

AMENDMENT ONE RECOMMUNITY RECYCLING PROCESSING SERVICES AGREEMENT

On June 6, 2013, the City Council approved Ordinance 2013-06-06-0399, which selected River Recycling LLC, d/b/a ReCommunity, ("Contractor") to provide recycling processing services and authorized the execution by the City of San Antonio, a Texas Municipal Corporation ("City"), of a contract pursuant to the City's Request for Proposal for "Recycling Processing Services" (RFP 13-001, 6100002089) issued by the City on December 7, 2012. The Integration Agreement ("Agreement" or "Contract") was executed by the City on July 25, 2013.

The Parties have agreed to amend the Contract to address issues concerning the date for the completion of the second materials recovery facility or transfer station, excess diaper contamination in the recycling stream, Quarterly Single Stream Curbside Recycling Audits, the replacement of the index values and an excess residue transportation rate.

This **Amendment One** to the Contract ("Amendment One") provides for the following:

The RFP and the Agreement required the completion by the Contractor of a second material recovery facility or transfer station by August 1, 2016. This completion date will be extended to August 1, 2017, in order to allow for the construction of the second facility. Any further extensions shall require mutual written agreement of the parties.

This Amendment provides for the City to reimburse the Contractor to compensate for unanticipated expenses associated with excess diapers in the recycling stream by establishing a new **Diaper Tip Fee** which shall be paid on all City input tons starting August 1, 2016 and continuing until the diaper contamination flow is under five pounds per hour over three consecutive quarterly audits (covering a six month consecutive period), along with a one-time payment by the City to the Contractor of \$659,850.00 covering the period January 1, 2016 to July 31, 2016. The Diaper Tip Fee shall not be applied to the Carryover Credit.

The Parties agree to use best efforts to eliminate all dead animals from input flow and work together to correct input related to the underperforming "bag-in-bag" program for single use plastic bags.

Quarterly commodity audits are required to be accomplished as provided in the RFP, 004 – Scope of Services. The Parties agree to engage an independent third party auditor to oversee the quarterly commodity audits pursuant to a protocol to be mutually developed by the Parties and the auditor using national best practices, for a one year period after the date of this Amendment, at the San Antonio facility to ensure contract terms are complied with. The City will pay for the costs of the independent third party auditor. The Parties would be bound by the auditor's determination.

The individual commodity sales values are currently based on the higher of either the actual sales price or a selected index value contained in the RFP, Attachment B, Table 1 and applicable footnotes. The RFP selected index values are no longer available and the Parties agree that new index values shall be selected.

The RFP provided that the selected Respondent shall transport and dispose of residue and the City shall reimburse the Respondent for disposal of residue in excess of 15%. Addendum 3 to the RFP clarified that transportation expenses for residue in excess of 15% was not included, but may be subject to negotiation. The Parties have negotiated and agree that starting August 1, 2016, the City will reimburse ReCommunity a rate of nine dollars (\$9.00) per ton for transportation of residue in excess of 15%, in addition to the current average disposal rate of \$22.91 per ton. This residue reimbursement payment (the transport rate plus the average disposal rate) shall not be applied to the Carryover Credit, as provided in section 5(d) of the Integration Agreement

This Amendment One is entered into by and between the City, acting by and through its designated representative, and the Contractor. The undersigned hereby agree to amend said Contract as follows:

1. The Agreement, section 3. Term of Agreement, Term of Performance and Termination Date, paragraph 3 (Page 2), is amended by deleting the ~~strikethrough~~ and adding the underlined words to now read as follows:

The Parties acknowledge and agree that the RFP was advertised with a long lead-time prior to commencement of providing recycling processing services to the City to allow potential Respondents ample time in case their proposal included a plan to build a new materials recovery facility(ies) (MRF) and/or recycling transfer station, in order to have at least one facility able to accept all recyclable material from the City's recycling programs in operation thirty (30) calendar days prior to August 1, 2014, and to have the second facility able to accept all recyclable material from the City's recycling program prior to August 1, 2016 2017. Any further extensions shall require mutual written agreement of the parties.

2. The Agreement, section 5. Compensation, add the following new paragraph after part (a) Processing/Marketing Fees, (page 3):

To address excess quantities of diaper contamination, Amendment One to this Agreement establishes a new "Diaper Tip Fee" which shall be paid by the City to the Contractor monthly based upon all City input tons per following fee structure: \$12.50 per ton fee as long as diapers processed are over 50 pounds per hour; \$6.25 per ton fee after diaper flow is under 50 pounds per hour over three consecutive quarterly audits (covering a six month consecutive period to be confirmed by the quarterly composition audits) ; a zero dollar fee after diaper flow is under five pounds per hour over three consecutive quarterly audits (covering a six month consecutive period to be confirmed by the quarterly composition audits). In addition to the quarterly composition audits, Contractor will provide weekly updates of diaper (no other materials) pounds per hour for all tons entering the MRF for educational purposes only. The Diaper Tip Fee will be paid monthly starting August 1, 2016 at the rate of \$12.50 per ton subject to the adjustments set forth above. To compensate for all past diaper-related expenses, within 30 days of the final approval of Amendment One, the City shall make a payment to the Contractor in the amount of \$659,850.00 covering the Diaper Tip Fee for the period January 1, 2016 to July 31, 2016. As the amount for July 2016 is an estimated amount, the payment for the Diaper Tip Fee for September 2016 will include an adjustment to true up the tonnages to the actual amount for

the month of July 2016. The Diaper Tip Fee shall not be applied to the Carryover Credit, as provided in section 5(d) of the Integration Agreement. The Parties shall establish a process and procedures to verify and report the diaper contamination required to implement this fee based on the materials used for the Quarterly Single Stream Curbside Recycling Audits. Such process and procedures may be modified with the mutual written agreement of the parties in the event a more accurate and efficient means of verifying diaper contamination is identified.

3. The RFP Section 004. Scope of Services, section “Materials”, subsection H. Audits, 1. Quarterly Single-Stream Curbside Recycling Audits (on RFP page 17 of 51, subject to Addend I - VI). The Parties agree to engage an independent third party auditor to oversee the quarterly commodity audits pursuant to a protocol to be mutually developed by the Parties and the auditor using national best practices, for a one year period after the date of this Amendment, at the San Antonio facility to ensure contract terms are complied with. The City will pay for the costs of the independent third party auditor. The Parties would be bound by the auditor’s determination.

4. The RFP, Attachment B, Table 1: Floor Price, Processing and Marketing Fees, and Recyclable Revenue Share Minimum Recyclable Materials for Single Stream Collection, “Revenue Share Basis” Column and applicable footnotes. Individual commodity sales values are currently based on the higher of either the actual sales price or a selected index value contained in Attachment B, Table 1. The RFP selected index values are no longer available, therefore the Parties agree that the following new index values shall be used after the date of this Amendment:

If any index value is no longer available during the term of the Agreement, the Parties will mutually agree on a replacement index value. If the Parties cannot agree on a replacement index value within 30 days, the auditor shall recommend a replacement index value that most closely aligns with the previous index value and the Parties shall not unreasonably withhold consent.

Material	Pricing Mechanism
Newspaper	Actual / Verified Market Price ¹
Old Corrugated Cardboard (OCC)	Actual / Verified Market Price ¹
Office Paper	Actual / Verified Market Price ¹
Mixed Paper	Actual / Verified Market Price ¹
Aluminum Cans	Recycling Markets.net, South Central (Houston) Market - Average of Regional Average or actual, whichever is higher
Steel/Tin Cans	Recycling Markets.net, South Central (Houston) Market - Average of Regional Average ² or actual, whichever is higher
Plastic Bottles #1 (PET)	Recycling Markets.net, South Central (Houston) Market - Average of Regional Average ² or actual, whichever is higher

Plastic Bottles #2 (HDPE Natural)	Recycling Markets.net, South Central (Houston) Market - Average of Regional Average ² or actual, whichever is higher
Plastic Bottles #2 (HDPE Colored)	Recycling Markets.net, South Central (Houston) Market - Average of Regional Average ² or actual, whichever is higher
Plastics #3-7	Recycling Markets.net, South Central (Houston) Market - Average of Regional Low Price ² or actual, whichever is higher
Plastic Film	Actual / Verified Market Price ¹
Scrap Steel	Actual / Verified Market Price ¹
Glass	Actual pricing using SMI Matrix
Residual	Actual / Verified Market Price ¹

(1) Actual/Verified Market Price shall mean the actual sales price for the transaction

(2) Average of all weekly publications in the month

5. The RFP, Section 004. Scope of Services, section "Materials" subsection G. Processing Mandates, 2. Disposal of Residue (on RFP page 16 of 51) provided that the selected Respondent shall transport and dispose of residue and the City shall reimburse the Respondent for disposal of residue in excess of 15%. Addendum 3 to the RFP, the response to Question 7.d. clarified that transportation expenses for residue in excess of 15% was not included, but may be subject to negotiation. The Parties now agree that starting August 1, 2016, the City will reimburse ReCommunity a rate of nine dollars (\$9.00) per ton for transportation of residue in excess of 15%, in addition to the current average disposal rate of \$22.91 per ton. The City will reimburse the Contractor for its share of residue expenses in excess of 15% of City delivered material at a rate of \$31.91 per ton, to cover transportation and disposal costs. The \$31.91 per ton rate shall be increased by an amount equal to the amount of the rate charged to the City for residue disposal above \$22.91 per ton. This residue reimbursement payment (the transport rate plus the average disposal rate) shall not be applied to the Carryover Credit, as provided in section 5(d) of the Integration Agreement.

6. This Amendment One to the Contract shall not prejudice any present or future rights, remedies, benefits, or powers belonging to or accruing to the Parties under the terms of the Contract herein amended.

7. Except as provided otherwise herein, the Contract shall remain unaffected, unchanged, and unimpaired by reason of the foregoing Amendment One.

Amendment One AGREED to this ____th day of August, 2016.

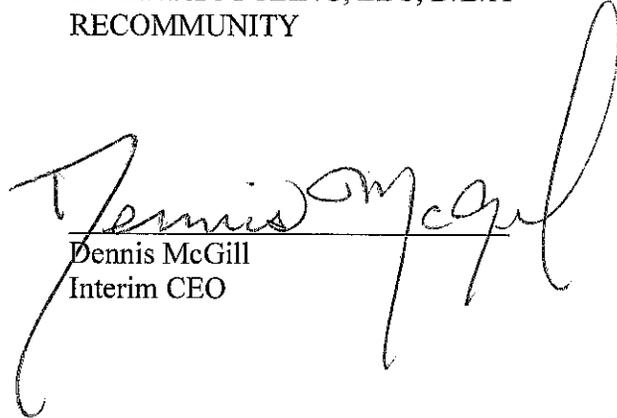
CITY:

CITY OF SAN ANTONIO
A TEXAS MUNICIPAL CORPORATION

CONTRACTOR:

RIVER RECYCLING, LLC, D/B/A
RECOMMUNITY

By: _____
Peter Zanoni
Deputy City Manager



Dennis McGill
Interim CEO

APPROVED AS TO FORM:
Martha G. Sepeda
Acting City Attorney

By: Assistant City Attorney