. Notices and communications given by mail hereunder shall be deemed to have been given five (5) days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[Company Seal]

Republic Services, Inc., as Guarantor

ATTEST:

*Denise R. Dechly*

By:

*[Signature]*

Printed Name:

*ROBERT J. BAERLES*

Title: *Administrative Assistant*

Accepted and Agreed to by:

[City Seal]

CITY OF FORT WAYNE

ATTEST:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**REPORT OF COMMITTEE ON PUBLIC WORKS**

**May 16, 2017**

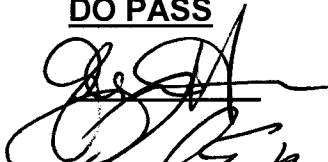


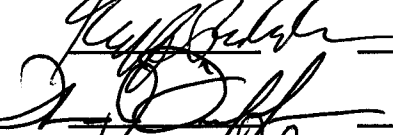
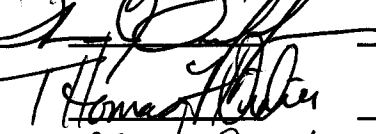
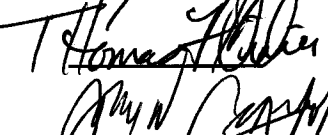
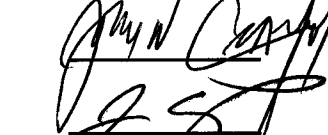
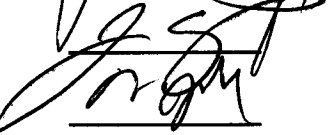
***Glynn Hines Chair***

***Russ Jehl Co-Chair***

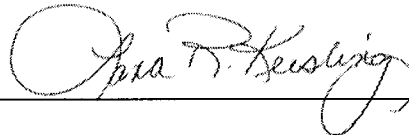
***All Council Members***

An Ordinance approving contract for Recycle Processing between Republic Services of Indiana LP, dba National Serv-All and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

**COMMITTEE ON PUBLIC WORKS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said ordinance**

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
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**LANA R. KEESLING CITY CLERK**

  
\_\_\_\_\_

Public Hearing Date: N/A

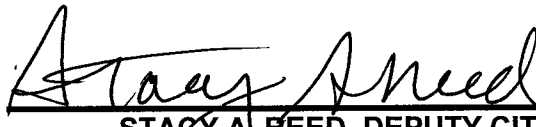
Read the first time in full and on motion by Councilman Hines.

Read the second time by title and referred to the Public Works Committee.

Read the third time in full and on motion by Councilman Hines, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

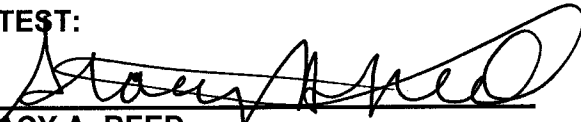
DATED: May 23, 2017

  
 \_\_\_\_\_  
 STACY A. REED, DEPUTY CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-17-05-23 on the 23rd day of May, 2017

ATTEST:

  
 \_\_\_\_\_  
 STACY A. REED  
 DEPUTY CITY CLERK

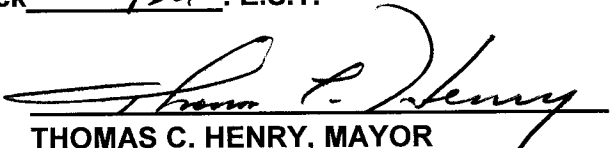
  
 \_\_\_\_\_  
 THOMAS C. HENRY  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th of May 2017, at the hour of 9:15 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 STACY A. REED, DEPUTY CITY CLERK

Approved and signed by me this 25<sup>TH</sup> day of MAY

2017, at the hour of 2:30 O'clock P.M. E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR