

CLEVELAND PUBLIC LIBRARY

Finance Committee

October 16, 2012

**RESOLUTION TO ENTER INTO AGREEMENTS WITH
REPUBLIC SERVICES, INC. FOR WASTE MATERIALS SERVICES**

WHEREAS, On December 22, 2005, the Cleveland Public Library entered into Customer Service Agreements with Allied Waste Services to provide waste material services for the Main Library, the Lake Shore Facility and the Woodland Garage; and

WHEREAS, In February, 2012, the Customer Agreements with Allied Waste Services were transferred to Republic Services, Inc. by Allied Waste Services; and

WHEREAS, The terms of the Customer Agreements automatically renew for a successive twelve (12) month term unless either party gives written notice of termination to the other at least sixty (60) days before the end of the current term, which will be October 23, 2012; and

WHEREAS, The Library sought and received two (2) other proposals in order to verify competitive pricing; and

WHEREAS, Republic Services, Inc., the Library's current service provider, offers the best price at a cost savings of approximately \$1,200.00 per month; now therefore be it

RESOLVED, That the Board of Trustees authorizes the Executive Director, CEO, or his designee, to enter into Customer Service Agreements with Republic Services, Inc., subject to the approval of the Chief Legal Officer, to provide waste material services for the Main Library, the Lake Shore Facility and the Woodland Garage in the amount of \$1,706.00 per month, plus an additional cost for an extra pick up when needed at a cost of \$75.00 per pick up, for a period of 36 months, in an amount not to exceed \$25,000 annually, with the expenditures being charged to the General Fund Account 12100053-53340 Building Maintenance.



Customer Service Agreement

AGREEMENT NUMBER **3-41162**
 ACCOUNT NUMBER **5052779**
 E-MAIL **mscruggs@cpl.org**

SITE LOCATION
 SITE NAME: **Cleveland Public Library**
 ADDRESS: **1700 Lake Shore**
 CITY: **Cleveland** STATE: **OH**
 ZIP CODE: **44110-1017**
 TEL NO: **216-623-2908** FAX NO:
 AUTHORIZED BY: **Myron Scruggs** TITLE: **Facilities Mgr**
 CONTACT: **Myron Scruggs** TITLE: **Facilities Mgr**

INVOICE TO
 CUSTOMER NAME: **Cleveland Public Library**
 ADDRESS: **Accounting Department**
325 Superior Ave E
 CITY: **Cleveland** STATE: **OH**
 ZIP CODE: **44114-1205**
 TEL NO: **216-381-5762** FAX: **216-381-4305**

NO	TYPE	SIZE	C	U	W	CO	GRD	THICK	HT	LF CODE	LF AMOUNT	LF CHARGE	EXTRA LFT	OTHER	RECYCLABLE
N 1	FL	6	N	1	P	N		o/c	3	N	Y	\$ 45.00			
N 2	FL	8	N	1	P	N		5/1w		N	Y	\$ 75.00			

BY: **[Signature]** TITLE: **X**
 COMMENTS: **HEREINAFTER REFERRED TO AS THE "COMPANY"**
 TERMS AND CONDITIONS: **X**

SERVICES. Customer grants to Company the exclusive right to collect and dispose of all of Customer's non-hazardous solid waste materials (including recyclables) (collectively, "Waste Materials"), and Company agrees to furnish such services.

TERM. THE INITIAL TERM OF THIS AGREEMENT SHALL START ON THE DATE OF THIS AGREEMENT AND CONTINUE FOR 36 MONTHS THEREAFTER. THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE 36 MONTH TERMS UNLESS EITHER PARTY GIVES WRITTEN NOTICE OF TERMINATION TO THE OTHER AT LEAST 60 DAYS BEFORE THE END OF THE THEN CURRENT TERM. ANY NOTICE OF TERMINATION UNDER THIS AGREEMENT BY CUSTOMER SHALL BE VOID UNLESS SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND ACTUALLY RECEIVED BY COMPANY.

WASTE MATERIALS. The Waste Materials shall not contain any hazardous materials, wastes or substances, toxic substances, wastes or pollutants; contaminants; pollutants; infectious wastes; medical wastes; or radioactive wastes (collectively, "Excluded Waste"), each as defined by applicable federal, state or local laws or regulations (collectively, "Applicable Laws"). Customer shall indemnify, defend and hold harmless Company from and against any and all claims, damages, suits, penalties, fines, remediation costs, and liabilities (including court costs and reasonable attorneys' fees) (collectively, "Losses") resulting from the inclusion of Excluded Waste in the Waste Materials.

Rate based on **lbs/yd**
 DOES FACILITY HAVE A HAZARDOUS WASTE GENERATOR I.D. NUMBER?
 NUMBER: YES NO
 NATIONAL ACCOUNT NUMBER: **719036169**
 CREDIT APPROVAL: **credit approval**
 CUSTOMER CATEGORY: **comm**
 EFFECTIVE DATE: **3**
 EXPIRES: **3**
 TAX CODE: **FRF**
 ERF: **n**
 FEE: **n**

TERMS AND CONDITIONS (Continued from other side)

PAYMENT . Customer shall pay Company for the services and equipment furnished by Company at the rates provided in this Agreement. Customer shall pay all taxes, fees and other governmental charges assessed against or passed through to Company (other than income or real property taxes). Customer shall pay such fees as the Company may impose from time to time by notice to Customer (including, by way of example only, late payment fees, administrative fees and environmental fees), with Company to determine the amounts of such fees in its discretion up to the maximum amount allowed by Applicable Law. Without limiting the foregoing, Customer shall pay Company: (a) a fee of \$50 (which Company may increase from time to time by notice to Customer) for each check submitted by Customer that is an insufficient funds check or is returned or dishonored; and (b) a fuel/environmental recovery fee in the amount shown on each of Company's invoices, which amount Company may increase or decrease from time to time by showing the amount on the invoice; and (c) a late payment fee of 1.5% per month on the amount past due. Customer shall pay Company within 20 days after the date of Company's invoice. At any time after Company becomes concerned about Customer's creditworthiness or after Customer has made any late payment, Company may request, and if requested Customer shall pay, a deposit in an amount equal to one month's charges under this Agreement.

RATE ADJUSTMENTS . Company may, from time to time by notice to Customer, increase the rates provided in this Agreement to adjust for any increase in: (a) disposal costs; (b) transportation costs due to a change in location of Customer or the disposal facility used by Company; (c) the Consumer Price Index for all Urban Consumers; (d) the average weight per cubic yard of Customer's Waste Materials above the number of pounds per cubic yard upon which the rates provided in this Agreement are based as indicated on the cover page of this Agreement; or (e) Company's costs due to changes in Applicable Laws. Company may increase rates for reasons other than those set forth above with Customer's consent, which may be evidenced verbally, in writing or by the parties' actions and practices. **SERVICE CHANGES** . The parties may change the type, size or amount of equipment, the type or frequency of service, and correspondingly the rates by agreement of the parties, which may be evidenced verbally, in writing or by the parties' actions and practices. This Agreement shall apply to any change of location of Customer within the area in which Company provides collection and disposal services. **RESPONSIBILITY FOR EQUIPMENT; ACCESS** . Any equipment Company furnishes shall remain Company's property. Customer shall be liable for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Company's handling of the equipment). Customer shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. Customer shall indemnify, defend and hold harmless Company from and against all Losses arising from any injury or death to persons or loss or damage to property (including the equipment) arising out of Customer's use, operation or possession of the equipment. Customer shall provide safe, unobstructed access to the equipment on the scheduled collection day. Company may charge an additional fee for any additional collection service required by Customer's failure to provide access.

DAMAGE TO PAVEMENT . Company shall not be responsible for any damages to Customer's pavement, curbing or other driving surfaces resulting from Company's providing service at Customer's location.

SUSPENSION . If any amount due from Customer is not paid within 60 days after the date of Company's invoice, Company may, without notice and without terminating this Agreement, suspend collecting and disposing of Waste Materials until Customer has paid such amount to Company. If Company suspends service, Customer shall pay Company a service interruption fee in an amount determined by Company in its discretion up to the maximum amount allowed by Applicable Law.

TERMINATION . In addition to its above suspension rights, Company may terminate this Agreement immediately by written notice to Customer if (a) any of the information contained in any credit application submitted to Company in connection with this Agreement is untrue or (b) Customer breaches this Agreement and fails to cure such breach within 10 days after Company gives Customer written notice of the breach. Company's failure to suspend service or terminate this Agreement when Customer fails to timely pay or otherwise breaches this Agreement shall not constitute a waiver of Company's right to suspend service or terminate this Agreement for any future failure to pay or other breach.

PAYMENT UPON TERMINATION . If Customer terminates this Agreement before its expiration other than as a result of a breach by Company, or if Company terminates this Agreement as a result of a breach by Customer (including nonpayment), Customer shall pay Company an amount equal to the most recent month's monthly charges multiplied by the lesser of (a) six months or (b) the number of months remaining in the term. Customer acknowledges that in the event of such a termination, actual damages to Company would be uncertain and difficult to ascertain, such amount is the best, reasonable and objective estimate of the actual damages to Company, such amount does not constitute a penalty, and such amount is reasonable under the circumstances. Any amount payable under this paragraph shall be in addition to amounts already owing under this Agreement.

ASSIGNMENT . Customer shall not assign this Agreement without Company's prior written consent, which Company shall not unreasonably withhold. Company may assign this Agreement without Customer's consent.

EXCUSSED PERFORMANCE . Except for Customer's obligation to pay amounts due to Company, 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.

ATTORNEYS' FEES . If any litigation is commenced under this Agreement, the successful party shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation or proceeding.

MISCELLANEOUS . This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exist between the parties regarding the subject matter of this Agreement. Company shall have no confidentiality obligation with respect to any Waste Materials. This Agreement shall be binding upon and inure solely to the benefit of the parties and their permitted assigns. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall be modified so as to be valid, legal and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby. Customer and Company agree that an electronically stored copy of the contents of this Agreement, as though it were original.

CUSTOMER'S INITIAL ~~X~~ _____ SLS 014

Agreement Number: 41162