

Agreement No. _____

RESIDENTIAL SOLID WASTE & RECYCLING COLLECTION & DISPOSAL AGREEMENT

The Contractual Agreement is executed this ____ day of _____, 2014 by and between North Ogden City, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 505 E. 2600 N., North Ogden, Utah, 84414, hereinafter referred to as the "CITY" and Allied Waste Services of North America, LLC a Delaware limited liability company d/b/a Allied Waste Services of Northern Utah and Republic Services of Northern Utah authorized to do business in the State of Utah, with its principal offices located in Phoenix, Arizona and its local office located at 798 w. 17th St., Ogden, Utah, 84404, hereinafter referred to as the "CONTRACTOR".

Recitals

WHEREAS, the CITY has elected to enter into a 3-year contract on the trash and every-other-week (EOW) recycling collection services

Covenants

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the CITY and the CONTRACTOR hereby agree as follows:

1. **Term and Effective Date:** The term of the agreement shall be from July 1, 2014 through June 30, 2017. The CITY retains the right to, at any time, extend this agreement for an additional 3-year term. Any additional term extensions beyond the additional 3-year term may be put into place if it is in the best interest of both the CITY and the CONTRACTOR.
2. **Waste Collection in General:** CONTRACTOR agrees to furnish all labor, fuel, trucks, equipment, administration, and all other needs required to complete the services defined hereunder except for the garbage and recycling containers of which the CITY will provide. The following guidelines shall apply to all types of approved waste and recyclables collected by CONTRACTOR pursuant to this Agreement.
 - a. Trash Disposal Site: All collected Municipal Solid Waste (MSW) shall be hauled to and disposed of at the Weber County Transfer Station, Ogden,

Utah. Any change in location for disposal must be mutually agreed upon, in writing, by the CITY and the CONTRACTOR and any associated increases/decreases in fees, and hauling savings/costs, will be directly given/taken to/from the CITY.

i. Nature of MSW Waste: CONTRACTOR shall collect and dispose of any waste normally categorized as MSW. Without limiting the generality of the previous statement, CONTRACTOR shall collect the following types of acceptable waste:

1. All waste associated with purchasing, handling, preparing, consuming, and disposing of food in a residential unit.
2. All waste associated with household and yard management, including packaging, debris from minor house repairs, minimal yard waste (e.g. grass clippings, small limbs, etc.), discarded clothing, shoes, disposable diapers, paper, broken, or discarded household items, etc., as long as the items fit in the garbage receptacle allowing the lid to the receptacle to be closed.
3. Waste associated with household pets, including pet waste and carcasses of dead household pets or portions thereof 10 pounds or smaller.
4. All waste normally associated with the types of CITY facilities being serviced by CONTRACTOR.
5. Other sundry waste items or debris as long as they can be reasonably accommodated in the garbage receptacles and can be handled without damaging the CONTRACTOR'S collection vehicles.
6. Waste and recyclable materials collected under this Agreement specifically exclude hazardous, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, bio hazardous, toxic or listed or characteristic hazardous waste as defined by applicable law or any otherwise regulated waste ("Excluded Waste"). Hazardous waste includes, but is not limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act, and including future amendments thereto, and any other applicable law.

ii. Non-acceptable waste the CONTRACTOR can refuse to collect would include:

1. Waste that is hazardous by Federal or State definition.
2. Waste that is of such volume, weight, and/or composition that it cannot be reasonably accommodated by the collection vehicles, including waste that is stacked/placed into the garbage receptacle in a way where the lid to the receptacle cannot be closed fully.

3. Waste that poses a danger to the truck and/or operator (e.g. hot ashes, ammunition, hazardous or toxic chemicals or chemical agents, heavy or jagged metal, oversized concrete or rock material, large sumps, large accumulations of human or liquid waste (as from RV holding tanks), sod or dirt or other items that cause a fine dust/particles that is a hazard to the driver and his/her ability to breathe.
 4. Waste that is industrial according to the Federal or State definition, or is of such a volume and composition so as to indicate obvious commercial activities rather than normal residential activities.
 5. CONTRACTOR may, in its sole discretion, reject any Excluded/Non-Acceptable Waste provided by CITY. CITY, upon receiving a notice of rejection from CONTRACTOR, shall immediately remove such Unacceptable Waste from CONTRACTOR'S collection vehicle or premises.
- b. Recycling Disposal Site: All collected Recycling (Curbside all-in-one recycling) shall be hauled to the Weber County Transfer Station's recycling drop-off, Ogden, Utah, or another recycling drop-off location or Materials Recovery Facility (MRF) approved by the CITY and the CONTRACTOR.
- i. Nature of Recyclables: CONTRACTOR shall collect and haul to the approved drop-off location, recyclables that are generally approved recyclables under this Agreement. They are to include:
 1. Corrugated cardboard, magazines, catalogs, newspapers, plastics 1-7, office paper, paperboard, phone books, aluminum, small metal and steel cans, junk mail, paper bags, and plastic grocery bags that are bound in a ball or tied in another bag.
 - ii. **Non-acceptable items** that should NOT be placed in the recycling receptacle include:
 1. GLASS
 2. Styrofoam
 3. Large or heavy steel/metal items (like a swing set or bike)
 4. Yard waste including leaves, limbs, etc.
 5. Food Waste
 - iii. Contamination of Recyclables: CONTRACTOR is not responsible for the collection or disposal of contaminated items in the recycling stream. If items delivered to the MRF/recyclable drop-off location are rejected and must be disposed of as trash, the CITY is responsible for the disposal of these items.

- c. Compliance with Law: CONTRACTOR agrees to strictly comply with all applicable federal, state, and local laws and regulations while performing this Agreement, and agrees to pay particular attention to complying with those laws and regulations governing health, safety, collection, removal, storage, and disposal of solid waste. CONTRACTOR shall be in compliance with all federal, state, and local laws and regulations prior to entering and executing this Agreement and hereby certifies the same upon execution.
- d. City Ordinance Requirements: CONTRACTOR shall comply with the CITY'S solid waste ordinance requirements as outlined in Title 9-5 of the North Ogden City Code, as well as any other relevant City Provisions.
- e. Records: CONTRACTOR shall, upon request of the CITY, and in a reasonable timeframe, make all records relating to the collection, removal, and disposal of solid waste and recycling pursuant to this Agreement available to the CITY for inspection and copying. If records request are proprietary and should not be made available to the public, CONTRACTOR shall provide, with the record or records requiring protection, a written claim of business confidentiality and concise statement of reasons supporting the claim of business confidentiality as required by U.C.A. 63-2-308 (1953 , as amended). The CITY shall classify such records as "protected".
- f. Title of Waste: Title to all waste collected pursuant to this Agreement shall pass to CONTRACTOR upon collection except that of hazardous/unacceptable waste which must remain with the generator of the waste. This provision shall not be interpreted to relieve the CONTRACTOR of its obligation to dispose of all solid waste collected pursuant to this Agreement at the location stated in 2.a. of this Agreement.
- g. Independent Contractor: The CONTRACTOR acts as an independent contractor in performing its duties pursuant to the Agreement. No employee, officer, or agent of the CONTRACTOR shall represent that they or the CONTRACTOR is an employee or agent of the CITY.
- h. Collection Days: CONTRACTOR and CITY will coordinate collection days and schedules that is in the best interest of the CITY and its residents and doable by the CONTRACTOR. Any change in collection days/schedule must be approved by the CITY at least 60 days prior to implementation.

3. **Residential Solid Waste and Recycling Collection:** The CITY hereby grants CONTRACTOR an exclusive license and privilege to collect, remove and dispose of curbside residential solid waste (weekly) and recyclables (every other week) in the corporate limits of North Ogden City. CONTRACTOR hereby contractually agrees to collect, remove and dispose of residential solid waste and recyclables from residences in the CITY according to the terms set forth in this Agreement and any ordinances enacted or amended by the CITY. CONTRACTOR agrees to continue operating automated collection vehicles for CITY'S residential pick-up services.
- a. Residential Solid Waste: CONTRACTOR shall collect, remove and dispose of residential solid waste weekly. Residential solid waste includes waste (see 2.a.i.1-6) produced by single family dwellings, some duplexes, four-plexes, townhomes, and apartments, and several small businesses. The defining feature of the residential solid waste and recycling service is that it is left for collection in the receptacles designed and provided to the residents for their intended use and is collected by CONTRACTOR'S automated collection vehicles. CONTRACTOR acknowledges that most commercial establishments in the CITY contract separately for solid waste and/or recycling services. Some business will continue to be serviced pursuant to this Agreement, some will not. In case of conflict, the CITY'S solid waste ordinance shall govern.
 - b. Residential Accounts: CONTRACTOR shall collect residential solid waste for every account designated by the CITY. The location where the receptacles are to be picked up shall be referred to as a "residential unit" regardless of the types of unit (single family, duplex, business, etc.). Each residential unit shall be charged the fees per the fee schedule pursuant to this Agreement. Multi-family units shall be billed per individual unit. For example, a duplex will be billed as two residential units. CONTRACTOR will bill CITY per the "House Count" number CITY provides to CONTRACTOR each month for the month prior. For example, February's bill will be for January's house count.
 - c. Garbage and Recycling Receptacles: The CITY shall provide both trash and recycling receptacles to its residents. CITY will also maintain, replace, and repair all receptacles in the CITY. *(CONTRACTOR will provide, maintain, repair - if damage is caused due to CONTRACTOR'S sole negligence or willful misconduct except normal wear and tear - , and replace all commercial containers pursuant to this Agreement of which it services for the CITY).*
 - d. Billing: All billing for services pursuant to this Agreement shall be handled by the CITY. The CITY shall assess solid waste and recycling fees through its utility billing accounts. Any additional charges the CITY elects to collect from its residents for fees, postage, billing personnel, and other expenses is at the discretion of the CITY and all charges shall be retained by and shall be the

sole property of the CITY. CONTRACTOR and CITY reserve the right to question and clarify any discrepancies related to residential units serviced by the CONTRACTOR and utility billing accounts identified by the CITY.

e. Charges & Fees:

- Starting July 1, 2014, the CITY shall pay CONTRACTOR the sum of Three-dollars and thirty cents (\$3.30) per residential unit per month for 1st trash receptacle basic service and the sum of One-dollar and Twenty Cents (\$1.20) for 2nd or more trash receptacles, and Two-dollars and Fifteen Cents (\$2.15) per residential unit per month for those participating in the curbside recycling program.
- The cost for the approximate ten (10) frontload dumpsters for CITY facilities are included in the residential can pricing, so no extra charges for those cans. Extra dump charges for those 10 containers will be negotiated as needed with the CITY.
- CONTRACTOR shall deliver, haul once, and remove the “large dumpster” for the July 4th Cherry Days event at no cost. The CITY shall be responsible solely for the disposal. All other roll-off hauls will be free delivery and seventy-nine dollars (\$79) per haul.

f. Price Adjustments: Beginning on July 1st of each year, starting July 1, 2015, an annual CPI (based on U.S. Department of Labor CPI index data) increase will be assessed on all 1st trash and 1st recycling receptacles.

g. Fuel Adjustment: If fuel reaches \$4.21/gallon, a fuel surcharge will be assessed monthly, using the U.S. Energy Information Administration statistic on diesel cost, for all 1st trash and 1st recycling receptacles.

Fuel Surcharge Table

**Monthly
Avg.
\$/Gallon** **\$ increase
per 1st
Container**

\$ 4.20		\$ 0.57
\$ 4.30		\$ 0.60
\$ 4.40		\$ 0.63
\$ 4.50		\$ 0.66
\$ 4.60		\$ 0.69
\$ 4.70		\$ 0.72
\$ 4.80		\$ 0.75
\$ 4.90		\$ 0.78
\$ 5.00		\$ 0.81

- h. Tipping Fee: The CITY shall pay all tipping fees for solid waste directly to Weber County Transfer Station (disposal site). In order to ensure the accuracy of the tipping fees paid by the CITY, CONTRACTOR agrees that it will not commingle solid waste from the CITY with solid waste from other locations or with any other type of waste. If requested by CITY, CONTRACTOR shall provide the CITY with reports showing the tonnage amounts collected in both trash and recycling.

- i. Recycling Commodity Rebates: The CITY shall receive 100% of the commodity rebate per its agreement with the commodity recipient. The CITY will also be responsible for any costs that may be associated with the commodity.

- j. Payment: The CITY shall pay CONTRACTOR the basic fee and additional receptacle fee(s) thirty days after receipt of billing. CONTRACTOR shall have the ability to charge interest on late payment in the event CITY does not pay CONTRACTOR on time. If CITY has concerns over the amount it is being billed by CONTRACTOR, CONTRACTOR and CITY will work together to eliminate the concern(s).

4. Other Services

- a. Under this Agreement, the CITY reserves the right to initiate discussions and contract with CONTRACTOR for other waste/recycling programs within the CITY as is in the best interest of the CITY without the need to go out to bid or notify other CONTRACTORS.
- b. Recharges, Go-backs, and Special Services: CONTRACTOR shall provide same day go-back services for residential units that were missed as long as CONTRACTOR is notified of the miss prior to 3 pm on the regularly scheduled pick-up day. If notified after 4 pm, CONTRACTOR will pick-up residential unit the next business day. CONTRACTOR will attempt to collect trash from residential units that were not out ready for pick-up prior to 7 am the same day if CONTRACTOR is notified by 3 pm.

5. Customer Service: CONTRACTOR acknowledges that it is critical to the CITY that excellent service levels be maintained in the CITY. To that end, the following service requirements shall be considered material provisions of this Agreement.

- a. Regular Collection: MSW will be collected from each residential unit weekly; recycling will be collected from each participating residential unit every other week. CONTRACTOR shall establish a regular collection schedule so that each unit will have its solid waste and recycling collected on the same day each week. Exceptions shall be allowed for weeks having holidays or for severe weather or unforeseen circumstances. CONTRACTOR will contact CITY for authorization to ever alter or change pick-up days or schedule.
- b. Basic Service Requirements: CONTRACTOR shall...
 - i. Collect MSW and recycling in the city during allowable collection hours. Allowable hours are 7 am to 7 pm.
 - ii. Maintain collection trucks in safe operating condition.
 - iii. Maintain collection trucks so as to prevent waste from leaking out or spilling out onto the city streets.
 - iv. Maintain collection trucks so as to prevent hydraulic or other oil spills or leakage.
 - v. Pick-up any waste that is in the receptacle upon pick-up and falls/spills out during collection.
 - vi. Cover or sufficiently contain all waste/recycling collected so as to prevent it from blowing during transport. CONTRACTOR'S drivers are responsible to ensure blown waste is collected and properly disposed of.
 - vii. Ensure trucks are in good repair in operation and appearance.
 - viii. Clean up all spills or leaks caused by CONTRACTOR immediately whether or not spill/leak occurred on public or private property.

- ix. Add additional trucks and drivers as needed to handle increase in residential units, trash/recycling volume, increase in the difficulty of the service, or other services required and contracted with the CITY. All services in the CITY should be completed within a 5-day work week.

- c. Force Majeure: Neither CONTRACTOR nor CITY shall be liable for damages for its failure to perform due to contingencies beyond its control including but not limited to strikes, labor disputes, storms, riots, flooding, terrorism, fires or acts of God (a "Force Majeure Event"). No contingency under this section shall excuse CITY from its obligation to make prompt payment of monies due and owing for services rendered. During any period when performance of a party's obligation is prevented by a Force Majeure Event, that obligation shall be suspended provided that the party whose performance is suspended shall resume performance as soon as reasonably possible upon cessation of the Force Majeure Event. The party claiming inability to perform shall notify the other party as soon as practical upon the beginning and ending of the Force Majeure Event. The parties may make reasonable efforts to perform the obligations of this Agreement during the Force Majeure Event. If CONTRACTOR is reasonably willing or able to provide some level of the Services during a period of a Force Majeure Event, CONTRACTOR'S reasonable performance under the circumstances shall be sufficient, and partial performance shall not be considered a breach of performance or Event of Default. If CONTRACTOR is required to incur additional expenses in performing its obligations during a Force Majeure Event or thereafter as a result of damages caused by the Force Majeure Event, CONTRACTOR may pass through those expenses to the CITY. CONTRACTOR and/or CITY may terminate this Agreement if a Force Majeure event continues for more than sixty (60) days.

- d. Publication of Collection Schedule: CONTRACTOR shall provide the CITY with a schedule of collection days and scheduled holiday adjustments for all neighborhoods and areas on an annual basis.

- e. Schedule Adjustments: CONTRACTOR shall submit information to the CITY at least 60 days in advance of any adjustment of collection schedule, outside of holidays. CITY will allow CONTRACTOR to use the CITY's newsletter to inform residents of pick-up information and recycling education.

- f. Customer Service Representative: CONTRACTOR shall provide and maintain a customer service representative at a local access telephone number who

shall be available to the CITY and its residents during CONTRACTOR'S normal business hours and on Saturday's when holidays require Saturday collection. CONTRACTOR may use automated answering devices during off hours. CONTRACTOR shall make a good faith effort to resolve customer concerns within seven days after notification.

- g. Accounts: By e-mail, the CITY shall provide a daily (regular working days) list of account closures and new accounts to CONTRACTOR for the purpose of collecting waste/recycling.

- h. Problem Accounts: CONTRACTOR shall ensure that a CONTRACTOR representative is able to meet with residents and CITY officials regarding any residential unit that is determined to be a "difficult stop". CONTRACTOR and CITY will work together to determine the best way to safely service these customers.

- i. Receptacle Collection: CONTRACTOR will make every possible attempt to safely service all residential units. If a receptacle is blocked, overloaded, filled with non-acceptable debris, or placed in a bad collection location, driver will take measures to safely dump the receptacle (unless it contains non-acceptable items that cannot be collected at that time – e.g. hot ashes, rocks, etc.) then tag the can informing the resident of the issue. If the same issue persists, driver will leave the receptacle and tag the can indicating why the receptacle was not dumped. Prolonged issues will be handled by CONTRACTOR'S representative by contacting the resident to explain the issue and getting the CITY officials/supervisors involved where needed. CONTRACTOR may receive written notice from the CITY approving the CONTRACTOR to skip a residential unit if the stop is deemed by the CITY to be unsafe/uncollectable.

- j. Radio Communication: CONTRACTOR shall maintain two-way radio communication between the collection vehicles and its central office to permit rapid deployment of crews to assist with problems and/or misses as needed.

- k. Insurance: CONTRACTOR shall procure and maintain, for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in conjunction with the performance of the work hereunder by CONTRACTOR, its agents, representatives, employees, or subcontractors.
 - i. Coverage Limits shall be at least:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Agreement or the general aggregate limit shall be \$2,000,000.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Worker's Compensation and Employers Liability: Workers' Compensation limits as required by Utah State law and Employers Liability limits of \$1,000,000 per accident.
4. Excess liability/Umbrella: \$1,000,000.00.

6. Indemnification:

By CONTRACTOR. CONTRACTOR agrees to indemnify, defend and hold harmless CITY, its officers, directors, employees, agents, affiliates, parent, subsidiaries, successors and assigns from and against any and all claims, counterclaims, suits, demands, actions, causes of action, damages, setoffs, liens, attachments, judgments, debts, expenses or other liabilities of whatsoever kind or nature (collectively, "Losses"), to the extent alleged and resulting from (i) the sole negligence or willful misconduct of CONTRACTOR and its subsidiaries and affiliates, and their employees, agents, servants and subcontractors, in the performance of the services under this Agreement, or (ii) the breach of this Agreement by CONTRACTOR.

By CITY. CITY agrees to indemnify, defend and hold harmless CONTRACTOR, its officers, directors, employees, agents, affiliates, parent, subsidiaries, successors and assigns against any and all Losses to the extent alleged and resulting from (i) the negligence or willful misconduct of the City and its subsidiaries and affiliates, and their employees, agents, servants and subcontractors in connection with the performance of their obligations under this Agreement, (ii) the breach of this Agreement by the City, or (iii) any Excluded Waste contained in the waste or recyclable material."

7. **Discontinuation of Service:** The parties acknowledge the important public health and safety issues involved in regularly collecting municipal solid waste/recycling. Therefore, if CONTRACTOR is unable to perform any of its collection obligations set forth in the Agreement for any reason, including "force majeure", for seven (7) consecutive days or more, the CITY may arrange for the collection and disposal of the waste by any alternative means until such time as CONTRACTOR can continue the service.

8. **Default:** Either party shall be considered in default if it fails to comply with any of the requirements of this Agreement. The parties shall be entitled to avail themselves of any remedy available in the State of Utah for any default or other failure to perform that is not specifically provided for in this Agreement.

9. **Termination of Agreement:** Either party may terminate this agreement for cause with 30-day written notification after the other party has had a chance to rectify and fix indicated problems (cause).
 - a. Cure Period and Remedy: The party desiring to terminate the Agreement based on cause, shall first give the other party a written notice of the default. If the default is cured within thirty (30) days, the Agreement shall stand in full force and effect. If the default is not cured within thirty (30) days, the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party. The termination shall not be effective until Ninety (90) days after written notice is given and both parties shall continue to perform respective obligations pursuant to this Agreement until Agreement is fully terminated.

 - b. Change of Laws: If any federal or state laws are enacted, or if any court cases are decided, that invalidate or disapprove of the types of activities set forth in this Agreement, the parties shall renegotiate the terms of the Agreement relating to the type of activity that is no longer appropriate. If the parties are unable to renegotiate terms, then either party may terminate the Agreement by giving ninety (90) days written notice.

10. **Dispute Resolution:** Both parties desire to resolve disputes short of litigation, if possible. Therefore, before commencing legal action, the parties shall attempt to negotiate a solution, and if unsuccessful, consider mediation or other means of resolving dispute without litigation. If a mediator is used, both parties agree to equally split the cost of the mediator and to select a neutral mediator acceptable to both parties.

11. **Lawful Agreement:** The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, by-laws, and other legal requirements applicable to their operation.

12. **Exclusive Agreement:** Both parties understand this Agreement to be an exclusive Agreement between CITY and CONTRACTOR with CONTRACTOR obligated and contracted to provide all municipal solid waste and municipal recycling collection in the CITY.

13. **Utah Law:** This Agreement shall be interpreted pursuant to the laws of the State of Utah.

14. **Amendments or Addendums:** Either party has the right to amend or add an Addendum to this Agreement if is in agreed upon in writing by both parties.

15. **No Presumptions:** Should any provisions of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly against the person who himself or through his agents prepared the same, it being acknowledged that both parties have participated in the preparation hereof.

16. **Binding Agreement:** This Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.

17. **No Assignment:** Neither party shall transfer or assign any of its rights, duties or obligations set forth in this Agreement to a third party without the prior written consent of the other party. CITY's written consent should not be unreasonably withheld, delayed or modified and no consent is required for transfers to affiliates in connection with the sale or purchase of a business.

Dated this _____ day of _____, 2014

North Ogden City by

ATTEST:

Brent R. Taylor
Mayor

S. Annette Spendlove, MMC
City Recorder

and

Allied Waste Services of North America, LLC a Delaware limited liability company d/b/a Allied Waste Services of Northern Utah and Republic Services of Northern Utah by

Jeff Andrews
Vice-President