RESOLUTION NO. 2020-13R

A RESOLUTION OF IVINS CITY, UTAH, approving: (a) the proposed 10-year Residential Waste Collection Agreement between the Washington County Special Service District No. 1 and Republic Services, and (b) the proposed Solid Waste Collection Agreement between Washington County Special Service District No. 1 and the City of Ivins, pertaining to billing and collection for solid waste services and related matters

WHEREAS Washington County Special Service District No. 1 (hereafter referred to as "District") was created by the Washington County Commission for the purpose of establishing a program for collection and disposal of solid waste in Washington County, Utah; and

WHEREAS District desires to enter into a 10-year agreement, titled "Residential Waste Collection Agreement," a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", with Allied Waste Transportation, Inc., a Delaware corporation d/b/a Republic Services of St. George, for continuation of collection and disposal of residential and commercial solid waste throughout Washington County, Utah; and

WHEREAS District desires to obtain the approval and consent of the City of Ivins for the entering into said agreement attached hereto as Exhibit "A"; and

WHEREAS District desires to enter into a Municipal Billing and Collection Agreement, a copy of which is attached hereto and by this reference incorporated herein as Exhibit "B", with the City of Ivins for the purposes stated therein; and

WHEREAS the Ivins City Council deems it necessary and expedient for the preservation of the public health, safety and welfare that the agreements attached hereto as Exhibits "A" and "B" be approved and that authorization is given for the execution of Exhibit "B" on behalf of the City of Ivins,

BE IT HEREBY RESOLVED by the Ivins City Council of Ivins, Utah, that the agreement between Washington County Special Service District No. 1 and Allied Waste Transportation, Inc., a Delaware corporation d/b/a Republic Services of St. George, titled "Residential Waste Collection Agreement," which is attached hereto as Exhibit "A" and by this reference incorporated herein as if fully set forth, is hereby approved.

BE IT FURTHER RESOLVED that the Municipal Billing and Collection Agreement between Washington County Special Service District No. 1 and the City of Ivins, attached hereto as Exhibit "B", is hereby approved, and that the Mayor and City Recorder/Clerk are hereby authorized to execute said agreement on behalf of the City of Ivins.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF IVINS CITY, STATE OF UTAH, AS FOLLOWS:

Severability. If any section, clause, or portion of this resolution is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Effective Date: This Resolution shall become effective immediately upon adoption by the City Council.

PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THIS 18 DAY OF AUGUST, 2020 BY THE FOLLOWING VOTE:

	AYE	NAY	ABSTAIN	ABSENT
Dennis Mehr	X			
Cheyne McDonald	X			
Jenny Johnson	X			
Miriah Elliott				X
Sue Gordhammer	X			

Chris Hart, Mayor

ATTEST:

IVINS CITY Corporate Seal WASHINGTON COUNTY

Kari Jimenez
City Recorder

MUNICIPAL BILLING AND COLLECTION AGREEMENT

This MUNICIPAL BILLING AND COLLECTION AGREEMENT is made and entered into on this 10th day of August, 2020, by and between Washington County Special Service District No. 1, a special service district organized under the laws of the State of Utah (hereinafter referred to as "District"), and the City of Ivins, a municipal corporation of the State of Utah (hereinafter referred to as "City"), collectively referred to as "the Parties."

Recitals:

A. District was duly created by resolution of the Washington County Commission for the purpose of providing solid waste collection and disposal services to the municipalities and unincorporated areas in Washington County, Utah.

B. District currently provides solid waste collection services to City and other municipalities within Washington County pursuant to an agreement which expires on January 31, 2021.

C. District has negotiated a proposed 10-year agreement, titled "Residential Waste Collection Agreement" (referred to herein as "the Agreement"), a copy of which is attached hereto and incorporated herein as if fully set forth, with Allied Waste Transportation, Inc., a Delaware corporation d/b/a Republic Services of St. George (hereafter referred to as "Republic"), to become effective on February 1, 2021 for the continuation of solid waste collection and disposal services within City, as well as all other municipalities and unincorporated areas of Washington County.

D. City desires to continue to utilize the solid waste collection and disposal services provided by District for the use and benefit of its residents.

E. District and City desire to enter into a written agreement specifying the terms and conditions upon which the District shall continue to provide solid waste collection and disposal services in accordance with the Agreement to all residences in City.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and obligations contained herein, the parties hereto agree as follows:

1. Incorporation of Recitals. Recitals A-E are hereby incorporated herein by this reference as if fully set forth.

2. Acknowledgement. City hereby acknowledges receipt of a copy of the Agreement

between District, as contractor, and Republic, as subcontractor, providing for solid waste collection

and disposal services within the boundaries of District. City hereby gives its approval to District's entering into the Agreement, which, upon formal execution by District and Republic, shall be attached hereto as Exhibit "A" and incorporated herein by this reference.

3. Definitions. Unless the context requires otherwise, all terms or phrases used herein shall have those meanings specified in the Agreement.

4. Solid Waste Collection and Disposal Services. The Parties hereto agree that District, by and through Republic, shall provide residential and commercial solid waste collection and disposal services to residences in City in accordance with the terms and conditions of the Agreement.

5. Recycling Opt Out. Subject to the provisions of paragraph 4 of the Agreement, the Parties agree to implement an opt-out curbside residential recycling program in accordance with the terms and provisions of the Agreement. The Parties further agree that residences within the boundaries of City shall be given a period of ninety (90) days to opt out of the curbside recycling collection services in accordance with the Recycling Opt-Out Rules and Guidelines attached hereto as Exhibit "B," or as otherwise agreed to by the Parties. All residences within the boundaries of City who do not opt out during in accordance with said Rules and Guidelines on or before the expiration of said 90-day period shall thereafter be included in the recycling program at recycling rates specified in the Agreement.

6. Billing, Collection and Payment of Residential Fee. In consideration of residential solid waste collection and disposal services provided by District under this agreement, Town agrees to be responsible for monthly billing, collection and payment to District of all monthly residential fees for all residences located within the City's boundaries. For purposes of this agreement, the term "residential fee" shall be comprised of the following amounts:

(a) the amount to be paid to Republic for basic waste collection services provided in accordance with the provisions of paragraphs 4.d. and 17.a. of the Agreement and Exhibit B attached thereto;

(b) the amount to be paid to Republic for recycling collection service in accordance with the provisions of paragraph 4 and 17.b. of the Agreement, plus the amount of $.75 per residence per month to offset the cost of the recycling container;

(c) the amount of $4.45 per month per residence, plus an annual increase of $.10 per month per residence, or such other amount as may be reasonably determined

from time to time by resolution of District's Administrative Control Board, for operation of the Washington County Landfill and District administrative expenses;

(d) such additional amount as may be determined by City to offset the cost of billing and collection.

City further agrees that the above-described residential fees for basic waste collection and recycling collection services shall be established by ordinance adopted by the City on or before February 1, 2021, and that the portion of the residential fees for billing and collection services, as specified in sub-paragraph (d) above, shall be retained by City to offset its costs of billing and collection.

7. Imposition of Lien. The parties further agree that in appropriate cases, as mutually determined by the Parties, the District will assist City in the collection of delinquent accounts through placement by District of a lien on the delinquent premises pursuant to the District's lien power provided for in Utah Code Ann. §17D-1-106(1)(g) and §17B-1-902; provided, however, that in such cases City shall not be relieved from its obligation to pay to District the amount of the monthly fee pending enforcement of the lien, the proceeds from which shall be used to reimburse City for any amounts paid

8. Compensation for Commercial Collection and Disposal Services. It is understood and agreed by the Parties that the amount and method of payment of compensation for commercial solid waste collection and disposal services provided by Republic to commercial establishments in City shall be determined by and shall be subject to private agreement between Republic and the commercial customer.

9. Number of Residences. The Parties hereto agree that for purposes of billing, collection and payment by City to District of the residential fees specified in paragraph 6 hereof, City shall assume responsibility and liability for submitting to District on a monthly basis an accurate house count of all residential units receiving basic waste collection and recycling collection services within the boundaries of City. Any discrepancy in the number of such residential units located within the boundaries of City, as reported by City, and the number of residences within City receiving residential basic waste collection and recycling collection services from Republic shall be promptly investigated and resolved by mutual agreement of the Parties.

10. Delinquencies. Payment by City to District of the residential basic waste collection and recycling collection fees described in paragraph 6 hereof shall be made on a monthly basis and shall be due and payable on the 25th day of the month following the month in which services were rendered. Any amounts not paid by Town by the 25th day of the month following the

month in which services were rendered shall be deemed delinquent and shall bear interest at the rate of ten (10) percent per annum until paid in full.

11. Condominium/Townhome Review. In order to facilitate planning for the location of waste containers and safe access by Republic, City agrees that no new subdivision, condominium or townhome or other residential development shall be given final subdivision plat or other approval until such time that plans for collection and disposal of residential waste have been reviewed by District.

12. Exclusivity of Contract; Commercial Haulers. The parties hereto agree that District shall be the only entity engaged by City to provide residential solid waste collection and disposal services within the City limits throughout the term of this agreement.

13. Unauthorized Disposal; Enforcement. City agrees to adopt by resolution or ordinance such rules and regulations as may be necessary to prevent the dumping or disposal of any solid waste at any site other than the Washington County Landfill or other site approved by District, or which is inconsistent with the terms of the Agreement or any applicable federal, state or local law or District resolution. City further agrees that it shall, at its expense, be responsible for enforcement of all laws, ordinances, rules or regulations so adopted.

14. Maintenance of Streets. City agrees to maintain all streets, roads or roadways under its control in such a manner so as to allow District and Republic reasonably safe access for solid waste collection and disposal purposes.

15. Binding Effect, Term and Effective Date. This agreement shall become binding upon execution by the respective Parties. The Parties agree that the Opt Out Rules and Guidelines attached hereto as Exhibit B shall become effective upon execution of this agreement. All other terms and conditions of the agreement shall become effective on February 1, 2021 and shall continue in force and effect until expiration at 11:59 p.m. on December 31, 2030.

16. Notice of Breach or Demand for Performance. It is agreed between the Parties that no claim will be made for breach of this agreement unless thirty (30) days written notice of the breach, and demand for performance, is sent to the other Party. The notice of breach under this paragraph must specify the details of the claimed breach, while the demand for performance must specify the details relative to the demanded performance.

17. Breach: Default. Failure by either Party to comply with any covenant, obligation or term contained in this agreement, including the payment of the residential fee as provided in paragraph 6 hereof, for a period of thirty (30) days after receipt of notice of breach and demand for performance from the other party shall be deemed a material and substantial breach of the terms of this agreement and shall constitute a default under the terms hereof.

18. Remedies Upon Default. Upon the occurrence of default by either Party, the Party not in default shall have the right to: (a) suspend all services to be performed under this agreement until such time that such default is remedied; and (b) terminate the agreement by sending thirty days written notice to the Party in default of such election to terminate; and (c) pursue any other remedy that may be available at law or equity to enforce compliance with the terms of this agreement.

19. Successors and Assigns. This agreement shall inure to the benefit of the successors and assigns of the respective Parties.

20. Time Essence. It is understood and agreed by the Parties that time is of the essence of this agreement.

21. Integration. It is understood and agreed by the Parties that this agreement contains the whole and complete agreement of the parties, and that all prior negotiations, conditions and oral representations have been merged herein.

22. Modification of Agreement. The Parties hereto agree that this agreement may not be modified orally, but shall be modified only in writing, signed by the Party against whom enforcement of such modification is sought.

22. Effect on Current Agreement. The Parties acknowledge and agree that the agreement currently in effect between the Parties for collection of residential and commercial waste within the corporate limits of City shall remain in full force and effect according to its terms and shall not be affected by this agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the date first above written.

WASHINGTON COUNTY SPECIAL
SERVICE DISTRICT NO. 1.

_____
Cheyne McDonald, Chairman

Attest:

_____
Ruth Whitaker, Secretary

IVINS CITY

Chris Hart, Mayor

Attest:

City Recorder

Exhibit B

Recycling Opt Out Rules and Guidelines

1. Residences in Enterprise, Apple Valley, New Harmony and the unincorporated areas of County (hereafter referred to as "excluded areas") shall be excluded from the recycling program. Residences in all other areas of the District (hereafter referred to as "included areas") shall be included in the recycling program.

2. The election to opt out shall be made by the owner of the residence or by such other person designated in writing by the owner as approved by city/town where residence is located.

3. All residences who are not current participants in curbside recycling collection services shall be deemed to have opted out of receiving curbside recycling collection services for purposes of these Rules and Guidelines.

4. Except as provided herein, all residences/residents who do not opt out by November 30, 2020 shall be included in the recycling program for the contract period unless they move to an excluded area.

5 Residents who opt out on or before November 30, 2020, as determined by City, may opt in at any time but thereafter shall be included in the recycling program for the remaining contract period unless they move to an excluded area.

6. Residents who move from an excluded area to an included area shall be included in recycling for the contract period for as long as they remain in an included area.

7. New residents, i.e., people who move from outside the District to a residence in an included area, or people who move from within the District to a new residence in an included area regardless of a prior election to opt out, shall be automatically included in the recycling program for as long as they remain in an included area.