

AMENDMENT ONE
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.

Due to Council approval of the Pay As You Throw initiative in FY 2015 that will incorporate organics recycling collection into the Solid Waste Management's base service and the anticipated increase in volume to be processed, the parties have agreed to amend the Contract to add provisions for New Earth to reimburse the City for feedstock and to increase the estimated annual payment as the annual volume increases.

This **Amendment One** to the Contract ("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, page 1, Compensation section, is amended by deleting the ~~striketrough~~ and inserting the underlined text to now read:

Compensation: As authorized by the Ordinance, City will pay Contractor a \$16.50 cost per ton of Organic Material delivered to the Contractor, less any credits received by the City. The estimated total annual budget sum, during the initial term of the Agreement, shall not exceed ~~\$600,000.00~~ \$1,320,000.00, 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 ~~six hundred one million three hundred twenty thousand~~ six hundred one million three hundred twenty thousand dollars (\$1,320,000.00 ~~600,000.00~~) per year during the initial term of the Agreement as total compensation. Contractor shall provide compost to the City, as specified in RFP Attachment A, Part Three, Proposed Plan, to promote the Program.

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 Request for Proposal (RFP), page 5, section 004. Scope of Services, is amended by deleting the ~~striketrough~~ and inserting the underlined text to now read:

B. Feedstock

The selected Respondent may collect coarse mulch contingent upon availability ~~at no charge~~ on a ton per ton basis (based on the number of tons program materials accepted by the selected Respondent) from the City's brush processing facility at Bitters Road or Nelson Road facility to use as additional feedstock in its composting operations. Respondent shall pay the City \$0.50 per ton of coarse mulch from the Bitters Brush Recycling Center and \$0.25 per ton of coarse mulch from the Nelson Gardens Brush Recycling Center. The City shall provide an invoice monthly to the Respondent who shall pay the amount due to the City within 15 days of receipt. The selected Respondent is responsible for picking up the mulch at its sole cost and expense. The City agrees to load the selected Respondent's vehicle(s) with mulch, but bears no transportation costs associated with the load. Under no circumstance will the City provide transportation for this mulch.

3. This Amendment One 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.

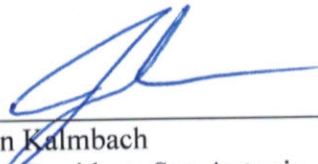
4. Except as provided otherwise herein, the Contract shall remain unaffected, unchanged, and unimpaired by reason of the foregoing Amendment One.

Amendment One AGREED to this 18 day of August, 2015.

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

NEW EARTH, INC.

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

By:  _____
John Kalmbach
Vice President, San Antonio

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

By: Assistant City Attorney