

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT FOR
HOUSEHOLD HAZARDOUS WASTE COLLECTION
ACTIVITIES/WASTE DISPOSAL SERVICES WITH
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.**

THE STATE OF TEXAS

§

CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

That this Agreement for purchase of household hazardous waste disposal and collection services, and for related goods and services, referred to herein as the "Agreement," is made and entered into on this the _____ day of the month of _____, 2015, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664, referred to herein as the "City," and CLEAN HARBORS ENVIRONMENTAL SERVICES, INC., whose offices are located at 4303 Profit Drive, San Antonio, Texas 78219, referred to herein as the "Services Provider." This Agreement supersedes and replaces any previous agreements between the named parties, whether oral or written, and whether or not established by custom and practice.

RECITALS:

WHEREAS, City desires to purchase household hazardous waste disposal and collection services, and to purchase associated goods and services, and City desires to purchase same from Services Provider; and

WHEREAS, City has issued its Invitation for Bid under Solicitation Number 15-028, Class/Item 926-45 dated June 2015, for the provision of said goods and services, and City has selected the bid submitted by Services Provider; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Services Provider whereby City is obligated to buy specified goods and/or services and Services Provider is

obligated to sell same. The Agreement includes the following: (a) City's Invitation for Bid under Solicitation Number 15-028, Class/Item 926-45 dated June 2015; (b) Services Provider's Response to IFB; (c) contract award; and (d) any exhibits, addenda, and/or amendments thereto. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference in the following order:

- (1) This Agreement;
- (2) Purchaser's Response to IFB;
- (3) City's Invitation for Bid, Addendums, Exhibits, and Attachments.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Services Provider** means Clean Harbors Environmental Services, Inc., or any of its successors or assigns.

2.01 EFFECTIVE DATE, INITIAL TERM, AND ALLOWABLE RENEWALS

A. This Agreement shall be effective upon execution of both parties hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. The term of this Agreement shall be for three (3) consecutive twelve-month periods from the effective date hereof. After that term, this Agreement may be renewed for no more than two (2) additional terms of twelve (12) months each, with such renewals to occur on or before the expiration date of the preceding term, and with such renewals being absolutely predicated upon the express written agreement of both parties. Such renewals are permitted only provided Services Provider has performed each and every contractual obligation specified in this original Agreement.

C. Price adjustments during the term of this Agreement, if any, shall be in accordance with Part I, Item 10 of City's Invitation for Bid under Solicitation Number 15-028,

Class/Item 926-45 dated June 2015. Services Provider may offer price decreases in excess of any allowable percentage change.

D. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

3.01 TRANSFER OF WASTE AND TITLE

Services Provider shall inspect, and where desires, sample, the waste collected from City and prepare an inventory form that indicates the contents of each container of waste. Services Provider shall be considered the Legal Generator of all waste removed from any site in the City pursuant to this Agreement. Services Provider is to prepare the Generator's Waste Material Profile Sheet and any required manifests. Services Provider shall sign as the Generator and shall not delegate this responsibility to any subcontractor. Any storage, transportation or disposal of waste undertaken pursuant to this Agreement shall comply with all applicable local, state or federal regulations and laws. No transporter or disposal facility shall be utilized if said transporter or facility is not in compliance with any permit, rule or regulation of the EPA, U.S. Department of Transportation, the Texas Railroad Commission, the Texas Commission on Environmental Quality or any other regulatory authority or agency. All wastes collected, transported and disposed of shall be in accordance with the terms and schedules set forth in Exhibit "B."

4.01 CONTRACT DOCUMENTS AND EXHIBITS

City selected Services Provider to supply the goods and services as outlined in City's Invitation for Bid under Solicitation Number 15-028, Class/Item 926-45 dated June 2015, attached as Exhibit "A," and Response to IFB submitted by Services Provider, attached Exhibit "B," both exhibits attached hereto and made a part hereof for all purposes. The intent of these documents is to formulate an Agreement listing the responsibilities of both parties as outlined in relevant documents and as offered by Services Provider in its Response to the IFB.

The goods and services which are the subject matter of this Agreement are described in Exhibits "A" and "B" and together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

5.01 ITEMS AWARDED

All bid items set forth in the IFB (Exhibit "A") are awarded to Services Provider.

6.01 COSTS

City shall pay to Services Provider for services performed the amounts set forth on pages nine (9) to eleven (11) of Exhibit "B" ("Bid Form"). The City's payment to Services Provider for services rendered shall not exceed **Twenty-Eight Thousand Two Hundred Twenty Dollars and no/100 (28,220.00) per year.**

7.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Services Provider;
- B. Purchase Order Number;
- C. Description and quantity of items received; and
- D. Delivery dates.

8.01 INTERLOCAL COOPERATIVE CONTRACTING / PURCHASING

Authority for local governments to contract with one another to perform certain governmental functions and services, including but not limited to purchasing functions, is granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102.

Other governmental entities within the State of Texas may be extended the opportunity to purchase off of the City of Round Rock's bid, with the consent and agreement of the successful Services Provider(s) and Round Rock. Such agreement shall be conclusively inferred for the Services Provider from lack of exception to this clause in the Services Provider's response. However, all parties hereby expressly agree that the City of Round Rock is not an agent of, partner to, or representative of those outside agencies or entities and that the City of Round Rock is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.

9.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Services Provider a written notice of termination at the end of its then-current fiscal year.

10.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Services Provider will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Services Provider may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with

V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Services Provider, a contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late; or
- B. There is a bona fide dispute between Services Provider and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- C. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- D. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

11.01 GRATUITIES AND BRIBES

City may, by written notice to Services Provider, cancel this Agreement without incurring any liability to Services Provider if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Services Provider or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Services Provider may be subject to penalties stated in Title 8 of the Texas Penal Code.

12.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Services Provider's charges.

13.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS

If Services Provider cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

14.01 INSURANCE

Services Provider shall in all respects comply with the provisions delineated in Part VI, Item 1 of City's Invitation for Bid under Solicitation Number 15-032, Class/Item 990-10 dated June 2015 (including all attachments and exhibits), and its bid response.

15.01 CITY'S REPRESENTATIVE

City hereby designates the following representative authorized to act on its behalf:

Tracy Herring
Environmental Services Supervisor
Utilities and Environmental Services
2008 Enterprise Drive
Round Rock, Texas 78664
tracyh@roundrocktexas.gov
(512) 218-5412

16.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

17.01 DEFAULT

If Services Provider abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Services Provider agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Services Provider shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

18.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Services Provider.

B. In the event of any default by Services Provider, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Services Provider.

C. Services Provider has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Services Provider, Services Provider shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Services Provider shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Services Provider that portion of the charges, if undisputed. The parties agree that Services Provider is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

19.01 INDEMNIFICATION

Services Provider shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Services Provider, or Services Provider's agents, employees or subcontractors, in the performance of Services Provider's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Services Provider (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

20.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

Services Provider, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

21.01 ASSIGNMENT AND DELEGATION

The parties hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

22.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- A. When delivered personally to recipient's address as stated in this Agreement; or
- B. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Services Provider:

Clean Harbors Environmental Services, Inc.
4303 Profit Road
San Antonio, TX 78219

Notice to City:

Laurie Hadley, City Manager
221 East Main Street
Round Rock, TX 78664

Stephan L. Sheets, City Attorney
AND TO: 309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Services Provider.

23.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

24.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Services Provider and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

25.01 DISPUTE RESOLUTION

City and Services Provider hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

26.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any such void provision shall be deemed severed from this Agreement, and the balance of this

Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined to be void.

27.01 MISCELLANEOUS PROVISIONS

Standard of Care. Services Provider represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Services Provider understands and agrees that time is of the essence and that any failure of Services Provider to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Services Provider shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Services Provider's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Services Provider shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Clean Harbors Environmental Services, Inc.

By: _____
Printed Name: Louis Pransky
Title: Vice President
Date Signed: 9/18/15

