

1 **BILL NO. S-22-03-26**

2 **SPECIAL ORDINANCE NO. S-_____**

3
4 AN ORDINANCE approving the RED RIVER – WASTE
5 AND RECYCLING REMOVAL TRANSITION
6 AGREEMENT between the City of Fort Wayne,
7 Indiana, and RED RIVER WASTE SOLUTIONS, LP


8 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF**
9 **THE CITY OF FORT WAYNE, INDIANA;**

10 **SECTION 1.** That the RED RIVER – WASTE AND RECYCLING
11 REMOVAL TRANSITION AGREEMENT between the City of Fort Wayne, Indiana,
12 and RED RIVER WASTE SOLUTIONS, LP, as outlined in Exhibit A attached
13 hereto and incorporated herein by reference is hereby in all things ratified,
14 confirmed and approved.

15 **SECTION 2.** That this Ordinance shall be in full force and effect from and
16 after its passage and any and all necessary approval by the Mayor.

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20 _____
21 Council Member

22 APPROVED AS TO FORM AND LEGALITY

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26 Carol Helton, City Attorney
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EXECUTIVE SUMMARY

RED RIVER – WASTE AND RECYCLING REMOVAL TRANSITION AGREEMENT

March 21, 2022

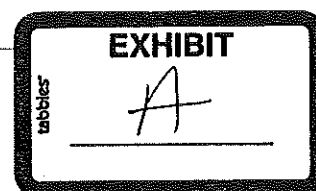
BACKGROUND:

This is a brief summary of the proposed terms and conditions of the Transition Agreement to be entered into by and between the City of Fort Wayne (“City”) and Red River Waste Solutions, LP (“Red River”). Red River and the City entered into (i) a Contract for Recycling Collection on June 1, 2017, with the service initiation date of January 1, 2018 (the “Recycling Contract”), and (ii) a Contract for Solid Waste Collection on June 1, 2017, with a service initiation date of January 1, 2018 (the “Solid Waste Contract,” and, collectively, with the Recycling Contract, the “Fort Wayne Contracts”). Red River filed for protection under the “Bankruptcy Code” in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division on October 14, 2021. Under the Bankruptcy Code, Red River is entitled to reject or assume the Fort Wayne Contracts. To ensure continued waste and recycling services during the period effective January 1, 2022, and concluding on June 30, 2022 (the “Transition Period”), Red River has agreed to provide ongoing waste and recycling collection services to the City in accordance with a “Transition Agreement” (the “Transition Agreement”).

Red River intends to “reject” the Fort Wayne Contracts in the pending bankruptcy case, effective December 30, 2021. Red River will enter into the Transition Agreement. Below is intended as a brief summary of the terms and conditions of the Transition Agreement and related agreements outlining the settlement between Red River and the City:

SUMMARY OF TERMS OF TRANSITION AGREEMENT:

1. Continued Service. Red River will continue waste and recycling services until June 30, 2022, in the manner provided in the Transition Agreement. Fort Wayne will continue to compensate Red River in accordance with the reimbursement terms in the Transition Agreement, which is substantially similar to the reimbursement terms in Fort Wayne Contracts (the “Base Pay”).
2. Argonaut Insurance Company. Argonaut Insurance Company (“Argo”) provided a recycling performance bond and solid-waste performance bond (collectively, the “Performance Bonds”) on behalf of Red River to the City, ensuring the performance of Red River under the terms of the Fort Wayne Contracts. A proposed settlement has been reached between Argo, Red River, and the City about the Performance Bonds. Contemporaneously, with the execution of a Mutual Release and Settlement Agreement, Argo will promptly pay the City \$1.6 million in settlement of disputed claims. The \$1.6 million will be paid by the City to Red River in installments during the Transition Period in addition to the Base Pay.
3. City Additional Contribution. The City has agreed to also make installment payments to Red River over the Transition Period in the aggregate sum of \$1.9 mm – that is, the \$1.6 mm Argo payment and an additional \$300,000 – plus the Base Pay.
4. Fines Assessed through January 30, 2022. All fines assessed by the City against Red River and offset against reimbursements otherwise payable by the City to Red River prior to January 30, 2022, will remain without any further adjustment, and shall be retained by the City.



5. Fines Assessed between February 1, 2022 and June 30, 2022. Fines assessed by the City against Red River between February 1, 2022, and June 30, 2022, may be withheld from payments by the City to Red River at a rate equal to (i) \$114.33 per ton for waste, and (ii) \$210.00 per ton for all recycling, collected by the City or its agents.
6. Fines Waived. The first \$50,000 of fines incurred by Red River in March, April, May, and June during the Transition Period will be waived by the City.
7. Barry Pruitt. At the insistence of the City, Red River has agreed to hire Mr. Barry Pruitt as an independent contractor, at Red River's expense, to oversee Fort Wayne operations effective immediately, until June 30, 2022. Barry Pruitt lives in Fort Wayne with his family, has extensive experience managing waste collection in Fort Wayne and in other major markets, and was recommended by the City to Red River.
8. Bankruptcy Court Approval. Under the Bankruptcy Code, the proposed settlement, including the Transition Agreement, must be approved by the Bankruptcy Court. Red River will ask the Bankruptcy Court to approve the proposed settlement as soon as reasonably practicable.
9. Releases. Upon approval of this proposed settlement by the Bankruptcy Court, (a) Red River will release all claims and causes of action against the City and Argo, (b) the City will release all claims and causes of action against Red River and Argo, and (c) Argo will release all claims and causes of action against Red River and the City.
10. Miscellaneous. The Bankruptcy Court will have exclusive jurisdiction to decide any disputes under the Transition Agreement, including the imposition and propriety of all fines and penalties. Red River will have other obligations under the Transition Agreement, many of which will be substantially similar to Red River's obligations under the rejected Fort Wayne Contracts, except as modified above.

The foregoing is intended only as a summary of material changes between the current Fort Wayne Contracts and the proposed Transition Agreement. It is possible that the City, either directly or through third parties, may be required to provide ongoing supplemental support for waste and recycling collection between now and June 30, 2022. The parties hope that, with experienced professional onsite management by Barry Pruitt and the outstanding efforts of Red River's existing and talented employees, the need for such supplemental support will be minimized.