

**Service Agreement
For Recycling Program**

This agreement ("Agreement") is made and entered into as of this 1st day of March, 2021 by and between the City of Avondale Estates, Georgia, a city, hereinafter referred to as "City" and Latham Home Sanitation Company, Inc., a Georgia corporation, hereinafter referred to as "LHS".

Witnesseth

Whereas, City desires to retain a contractor to provide curbside collection of recyclable materials as well as processing and all marketing services with regard to recyclable materials; and

Whereas, LHS presented a proposal and was selected as the most responsive vendor by the City; and

Whereas, City and LHS desire to enter into this agreement upon the terms and conditions set forth herein;

Now, therefore, in consideration of the mutual covenants, terms and conditions contained herein, the parties agree as follows:

Section 1: Scope of Service

LHS shall timely and conscientiously in a professional and diligent manner provide residential curbside collection of Recyclable Materials (defined herein) once per week on Wednesday of each week for so long as this Agreement is in effect from approximately one thousand five hundred seventy-seven (1577) Residential Living Units (as defined herein) situated within the City of Avondale Estates, Georgia. In the event that Christmas Day falls on a Wednesday, LHS shall collect recycling on Thursday of that week.

The term "Recyclable Materials" shall mean aluminum and steel cans; magazines and newspaper; flattened cardboard; and PET and HDPE beverage containers (Nos. 1 and 2 plastic bottles).

In providing services under this Agreement, LHS shall use the recycling bins that are currently being used by the City for its Residential Living Units. LHS will replace bins damaged through normal use. Bins lost or stolen will be replaced by LHS without cost for up to 50 replacements per year. Bins replaced in excess of 50 per year shall be purchased by the City at a price not to exceed ~~\$7.50~~ each. LHS shall accept co-mingled Recyclable Materials.

LHS will provide promotional and educational materials explaining to the public the benefits of recycling.

The term "Residential Living Unit(s)" shall mean either a single-family residence or a multi-family dwelling (such as a condominium) occupied by not more than four families. A Residential Living Unit shall be deemed to be occupied when either water, light, gas or power services are being supplied thereto. For purposes of billing, each single family unit within a multi-family dwelling (such as a condominium) shall be counted as a separate living unit.

LHS will market and transport to market all Recyclable Materials, retain any revenue

derived from the sale of such Recyclable Materials, and pay any disposal fees associated with processing such Recyclable Materials. No Recyclable Materials collected from curbside bins will be disposed of in any landfill other than normal and customary residue. By initialing here LHS represents and warrants that Recyclable Materials collected from all Residential Living Units in the City shall not be disposed of in a landfill or in any other facility for the disposal of waste except for normal and customary residue.

Vendor initial here: BLG.

LHS shall continue curbside collection of Recyclable Materials from all Residential Units in the City. LHS shall prepare a written monthly report disclosing the average tonnage of Recyclable Materials collected and shall transmit said report to the City Manager monthly during the term of this Agreement.

Section 2: Term

This Agreement shall take effect on March 1, 2021 and shall terminate on December 31, 2021. Upon expiration of the initial term the Agreement will renew automatically for five (5) successive one (1) year terms, unless City provides LHS by October 1 of the year preceding such January 1 a non-renewal notice or unless otherwise terminated in accordance with the terms of this Agreement.

Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate absolutely and without further obligation on the part of the City at the close of the Starting Term or last Renewal Term for which this Agreement has been renewed. The parties intend that the Agreement operate in conformity with and not in contravention of O.C.G.A. § 36-60-13, and in the event that this Agreement would conflict therewith, this Agreement shall be interpreted and implemented in a manner consistent with such statute.

Nothing in this Agreement shall be construed to require the governing body of the City to make any future appropriation of money to pay any amounts owing hereunder. Any payments required to be made by the City hereunder constitute current expenses of the City, and City's obligations hereunder are from year to year only and do not constitute a mandatory payment obligation of the City in any ensuing calendar year beyond the current calendar year in contravention of O.C.G.A. § 36-60-13, as amended.

No provision hereof shall be construed or interpreted as creating a general obligation or other indebtedness of the City or the State of Georgia, within the meaning of any constitutional or statutory debt limitation. This agreement does not directly or indirectly obligate City to make any payments hereunder beyond those appropriated by City's current calendar year.

Section 3: Compensation

LHS shall receive as compensation for the work performed pursuant to this Agreement the amount of FIVE DOLLARS AND SIXTY-NINE CENTS (\$5.69) per Residential Living Unit per month. After the initial term of services under this Agreement, this rate may be adjusted by LHS once annually to reflect increases or decreases in the

Consumer Price Index for All Urban Consumers (CPI-U), US City Average, All Items, 1982-84=100, not seasonally adjusted as determined by the U.S. Bureau of Labor Statistics. This calculation shall use February 2021 as the initial index point; any future adjustments will use the month of the last adjustment as the index point.

In addition to the foregoing, LHS's fees may be increased or decreased, with the consent of the City, to reflect increases or decreases in LHS's disposal rate, changes in location of disposal sites, or on the basis of unusual changes in LHS's cost of operations, such as revised laws, ordinances, or regulations, upon increase of 5% or more in the number of Residential Units from growth or annexation or required changes in the method of collection, provided that increases in the allowable fees shall be made only as a result of changes mandated by the state, federal, or local rules and regulations. Any rate changes will be specified in a written amendment to this Agreement signed by both parties.

The number of Residential Living Units covered by this agreement shall be updated annually by the City and provided to LHS no later than May 1 of each year.

The City shall pay LHS the above-described compensation monthly within thirty (30) days of receipt of invoice from LHS.

Section 4: Nondiscrimination

LHS and its subcontractors will not discriminate against any employee or application for employment because of race, religion, color, sex, or national origin.

Section 5: Safety

LHS will take precautions necessary and will bear sole responsibility for the safety and adequacy of methods and means employed in performing its duties under this Agreement.

LHS will at all times in performance of services hereunder comply with and provide the safeguards required by applicable federal, state, county and local laws; rules and regulations concerning the Occupational Safety and Health Act of 1979 (OSHA); and all applicable Georgia labor laws, regulations and standards. LHS warrants that any services performed on City property or within the City limits of the City, or in a location partially or entirely under LHS's control will be performed in accordance with OSHA and all other legal requirements. LHS will indemnify and hold City harmless from and against liabilities, suits, damages, costs and expenses, including reasonable attorney's fees, which may be imposed on, incurred by or asserted against the City because of LHS's failure to comply with OSHA or state labor laws or other applicable legal requirements.

Section 6: Independent Contractor

The parties to this Agreement agree that LHS, its employees, agents and subcontractors, shall be independent contractors with regard to performing the scope of work under this Agreement and that LHS's employees, agents and subcontractors shall not be considered to be employees or agents of City for any purpose and will not be entitled to any of the benefits City provides for its employees.

Section 7: Audit Authority

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. Contractor shall preserve these records, books, correspondence and other data relating to this Agreement for a period of two years after final payment, or for such longer period as may be required by law. In addition, Contractor agrees to make such records, books, correspondence and other data relating to this Agreement available to City at City's principal place of business upon reasonable written notice. The City Manager, or his or her designee, shall at all times have the right to inspect the work, services, or materials.

Section 8: Indemnification

LHS will indemnify, defend and hold harmless City, its agents and employees from or on account of any physical injuries or damages, received or sustained by any person or persons during the term of the Agreement, but only to the extent resulting from any negligent act or omission or willful misconduct of LHS, its agents, employees, or subcontractors in the performance of the Agreement or to the extent resulting from the use of any improper materials or by or on account of any breach of the Agreement by LHS or its subcontractors, agents, or employees. LHS further agrees to indemnify, defend and hold harmless City, its agents or employees against claims for liability arising from or based upon the violation of any federal, state, county, city or other applicable laws, bylaws, ordinances, or regulations by LHS, its agents, subcontractors or employees.

This defense, indemnification and hold harmless specifically includes, but is not limited to, any violation by LHS of federal laws enforced by the United States Environmental Protection Agency, or any state agency.

Section 9: Insurance

LHS will assume the full duty, obligation and expense of obtaining and maintaining necessary insurance. Such policies will be issued by approved companies authorized to do business in the state of Georgia and will contain at a minimum the following provisions, coverages, and policy limits of liability:

a. Commercial General Liability. Commercial General Liability coverage that will protect the City, LHS and its subcontractors, agents and employees from claims or damages or personal injury, including accidental or wrongful death, as well as property damage which may arise from performance under this Agreement. The insurance coverage shall provide minimum limits of liability of \$1,000,000 per occurrence combined single limit for bodily injury and property damage and a general aggregate of \$2,000,000.

b. Auto Liability. Auto liability coverage shall provide minimum combined single limit coverage of \$1,000,000 per accident.

c. Worker's Compensation. Worker's compensation must exceed statutory limit in compliance with Worker Compensation Laws of the State of Georgia. This policy must include Employer's Liability of \$500,000 per accident.

~~*d. Excess Umbrella.* Excess umbrella coverage must be provided with limits of \$2,000,000.~~

Bkg.

LHS shall cause the City to be named as an additional insured on each policy of insurance except the Worker's Compensation policy. LHS shall provide the City with a copy of each policy no later than the effective date of this Agreement and shall notify the City in writing of any changes in coverage. LHS shall provide proof of insurance upon request by the City.

Section 10: Immigration Compliance

Before beginning work, Contractor will provide to City the required E-Verify affidavit pursuant to O.C.G.A. § 13-10-91(b).

Section 11. Termination of Contract

This Agreement may terminate or may be terminated by City for any or all of the following reasons:

- For any default by LHS;
- For the convenience of City;
- In the event of the insolvency of or declaration of bankruptcy by LHS; or
- In the event sufficient appropriated or obligated funds no longer exist for the payment of City's obligation hereunder.

Each of these is described in the following subsections.

A. Termination for Default

The failure of LHS to perform or comply with any term, condition, or provision of this Agreement shall constitute a default by LHS. In the event of default, City shall notify LHS by certified or registered mail, return receipt requested, of the specific act or omission of LHS that constitutes default. LHS shall have fifteen (15) calendar days from the date of receipt of such notification to cure such default. In the event of default, and during the above -specified grace period, performance under this Agreement shall continue as though the default had never occurred. In the event the default is not cured in fifteen (15) calendar days, City may, at its sole option, terminate the Agreement for default. Such termination shall be accomplished by written notice of termination forwarded to LHS by certified or registered mail, return receipt requested, and shall be effective at the close of business on the date specified in the notice. If it is determined, after notice of termination for default, that LHS's failure was due to causes beyond the control of and without error or negligence of LHS, the termination shall be deemed a termination for convenience.

B. Termination for Convenience

City may terminate performance of work under the Agreement in whole or in part whenever, for any reason, City determines that such termination is in the best interest of the City. In the event that City elects to terminate the Agreement pursuant to this provision, it shall so notify LHS by certified or registered mail, return receipt requested. The termination shall be effective as of the date specified in the notice.

C. Termination for Bankruptcy or Insolvency

In the event that LHS ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the

appointment of a receiver for its business or its assets or avails itself of, or becomes subject to, any proceedings under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, City may, at its option, terminate this Agreement. In the event City elects to terminate the Agreement under this provision, it shall do so by sending notice of termination to LHS by certified or registered mail, return receipt requested. The date of termination shall be deemed to be the date such notice is mailed to LHS, unless otherwise specified.

D. Termination for Unavailability of Funds

Notwithstanding any other provision of this Agreement, the parties hereto agree that the charges hereunder are payable by City from budget appropriations. In the event such appropriations are determined at the sole discretion of the City to no longer exist or to be insufficient with respect to the charges payable hereunder, this Agreement shall terminate without further obligation of City as of that moment.

E. Payment Upon Termination

Upon termination for any reason, LHS shall be entitled to payment for services rendered up to and including the effective date of termination.

Section 12. Assignment

LHS shall not assign, sublet, hypothecate or transfer this Agreement, either directly or indirectly, or any of its interest herein without the prior written approval of the City, which approval will not be unreasonably withheld except that such consent will not be required in the event of a transfer to a company or entity controlled by or under common control of LHS.

Section 13. Notices

Any notice required by or related to this Agreement shall be sent by United States registered or certified mail, postage prepaid and return receipt requested as follows:

Notice to City: City Manager

City of Avondale Estates

21 North Avondale Plaza

Avondale Estates, GA 30002

Notice to LHS: Barbara Latham Jarvis

Latham Home Sanitation Company, Inc.

7756 B Hampton Place

Loganville, GA 30052

Or such other addresses as may be designated by the City or LHS in writing.

Section 14: Remedies, Cumulative/Applicable Law/Venue

All remedies conferred upon the City herein shall be deemed cumulative and not exclusive of any other, or exclusive of any other remedy conferred by law. The Agreement shall be interpreted in accordance with the laws of the State of Georgia., The Venue for any disputes shall be in DeKalb County.

Section 15: Force Majeure, Miscellaneous

Except for the obligation to pay for services rendered, neither party hereto shall be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, war, fire, acts of God, injunction, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body or any instrumentality thereof. This agreement represents the entire agreement of the parties, and may be modified or amended only by agreement in writing.

This Agreement supersedes all prior discussions and agreements between the parties and contains the entire understanding between the parties. All promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the parties, if any, are superseded by this agreement.

Except as expressly limited by this Agreement, all rights given hereunder are in addition to and do not limit those provided at law or in equity.

No failure of any party to exercise any power given under this Agreement or to insist upon strict compliance with any obligation of this Agreement, and no customs or practice at variance with the terms of this Agreement, shall constitute a waiver of any party's right to demand exact compliance. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Time is of the essence in this Agreement.

Each provision shall be construed as though all parties participated equally in its drafting.

No course of previous dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of its terms. This Agreement shall benefit and bind the parties and their heirs, executors, administrators, successors and assigns.

IN WITNESS HEREOF, this Agreement has been signed and sealed in duplicate by the respective parties hereto.

By the City of Avondale Estates, Georgia



By: Patrick Bryant
Its: City Manager

Attest:

Gina Hill, City Clerk

Approved as to form:

Stephen Quinn
Stephen Quinn, Assistant City Attorney

By Latham Home Sanitation Company, Inc.

Barbara Latham Jarvis
By: Barbara Latham Jarvis
Its: President

Witness as to execution on behalf of LHS:

Richard Felton Jarvis
Richard Felton Jarvis
Vice President
Latham Home Sanitation Company, Inc.