

**AMENDMENT THREE
AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND NEW EARTH, INC.
FOR
ORGANIC MATERIAL PROCESSING SERVICES (RFP 013-049)**

On February 20, 2014, the City Council approved Ordinance 2014-02-20-0088, which selected New Earth, Inc. and awarded a contract for organic material processing services, in an amount estimated at \$82,500.00 for the first year processing an estimated 5,000 tons of material and \$165,000.00 processing an estimated 10,000 tons annually thereafter for an initial term of five years with five additional renewal options.

Amendment One to the Contract, approved by the City Council on October 8, 2015, by Ordinance 2015-10-08-0865, added provisions for New Earth to reimburse the City for feedstock and to increase the estimated annual payment as the annual volume of organic materials collected increases due to the programmed expansion of the organics recycling program and the anticipated increase in estimated volume to be processed.

Amendment Two to the Contract, signed by the City on November 29, 2017, (a) increased the quantity of mulch to be made available to New Earth from the City, (b) decreased the pricing per ton to no charge, and (c) defined several additional contractual terms and conditions.

The initial term of the Contract will expire on December 31, 2019, and the City is exercising the first option to renew this Contract for a period of one additional year. This first renewal will start on January 1, 2020 and end on December 31, 2020. The City retains the right to exercise the additional annual renewal options at any time before the end of this first renewal option period.

The Parties have agreed to amend the Contract during the first renewal option period to increase the compensation from \$16.50 per ton to \$24.00 per ton on accepted material. The credit on rejected material will go from \$8.25 to \$12.00 per ton back to the City. ~~and~~ The City has agreed to purchase up to 75,000 cubic yards of compost annually from New Earth.

This **Amendment Three** to the Contract (“AmendmentThree”) 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, page 1, Compensation section, as amended, is amended by deleting the ~~strikethrough~~ and inserting the underlined text to now read:

Compensation: As authorized by the Ordinance, City will pay Contractor a ~~\$16.50~~\$24.00 cost per ton of Organic Material delivered to the Contractor, less any credits received by the City. The credit on rejected material will go from \$8.25 to \$12.00 per ton back to the City. The estimated total annual budget sum for organic material processing services, during the ~~initial~~first renewal option period term of the Agreement, shall not exceed ~~\$1,160,000.00~~\$1,670,000.00, unless City Council action is taken to amend the enabling Ordinance.

The City will buy-back from New Earth a quantity of finished compost during the year which the City may use for any purpose. The quantity of City Compost purchased by the City will depend on the quantity of organic material delivered by the City for processing to New Earth and the rejection rate of the delivered material by New Earth because of contamination only. The City will pay New Earth \$14.00 per cubic yard, up to a maximum of 75,000 cubic yards, during the first one-year option renewal period. The estimated total annual budget sum for the finished compost buy-back shall not exceed \$1,050,000.00, unless City Council action is taken to amend the enabling Ordinance.

If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director Solid Waste Management Department (hereinafter "Director"), of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount estimated not to exceed one million ~~six~~ hundred ~~seventy~~sixty thousand dollars (\$1,670~~160~~,000.00) per year during the ~~initial term~~first renewal option period of the Agreement as total compensation for organic material processing services. Contractor shall provide compost to the City, as specified in RFP Attachment A, Part Three, Proposed Plan, to promote the Program, which is: One bulk load of Compost per quarter and 540 Bags per quarter will be made available free of charge to the City for promotional purposes. The actual bag holding compost will be at the discretion of the contractor and the description of product on the bag may not be the same as the COSA compost inside the bag.

It is understood and agreed by the Parties that the City does not guarantee any minimum volume of work, and that Contractor will be paid for actual work performed and for allowable expenses, provided that Contractor shall present City with an invoice for all expenses and services monthly within 14 days of the end of the month. Payment shall be made no more than 30 calendar days following receipt and approval of each invoice.

2. The Agreement is amended by adding a new section entitled "Organic Material Buy-Back" immediately after the Compensation section to read:

Organic Material Buy-Back:

The City will buy-back from New Earth a quantity of finished compost during the year which the City may use for any purpose. The City will not sell or advertise for sale any of the compost received from New Earth through the duration of this contract. Compost received from New Earth during the course of this contract is intended to be used on City properties and/or for City projects and may be provided to residents in a similar fashion as City-produced mulch.

Quality: This compost, to be called City Organic Program Compost, will be fully cured and ready to apply to turf and planting beds. Specifications are: Compost shall be finished curing material derived from accepted City of San Antonio organics collection program. Compost shall

consist of well decomposed and stable material from an organic matter source produced by aerobic (biological) decomposition of organic matter and meeting the requirements of Table 1. The compost shall possess no objectionable odors and shall not resemble the raw material feedstock's from which it was derived. Compost feedstock may include, but is not limited to, leaves and yard trimmings, food scraps, food-processing residuals, bark, and paper. The level of contamination in accepted feedstock will be that or lesser in finished compost. Compost shall be of same quality or better as the compost produced under the first contract term relative to the contamination of accepted material. Finished compost acquired by the City shall be of sufficient quality from a maturity and nutrient standpoint that it would be considered for immediate application by reasonable professionals.

Physical Requirements for Compost Property	Test Method	Requirement
Particle Size	TMECC1 02.02-B, "Sample Sieving for Aggregate Size Classification"	95% passing 5/8"
		70% passing 3/8"
Heavy Metals Content	TMECC 04.06, "Heavy Metals and Hazardous Elements":	Pass
	04.06-As, Arsenic	
	04.06-Cd, Cadmium	
	04.06-Cu, Copper	
	04.06-Pb, Lead	
	04.06-Hg, Mercury	
	04.06-Mo, Molybdenum	
	04.06-Ni, Nickel	
	04.06-Se, Selenium	
Salinity	TMECC 04.10-A, "1:5 Slurry Method, Mass Basis"	5.0 dS/m Max2
pH	TMECC 04.11-A, "1:5	5.5–8.5

	Slurry pH”	
Maturity	TMECC 05.05-A, “% Emergence and Relative Seedling Vigor”	> 80%
Organic Matter Content	TMECC 05.07-A, “Loss-On-Ignition Organic Matter Method”	25-65% (dry mass)
Stability	TMECC 05.08-B, “Carbon Dioxide Evolution Rate”	≤ 8
Fecal Coliform	TMECC 07.01-B, “Fecal Coliforms”	1,000 MPN/g Max

1. *Test Methods for the Examination of Composting and Compost*, published by the United States Department of Agriculture and the USCC.

2. A soluble salt content up to 10.0 dS/m for compost used in compost-manufactured topsoil will be acceptable.

Quantity: The quantity of City Organic Program Compost purchased by the City will depend on the quantity of organic material delivered by the City for processing to New Earth and the rejection rate of the delivered material by New Earth because of only contamination. The amount of compost purchased by the City will be up to a maximum of 75,000 CY, assuming a rejection rate of no greater than 20%.

Assuming, based on historical data, 68,000 tons of incoming material with a 20% rejection rate, the ratio of accepted tons to yards bought is 1.38 (75K/54.4K). This ratio will be applied to the incoming accepted tons with a cap not to exceed 75,000 cubic yards of finished material but with the understanding that if the rejection rate increases and the ratio would put the number taken at less than 75,000 CY of finished material that it will be only that lesser amount the City is required to take.

In the event that the rejection rate increase above 20%, the City will purchase an amount, measured in cubic yards, equal to the tons of City organic material taken into New Earth and accepted by New Earth multiplied by 1.38, as above. For example, if the City takes in and New Earth accepts 10,000 tons of organics, then the City will buy back 13,800 cubic yards of compost. If the rejection rate increases and the ratio would put the number taken at less than 75,000 CY of finished material then it will be only that lesser amount the City is required to take.

For example if the rejection rate increases to 30% that would result in fewer tons accepted and the 1.38 rule is applied. At 68,000 tons delivered, only 47,600 tons are accepted with a 30% rejection rate. Using the 1.38 rule, the City would only be obligated to purchase 65,688 cubic yards.

In the event that the rejection rate decreases and more material of the 68,000 tons is accepted, the City will not be obligated to purchase additional compost because the City is capped at purchasing 75,000 cubic yards.

Any adjustment to the volume will be made no earlier than the 3rd Quarter. The Parties agree to holding compost purchase and transportation constant with the 75,000 CY as the target for the first three calendar quarters of 2020 with the final adjustments made in the fourth quarter of 2020 (October to December 2020). This would put the total for the year at +/- 56,000 CY when the third quarter ends. Final adjustments would be made for December at the close of November.

Price: The City will pay \$14.00 per cubic yard for the City Organics Program Compost. Material will be sold to the City in bulk at New Earth's facility. City will be responsible for transportation. The City will transport compost at mutually agreeable times and dates, assumed to be on a weekly basis but subject to seasonal requirements and exigent circumstances.

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

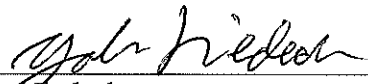
4. Except as provided otherwise herein, the Contract shall remain unaffected, unchanged, and unimpaired by reason of the foregoing Amendment Three.

Amendment Three AGREED to this ___ day of November, 2019.

**CITY OF SAN ANTONIO
A TEXAS MUNICIPAL CORPORATION**

NEW EARTH, INC.

By: _____
David W. McCary, CPM
Director, Solid Waste Management Department

By: 
John Niedecken
Chief Operating Officer

APPROVED AS TO FORM:
Andrew Segovia
City Attorney

By: Assistant City Attorney