

RESOLUTION NO.: 45-2010
INTRODUCED BY: Mayor Ursu and Councilmembers

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF THE RESIDENTIAL REFUSE COLLECTION, DISPOSAL AND RECYCLING CONTRACT WITH REPUBLIC SERVICES OF OHIO HAULING, LLC, TO BROWNING FERRIS INDUSTRIES OF OHIO, INC., DBA REPUBLIC SERVICES; AUTHORIZING THE EXERCISE OF TWO OPTION YEARS OF THE CONTRACT TO EXTEND THE CONTRACT THROUGH AUGUST 31, 2012, AND PROVIDING FOR TERMS ASSOCIATED THEREWITH; PROVIDING FOR DIRECT BILLING TO HOMEOWNERS; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Resolution No. 98-2007 of this Council, the City of Richmond Heights entered into a contract with Republic Waste Services of Ohio Hauling, LLC, which has subsequently been acquired by Browning Ferris Industries of Ohio, Inc. ("BFI"), dba Republic Services ("Republic"), to perform residential refuse collection and disposal services for the City for a term beginning September 17, 2007 through September 16, 2010, which contract provided for two additional option years of the contract exercisable at the sole discretion of the City (hereinafter the "Contract"); and

WHEREAS, this Council desires to authorize the assignment of the Contract to BFI and to exercise the two option years as set forth in the Contract for the combined extended period of September 1, 2010 through August 31, 2012; and

WHEREAS, it is financially necessary for the City to begin charging homeowners for the home refuse collection portion of the Contract as of July 1, 2010, and, in furtherance thereof, to authorize Republic to do the direct billing of homeowners for such services and to adjust certain billing rates for collection and disposal going forward.

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: This Council hereby authorizes the assignment of the "Residential Refuse Collection, Disposal and Recycling Contract" as originally authorized by Resolution No. 98-2007 of this Council, passed and effective on September 4, 2007, to BFI under the terms set forth in said Contract and an Addendum thereto, effective September 4, 2007, and Council hereby authorizes the exercise of both of the two option years provided for in the Contract, which combined option terms shall run through August 31, 2012.

Section 2: Certain terms related to the two option years exercised in Section 1 of this Resolution are set forth in a "Second Addendum" to the Contract which also provides for the terms for direct billing of homeowners by Republic for collection services and adjustments to charges for disposal of refuse, all as set forth in the "Second Addendum" attached hereto and incorporated herein as Exhibit A.

Section 3: The Mayor is authorized to execute an agreement in substantially similar form as the Second Addendum referred to in Section 2 of this Resolution and the Director of Finance is authorized and directed to appropriate to a proper account the sums sufficient to cover the cost of the Contract pursuant to said Second Addendum.

Section 4: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public and/or meetings in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 5: This Resolution is hereby declared to be an emergency measure immediately necessary to preserve the public health, safety and general welfare of the citizens of the City and for the further reason that this Resolution is required to be immediately effective to provide continued refuse collection and disposal services which are needed to eliminate real and potential threats and hazards to the health, safety and welfare of the residents and visitors of the City; wherefore this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council

EXHIBIT A

SECOND ADDENDUM TO CONTRACT FOR
RESIDENTIAL REFUSE COLLECTION, DISPOSAL AND RECYCLING
PURSUANT TO CITY OF RICHMOND HEIGHTS
BID NO. 01-2007

This Second Addendum to Contract for Residential Refuse Collection, Disposal and Recycling Pursuant To City of Richmond Heights Bid No. 01-2007 ("Second Addendum") is made as of the _____ day of July, 2010, by and between the **City of Richmond Heights**, 26789 Highland Road, Richmond Heights, Ohio 44143 (hereinafter "City") and **Browning Ferris Industries of Ohio, Inc., a Delaware corporation, dba Republic Services**, 8123 Jones Road, Cleveland, Ohio 44105 (hereinafter "Republic") (the City and Republic are collectively referred to as the "Parties").

WHEREAS, Republic Services of Ohio Hauling, LLC and the City entered into a three-year "Residential Refuse Collection, Disposal and Recycling Contract" pursuant to a competitive bid solicitation by the City (No. 01-2007) (hereinafter the "Refuse Contract"), with the initial term commencing on September 17, 2007 and ending September 16, 2010 and with two (2) one-year renewal options at the City's sole discretion;

WHEREAS, the Parties also entered into an "Addendum to Contract for Residential Refuse Collection and Disposal Pursuant to City of Richmond Heights Bid No. 01-2007" on or about September 4, 2007, regarding a fuel adjustment surcharge related to the Refuse Contract (the "First Addendum");

WHEREAS, Republic has requested that the Refuse Contract, along with any addenda thereto, be assigned from Republic Services of Ohio Hauling, LLC to Browning Ferris Industries

of Ohio, Inc., and which was authorized by Resolution No. 45-2010 of the City's Council on July 13, 2010;

WHEREAS, the Refuse Contract provides for Republic to charge the City, and for the City to pay Republic, for the cost of refuse collection and the cost of refuse disposal;

WHEREAS, the Parties now agree to amend the Refuse Contract through this Second Addendum to provide for Republic to directly invoice City residents for refuse collection costs only, with Republic continuing to invoice the City for refuse disposal costs, and to provide an option to City residents to obtain refuse pick-up service at the front building line or at the garage on the homeowner's property;

WHEREAS, the Parties also agree to amend the Refuse Contract through this Second Addendum to change the termination date of the Refuse Contract from September 17, 2010 to August 31, 2010, with the one-year renewal periods, when exercised, to begin on the following September 1 and end on August 31 of the respective option years; and the City Council has determined to exercise both option years under the terms and conditions set forth herein;

NOW, THEREFORE, pursuant to the mutual considerations set forth herein and in the Refuse Contract and First Addendum, the Parties agree as follows:

1. The City hereby gives notice to Republic of exercising both of the two option years in the Refuse Contract.
2. The Parties further agree that the term of the Refuse Contract shall be amended to expire on August 31, 2010, and that the City's exercise of the two option years shall extend the Refuse Contract from September 1, 2010 through August 31, 2012.

3. This Second Addendum does not alter the existing provisions and terms of the Parties' agreement set forth in the Refuse Contract, except for the terms set forth herein which shall be added to, or shall amend, the Refuse Contract. The First Addendum is not altered or amended by this Second Addendum.
4. Republic shall directly invoice the owner(s) of all City households (hereinafter "Owners") receiving refuse collection services under the Refuse Contract for the cost of refuse collection, at the rates set forth in the Refuse Contract, on a quarterly basis, with the quarters set forth as follows:

First Quarter: January, February, and March;

Second Quarter: April, May, and June;

Third Quarter: July, August, and September; and

Fourth Quarter: October, November, and December.
5. Republic's obligations in Paragraph 4 above shall commence for the Third Quarter period of July 1, 2010, through September 30, 2010, with the Parties recognizing that the invoices for this billing period will be sent sometime in the month of July, 2010.
6. The Parties also acknowledge that the final billing period for Owners under the extended Refuse Contract shall be for only two months – July and August of 2012.
7. Republic shall be entitled to charge City residents up to an additional sixty cents (\$0.60) per month (equaling up to \$1.80 per quarter) for such direct invoicing to Owners.

8. Prior to initiating the invoicing required by Paragraphs 4 and 5 above, the City shall supply a list of all Owners with their addresses for refuse collection who will receive and be invoiced for refuse collection services (the “List”). Going forward, the Parties will use their best efforts to obtain information pertaining to inhabited properties and uninhabited properties, so that Republic may initiate, continue or terminate service, as appropriate, for those properties.
9. Republic agrees to perform a home-by-home audit within eight weeks of the effective date of this Second Addendum to determine the existence of uninhabited homes. Republic agrees to make adjustments to its billings so as not to charge Owners or the City for collections at uninhabited homes where there has been no actual collection of refuse. Republic shall make the List of Owners and addresses available to the City upon request for the City's review and Republic shall make any necessary adjustments in the List on an ongoing basis and shall keep the List current. To that end, Republic shall keep a written or retrievable electronic log of City properties where refuse collection is made each week and which shall be made available to the City upon request.
10. Owners wishing to initiate, terminate, or suspend (for a specific period of time) refuse collection will be required to arrange for such services directly through Republic.
11. An Owner shall have the option of contacting Republic for pick-up service at the front building line of an Owner's home or at the front of an Owner's garage which, for the remaining term of the extended Refuse Contract, shall be at an

added cost of \$ 8.00 per month which shall be directly invoiced to the Owner as part of the Owner's regular invoice for services.

12. If payment on an account becomes delinquent by sixty (60) days, Republic shall have the right to contact the Owner obligated on the service account through written correspondence to resolve the delinquent account. If the account becomes ninety (90) days delinquent (a "Delinquent Account"), Republic shall advise the City of the Delinquent Account and provide the City with a written account statement, and the City shall make payment to Republic in the amount necessary to bring the Delinquent Account current or as otherwise agreed to by Republic and the City.
13. If the City makes payment to Republic to bring the Delinquent Account current and Republic also receives a payment on the Delinquent Account from the Owner or a third party, Republic shall reimburse the City in an amount equal to the amount Republic received from the Owner or the third party within 30 days after receipt. This amount may be reimbursed through offset of any other amounts due to Republic by the City, but the reimbursement credit shall be clearly indicated on an invoice to the City.
14. Republic shall continue to invoice the City for the cost of refuse disposal as set forth in the Refuse Contract and in the First Addendum; however, there shall be added to the price per ton of disposal commencing as of July 1, 2010, one dollar and twenty-five cents (\$1.25) per ton due to an increase in the State of Ohio's tipping fees at the landfill so that the base price to be charged per ton to the City, without the adjustments provided by the terms of the First Addendum, shall be

\$40.24 per ton for the first option year and \$42.19 per ton for the second option year of the Refuse Contract.

15. Commencing with the invoices to the City for disposal services in September 2010, Republic shall give the City a credit against its charges to the City for disposal costs of \$5,291.67 per month for each month of disposal services through the expiration of the extended term of the Refuse Contract on August 31, 2012.
16. The Parties acknowledge that any billing and payment discrepancies claimed by either party, or their predecessors in interest, from the beginning of time to the date of this Second Addendum have been completely and satisfactorily resolved.
17. This Second Addendum shall not be revised or amended except in writing executed by both Parties.
18. This Second Addendum, as well as the Refuse Contract itself, are for the benefit of the Parties only and not for the benefit of, and do not create any rights in, any third party and shall not be enforceable by any third party.

The Parties' authorized representatives have placed their signatures below as their voluntary act and deed and the voluntarily act and deed of the entities they represent.

**Browning Ferris Industries of
Ohio, Inc.**

By: _____

(Type or Print Name and Title)

Date: _____

City of Richmond Heights, Ohio

By: _____
Daniel J. Ursu, Mayor

Date: _____

Approved as to legal form and correctness

R. Todd Hunt, Director of Law

FISCAL OFFICER'S CERTIFICATE

As the fiscal officer of the City of Richmond Heights, I hereby certify that as of the date of execution of the attached Second Addendum to Contract for Residential Refuse Collection, Disposal and Recycling Pursuant to City of Richmond Heights Bid No. 01-2007, the amount required to satisfy payment under the Second Addendum has been fully appropriated, or authorized or directed for such purpose and is in the Treasury, or is in the process of collection and is free from any obligation or certification now outstanding.

Date: _____

Lynda S. Rossiter, Director of Finance
City of Richmond Heights, Ohio