

**CONTRACT
FOR RECYCLABLE MATERIALS PROCESSING SERVICES**

between

CITY OF LEWISVILLE

and

FCC SA, INC.

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**CONTRACT
FOR RECYCLABLE MATERIALS PROCESSING SERVICES**

between

**CITY OF LEWISVILLE
and
FCC SA, INC.**

This Contract is made on [INSERT MONTH AND DATE SIGNED BY CITY], 2018 between **CITY OF LEWISVILLE (“City”)** and **FCC SA, INC. (“Contractor”)**.

RECITALS

WHEREAS, City issued an Request for Proposals for Recyclable Materials Processing Services ("the RFP"); and,

WHEREAS, Contractor submitted a proposal in response to the RFP on or before the bid end date; and,

WHEREAS, City received and evaluated proposals from vendors in response to the RFP; and,

WHEREAS, City has the power to execute this Contract; and,

WHEREAS, Contractor has the power to execute this Contract; and,

WHEREAS, City desires to hire Contractor to provide services specified hereinafter; and

WHEREAS, Contractor desires to provide services specified hereinafter; and,

NOW, THEREFORE, in consideration of the premises and of the mutual obligations undertaken herein, the Parties hereby agree as follows:

SECTION 1: DEFINITIONS

As used herein, the capitalized terms, phrases, words, and their derivations shall have the meanings as set forth herein.

Applicable Law — Applicable Law shall mean any statute, law, constitution, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced that relates to or affects the City, the Contractor, or the performance by a Party of its obligations hereunder.

Business Day — Business Day shall mean any day, Monday through Friday, from 8:00 AM, Central Time until 5:00 PM, Central Time, which is not a holiday designated as such in the Contract.

Characterization Audit — Characterization Audit shall mean the audit conducted in accordance

with the Contract for determination of the following for all Loads from Residential Service Customers:

- i. Disposal Fees for Contamination to be paid by City; and
- ii. Recyclable Revenue Share.

City — City shall mean the Lewisville, Texas.

City Collection Contract — City Collection Contract shall mean the then current agreement between the City and a private vendor for Collection of Single Stream Program Recyclable Materials within the City of Lewisville, Texas.

City Collection Vendor — City Collection Vendor shall mean a person contracted by City pursuant to the City Collection Contract.

City Program — City Program shall mean the Collection of Single Stream Program Recyclable Materials Collected from Residential Service Customers. If the City elects, City Program shall also include the Collection of Single Stream Program Recyclable Materials Collected from Multi-Family Dwellings via the City Collection Contract at such property. City Program excludes the Collection of Single Stream Program Recyclable Materials from other sources such as, but not limited to, convenience centers and other Commercial Customers.

Collect or Collection — Collect or Collection shall mean the act of removing Recyclable Materials for transport to the Delivery Facility.

Commencement Date — Commencement Date shall mean November 1, 2018, the date on which the Contractor shall begin Processing Program Recyclable Materials hereunder.

Commercial Container — Commercial Container shall mean a receptacle, such as a dumpster or roll-off, with a minimum capacity of two (2) cubic yards designed to store Recyclable Materials.

Commercial Customer — Commercial Customer shall mean all commercial establishments and institutions within the City limits of Lewisville. Commercial Customer excludes Residential Service Customers. In addition, Commercial Customer excludes Multi-Family Dwellings for purposes of this Contract.

Contamination — Contamination shall mean material or substance on or contained in Program Recyclable Materials other than Recyclable Materials accepted at the Processing Facility.

Contract Administrator — Contract Administrator shall mean the City Public Services Director, or his or her designee or designees, or such other person(s) designated by the City, which shall represent City in the administration and supervision of the Contract.

Contract — Contract shall mean this Contract and all duly authorized and enacted amendments thereto.

Contract Year — Contract Year shall mean the period beginning November 1st of each year and

ending on October 31st of the subsequent year for the term of the Contract.

Contractor — Contractor shall mean FCC SA, Inc. authorized to do business in the City and the State, and Contractor's assignees and subcontractors, which parties are responsible for the services under this Contract.

Contractor's Representative — Contractor's Representative shall mean the employee designated by the Contractor as in charge of Contractor's operations and who is authorized to make decisions and act on Contractor's behalf as to the Contract.

Dispose, Disposal or Disposing — Dispose, Disposal or Disposing shall mean the deposit of any material at a disposal site authorized by the State to manage such waste and shall meet all local, State, and federal requirements.

Delivery Facility — Delivery Facility shall mean the Facility located at 5220 Simpson Stuart Rd., Dallas, Texas 75241 at which the Contractor accepts Loads of Program Recyclable Materials from City Collection Vendor.

Disposal Fee — Disposal Fee shall mean the per Ton fee as authorized by the Contract for Disposal of Unaccepted Loads or Contamination.

Effective Date — Effective Date shall mean the date set forth in the first sentence of the Contract.

Facility — Facility shall mean the Delivery Facility and Processing Facility.

Hazardous Waste — Hazardous Waste shall mean any solid waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, et. seq., as amended or by the Texas Commission on Environmental Quality.

Load — Load shall mean all materials from a vehicle hauled to and unloaded at the Delivery Facility.

Market or Marketing — Market or Marketing shall mean identification and development of end markets for Recovered Materials and the selling of Recovered Materials to end markets.

May — May shall mean something that is not mandatory but permissible.

Multi-Family Dwelling — Multi-Family Dwelling means a building designed exclusively for residential occupancy by more than four (4) families or dwellings otherwise approved by the City from which Recyclable Materials are Collected via Commercial Containers.

Net Revenues — Net Revenues shall mean gross revenue from Recovered Materials less Processing Fee accrued by City.

Party or Parties — Party shall mean the Contractor or City. Parties shall mean the Contractor and City.

Process, Processed or Processing — Process, Processed or Processing shall mean the recovery of Recyclable Materials from solid waste and treatment into Recovered Materials and Marketing to end markets.

Processing Facility — Processing Facility shall mean the place operated by Contractor located at 5220 Simpson Stuart Rd., Dallas, Texas 75241 where Recyclable Materials are processed into Recovered Materials.

Processing Fee — Processing Fee shall mean the per Ton fee for accepting and Processing of Program Recyclable Materials and Marketing of Recovered Materials.

Processing Fee Cap — Processing Fee Cap shall mean the maximum per ton fee Contractor shall charge City after calculation of the City Recyclable Revenue Share. The Processing Fee Cap shall equal the minimum charge for disposal of solid waste for such month to Contractor by McCommas Bluff Landfill. Contractor shall immediately notify Contract Administrator of any changes, increases or decreases, to Processing Fee Cap. The Processing Fee Cap does not affect any other payments owed by Contractor to City such as, but not limited to, administrative charges and public education contributions.

Program Recyclable Materials — Program Recyclable Materials shall mean:

- i. Fiber Products: Flattened cardboard, magazines, office paper, newspaper, paperboard like paper towel rolls, cereal boxes, phone books, junk mail; and milk cartons, juice cartons, juice and drink boxes without the straws; and
- ii. Plastics: Plastic bottles and containers with #1 - #7 resin code (excluding expanded polystyrene); and
- iii. Metal Containers: Food, beverage and soft drink cans made of tin, steel or aluminum; empty aerosol cans; all metal cooking pots, pans and utensils; and
- iv. Glass Containers: If City elects to include glass as Program Recyclable Materials, glass includes food and beverage containers that are clear, brown or green in color; and
- v. Other: Any other materials proposed by the Contractor and agreed to by the City.

Public Education Contribution — Public Education Contribution shall mean the payment by Contractor per each incoming Ton of materials delivered by or on behalf of the City to the Delivery Facility and accepted by the Contractor.

Recovered Materials — Recovered Materials shall mean Recyclable Materials which have been Processed to market specifications.

Recyclable Materials — Recyclable Materials shall mean material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, Recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not solid waste. However, Recyclable Material may become solid waste at such time, if any, as it is abandoned or disposed of rather than Recycled, whereupon it will be solid waste with respect only to the party actually abandoning or Disposing of the material.

Recyclable Revenue Share — Recyclable Revenue Share shall mean the portion of revenues from the sale of Recyclable Materials that is payable to the City.

Recycling — Recycling shall mean a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or Processed and returned to use in the form of raw materials in the production of new products.

Residential Service Customer — Residential Service Customer shall mean a single-family, two-family, condominium, townhouse or other permanent living unit which is positioned on a single lot with individual City water meter and sewer service in which the Recyclable Materials are set out in a cart and other units designated by the City for service at the curb or alley way. Residential Service Customer shall not include apartments, hotels, motels, lodging housing, or other non-permanent residential establishments.

Residue — Residue shall mean material accepted at Processing Facility that is not captured by the Processing equipment for Marketing.

Shall — Shall will always mean mandatory and not merely discretionary.

Single Stream — Single Stream shall mean Program Recyclable Materials that are commingled and that do not require the generator to subdivide the Program Recyclable Materials prior to Collection.

State — State shall mean the State of Texas.

Ton — Ton shall mean a unit of weight equal to 2,000 pounds.

Unaccepted Load — Unaccepted Load shall mean a Load delivered by the City Collection Vendor that is designated by the Contractor and agreed to by City as an Unaccepted Load in accordance with the Contract.

SECTION 2: EFFECTIVE DATE AND CONTRACT TERM

2.1 Effective Date

Except as otherwise provided for herein, the obligations of the Parties shall take effect on the Effective Date.

2.2 Contract Term

2.2.1 Initial Term

Unless sooner terminated in accordance with the provisions in this Contract, the term of this Contract shall commence on the Commencement Date and shall continue in effect until three (3) years thereafter at 11:59 PM, CENTRAL TIME. This provision in no way limits City's rights to terminate this Contract at any time during the term of this Contract pursuant to the provisions of this Contract.

2.2.2 Optional Renewal Terms

After the Initial Term as defined in Section 2.2.1 of this Contract, City shall have the option to renew this Contract for up to two (2) additional three (3) year renewal terms. Contractor may prohibit City from exercising an optional renewal term by providing written notice to the Contract Administrator of Contractor's election to reject a renewal on or before twelve (12) months preceding the scheduled date of expiration of the Initial Term or the then current optional renewal term of this Contract.

If Contractor does not provide such written notice to the Contract Administrator on or before twelve (12) months preceding the scheduled date of expiration of the Initial Term or the then current optional renewal term of this Contract prohibiting City from exercising the optional renewal term, City may upon written notice to Contractor not later than one hundred twenty (120) calendar days preceding the scheduled date of expiration of the Initial Term or the then current optional renewal term of this Contract exercise such optional renewal term by such notice. If the City does not provide written notice to Contractor as required herein, the Contract shall expire at the scheduled date of expiration of the then current Initial Term or renewal term unless agreed upon otherwise both Parties in writing.

This provision in no way limits City's right to terminate this Contract at any time during the Initial Term or any optional renewal term thereof pursuant to the provisions in this Contract.

SECTION 3: RESPONSIBILITIES FOR DELIVERY OF PROGRAM RECYCLABLE MATERIALS

City agrees any City Collection Contract shall direct Single Stream Program Recyclable Materials collected via the City Program to the Contractor's Delivery Facility. Contractor agrees that the City may, at City's sole discretion, exclude Multi-Family Dwellings from the City Program.

SECTION 4: RESPONSIBILITIES FOR ACCEPTANCE, TRANSPORTING, PROCESSING, AND MARKETING OF PROGRAM RECYCLABLE MATERIALS

4.1 Responsibility to Accept Program Recyclable Materials

4.1.1 Acceptance of Program Recyclable Materials from City Collection Vendor

Contractor shall accept Program Recyclable Materials delivered by City Collection Vendor to the Delivery Facility. Failure of Contractor to meet the requirements set forth in this section of the Contract shall be a breach of this Contract and may result in termination of this Contract with Contractor.

4.1.2 Acceptance of Recyclable Materials from Other Sources

Contractor may accept Recyclable Materials from other sources at the Facility provided the acceptance of such Recyclable Materials shall not preclude or interfere with the acceptance, transporting, and Processing of Program Recyclable Materials collected by the City Collection Vendor.

4.2 Responsibility to Transport Program Recyclable Materials

In the event that the Delivery Facility is not the Processing Facility, Contractor shall be

responsible for transporting all Loads delivered to the Delivery Facility by the City Collection Vendor to the Processing Facility at no additional cost to City. Failure of Contractor to meet the requirements set forth in this section of the Contract is a breach of this Contract and may result in termination by City of this Contract with Contractor.

4.3 Responsibility to Process Program Recyclable Materials

Contractor shall be solely responsible for Processing all Program Recyclable Materials delivered to the Delivery Facility by the City Collection Vendor. Failure of Contractor to meet the requirements set forth in this section of the Contract is a breach of this Contract and may result in termination by City of this Contract with Contractor.

4.4 Responsibility to Market Program Recyclable Materials

Contractor shall be solely responsible for Marketing in accordance with this Contract all Program Recyclable Materials delivered to the Delivery Facility. Contractor shall use its best efforts to research and investigate new markets for Program Recyclable Materials. Failure of Contractor to meet the requirements set forth in this section of the Contract is a breach of this Contract and may result in termination by City of this Contract with Contractor.

SECTION 5: INSPECTION OF LOADS AND UNACCEPTED LOADS

5.1 Contractor's Right to Inspect Loads

Contractor shall have the right to inspect each Load upon discharge at the Delivery Facility for compliance with this Contract.

5.2 Unaccepted Loads

5.2.1 Reasons for Unaccepted Loads

Prior to departure of a City Collection Vendor's vehicle from the Delivery Facility, Contractor may designate a Load delivered by or on behalf of the City as an Unaccepted Load for the following reasons:

- (i) A Load contains more than thirty percent (30.0%) of non-Program Recyclable Materials by weight;
- (ii) Majority of Program Recyclable Material fiber products in a Load cannot be processed by Processing Facility into Recovered Materials and the Load contains more than twenty percent (20.0%) moisture as reported by moisture reader at a minimum of eight (8) random points located throughout the Load (calculation to be based on an average of the eight moisture readings);
- (iii) A Load contains Hazardous Waste prohibited by Applicable Law to be processed at Processing Facility; or
- (iv) A Load presents a substantial endangerment to the public or employee health or safety.

Contractor may not designate a Load as an Unaccepted Load for any reason other than those identified in this section.

5.2.2 Procedure for Unaccepted Loads

5.2.2.1 Notice of Unaccepted Load

If Contractor designates a Load delivered by City Collection Vendor as an Unaccepted Load for reasons set forth in Section 5.2.1 (i), (ii), (iii), or (iv), Contractor shall provide verbal notice to the City Collection Vendor's driver and written notice and photographs via email to the Contract Administrator prior to the City Collection Vendor's vehicle departing from the Delivery Facility. In addition, Contractor shall provide photographs of meter readings via email to the Contract Administrator prior to the City Collection Vendor's vehicle departing from the Delivery Facility if Contractor designates a Load delivered by City Collection Vendor as an Unaccepted Load for reason set forth in Section 5.2.1 (iii). Contractor shall state the reason the Load was designated an Unaccepted Load in the notifications. In addition, Contractor shall maintain the Load separately from other material to afford Contract Administrator the right to inspect as provided by Section 5.2.2.2 of this Contract. If Contractor fails to provide notice in accordance with this section, Contractor shall accept the Load.

5.2.2.2 Right to Inspect Unaccepted Loads

Upon receipt of the notice by the Contract Administrator from Contractor in accordance with Section 5.2.2.1, Contractor shall retain the Unaccepted Load for an additional twenty-four (24) hours to allow the Contract Administrator the opportunity to inspect the Load. The Contract Administrator may waive the right to inspect the Load. Failure to inspect the Load within twenty-four (24) hour of receipt of notice shall be deemed a waiver of the right to inspect the Load.

5.2.2.3 Dispute or Acceptance of Designation as Unaccepted Load

If the Contract Administrator inspects the Load, Contract Administrator may dispute or accept the designation as an Unaccepted Load.

If the Contract Administrator disputes the rejection of the Load for reasons set forth in Section 5.2.1 (i), Contractor shall either sort the contents of the Load by Program Recyclable Materials and other materials and weigh each individually or accept the Load. If Contractor sorts the contents of the Load by Program Recyclable Materials and non-Program Recyclable Materials and weighs each individually, Contractor shall accept the Load if the weight of such non-Program Recyclable Materials is equal to or less than thirty percent (30.0%) of the weight of the entire Load.

If the Contract Administrator disputes the rejection of the Load for reasons set forth in Section 5.2.1 (ii), (iii), or (iv), Contractor and Contract Administrator shall re-inspect the Load and reach mutual agreement as to management of the Load.

5.2.2.4 Costs for Unaccepted Loads

Contractor shall transport and Dispose of Unaccepted Loads. City shall reimburse Contractor for Disposal costs of Unaccepted Loads based on the Disposal Fee as set forth in Attachment B, as adjusted pursuant this Contract. Contractor shall be solely responsible for all other costs related to Unaccepted Loads.

SECTION 6: FACILITY LOCATIONS, ALTERNATIVE FACILITIES, AND FACILITY CAPACITY

6.1 Facility Locations and Alternative Facilities

Contractor shall maintain the Delivery Facility for delivery of Program Recyclable Materials by the City Collection Vendor at located at 5220 Simpson Stuart Rd., Dallas, Texas 75241 throughout the term of the Contract. In addition, Contractor shall maintain the Processing Facility at 5220 Simpson Stuart Rd., Dallas, Texas 75241 for Processing and Marketing of Program Recyclable Material Collected by City Collection Vendor throughout the term of the Contract.

If Contractor is unable to maintain the Delivery Facility for delivery of Program Recyclable Materials by the City Collection Vendor and/or Processing Facility for Processing and Marketing of Program Recyclable Material Collected by City Collection Vendor at the locations designated herein, Contractor shall be solely responsible for the following:

- (i) Procuring an alternative Facility for accepting, transporting, Processing, and Marketing such Program Recyclable Materials; and
- (ii) Any and all increases in costs, including, but not limited to, transportation costs, Processing costs, capital costs, and operational costs incurred by City or City Collection Vendor associated with accepting, transporting, Processing, and Marketing such Program Recyclable Materials at the alternative Facility.

Failure of Contractor to maintain the Delivery Facility for delivery of Program Recyclable Materials by the City Collection Vendor and/or Processing Facility for Processing and Marketing of Program Recyclable Material Collected by City Collection Vendor at the locations designated herein shall be a breach of this Contract and may result in termination by City of this Contract with Contractor.

6.2 Facility Capacity

Contractor shall have and maintain during the term hereof, adequate capacity for accepting, transporting, Processing, and Marketing material delivered by City Collection Vendor for the term of this Contract. Failure of Contractor to meet the requirements set forth in this section of the Contract is a breach of this Contract and may result in termination by City of this Contract with Contractor.

SECTION 7: HOLIDAYS AND HOURS OF OPERATION

7.1 Holidays

For purposes of this Contract, holidays shall solely include the following:

- (i) New Year's Day;
- (ii) Thanksgiving Day; and
- (iii) Christmas Day.

7.2 Hours of Operation

7.2.1 Delivery Facility Hours of Operation

Contractor shall operate the Delivery Facility during hours of operation as needed to support

the requirements of the City Collection Vendor services. At a minimum, Contractor shall operate the Delivery Facility from Monday through Friday, from 7:00 AM, Central Time to 5:30 PM, Central Time. If a holiday as defined in Section 7.1 occurs on a Monday thru Friday, Contractor shall operate the Delivery Facility on Saturday from 7:00 AM, Central Time to 2:30 PM, Central Time. Contractor shall provide City and City Collection Vendor access to the Delivery Facility to deliver Loads outside of the hours of operation.

7.2.2 Processing Facility Hours of Operation

Contractor shall operate the Processing Facility during hours of operation sufficient to support the requirements as set forth in this Contract.

SECTION 8: OTHER FACILITY REQUIREMENTS

8.1 Scales and Computerized Recordkeeping

Contractor shall operate and maintain adequately sized truck scales and computerized recordkeeping systems for weighing and recording all incoming and outgoing delivery vehicles. Contractor shall maintain a record containing the gross weight, tare weight, net weight, date, time, and vehicle identification of each vehicle entering and exiting the Delivery Facility utilizing equipment provided by Contractor. Contractor shall weigh, record, and tabulate materials from the City Collection Vendor and other haulers' vehicles separately. Contractor shall test the Delivery Facility scales as required by Applicable Law. At a minimum, Contractor shall test the Delivery Facility scales every three (3) months. If testing of the Delivery Facility scales indicates that a scale is reporting weights less or more than the actual weight by an amount greater than one percent (1.0%), then Contractor and City agree that upon request of the City the scale records for the preceding ninety (90) days shall be adjusted by the percentage the scale is inaccurate and payments to City shall be increased accordingly for such ninety (90) days. If the Delivery Facility scales are unavailable during hours of operation, Contractor shall use the average weight for the route and Load of the day from the previous calendar month. City may conduct random and periodic weight checks on the City Collection Vendor's vehicles. Contractor may accompany City on such checks.

Failure of Contractor to meet the requirements set forth in this section of the Contract is a breach of this Contract and may result in termination by City of this Contract with Contractor.

8.2 Vehicle Turnaround Time

Contractor shall operate the Delivery Facility to minimize traffic impact at the Delivery Facility and on surrounding roadways and to facilitate vehicle access during operations. Contractor shall operate the Delivery Facility to maintain a daily average vehicle turnaround time for City Collection Vendor's vehicles of less than fifteen (15) minutes. Vehicle turnaround time will be calculated from the arrival of a City Collection Vendor's vehicle at the Delivery Facility scale to departure of such vehicle from the Delivery Facility scale. Vehicle turnaround time includes queuing time at the scale house.

8.3 Receipt and Queuing

Contractor shall construct, maintain, and operate the Delivery Facility to ensure the

Delivery Facility is capable of accepting any and all Program Recyclable Materials delivered by City Collection Vendor from all types of delivery vehicles.

8.4 Storage

Contractor shall store Recyclable Materials to prevent degradation of Recyclable Materials, prevent negative impact to maneuvering of vehicles in Facility, and promote the safety of persons at the Facility. At a minimum, Contractor shall provide for storage of the amount of Materials delivered to the Facility over a period of three (3) consecutive Business Day(s).

8.5 Security

Contractor shall be solely responsible for security of the Facility and shall maintain adequate protective security at the Facility which, at a minimum, shall include locking of all access gates and building entrances as appropriate and use of security lighting.

8.6 Litter and Odor

Contractor shall maintain Facilities in a manner that eliminates litter and minimizes odor.

SECTION 9: MINIMUM PROCESSING REQUIREMENTS

Contractor shall process a minimum of ninety-five percent (95.0%) by weight of Program Recyclable Materials into Recovered Materials utilizing Processing subsystems at the Processing Facility capable of fulfilling this requirement. In addition, Contractor shall utilize Processing subsystems at the Processing Facility capable of complying with product specifications of secondary materials buyers including, but not limited to, product form, size, weight, density, and degree of Contamination.

Failure of Contractor to meet the requirements set forth in this section of the Contract is a breach of this Contract and may result in termination by City of this Contract.

SECTION 10: DISPOSAL OF PROGRAM RECYCLABLE MATERIALS PROHIBITED

Contractor shall not Dispose of any Program Recyclable Materials or Market Program Recyclable Materials to markets that Contractor knows or reasonably should have anticipated will Dispose of the Program Recyclable Materials except when approved in writing by the Contract Administrator. Disposal of any Program Recyclable Materials or Marketing Program Recyclable Materials to markets that Contractor knows or reasonably should have anticipated will Dispose of the Program Recyclable Materials, except when approved in writing by the Contract Administrator, is a breach of this Contract and may result in termination by City of this Contract with Contractor.

SECTION 11: RESIDENTIAL SERVICE CUSTOMER MATERIAL CHARACTERIZATION AUDITS

Contractor and City agree that composition information derived from Characterization Audits of material Collected from Residential Service Customers shall be used for determination of the following for all Loads from Residential Service Customers:

- (i) Disposal Fees for Contamination to be paid by City; and

- (ii) Recyclable Revenue Share.

Contractor, at Contractor's sole expense, shall conduct Characterization Audits in accordance with the protocol set forth in Attachment A.

SECTION 12: DISPOSAL OF RESIDUE AND CONTAMINATION

Contractor shall dispose of Residue and Contamination delivered to the Facility by City Collection Vendor. City shall reimburse Contractor based on the Disposal Fee as set forth in Attachment B, as adjusted pursuant this Contract, for Disposal of Contamination in excess of nineteen percent (19.0%) if City Program includes glass or twenty-six percent (26.0%) if City Program excludes glass from materials delivered by or on behalf of the City based on the most recent Characterization Audit. Contractor shall be responsible for all other costs including but not limited to handling, transporting, and Disposal of such Residue and Contamination other than those specifically authorized in this Contract.

SECTION 13: PERSONNEL

13.1 Contractor's Representative and Key Personnel

At least ten (10) Business Days prior to the Effective Date, Contractor shall have employed a Contractor's Representative. Contractor agrees that City and Contract Administrator shall have twenty-four (24) hour access to Contractor's Representative via a non-toll call from City. Contractor agrees Contractor's Representative shall upon request of City attend any or all City meetings. Contractor shall provide to Contract Administrator in writing ten (10) Business Days before the Effective Date the name, business, cell, and home phone numbers, email address and fax number of Contractor's Representative and any key personnel. Answering machines, pagers or other devices that do not provide for immediate contact with Contractor's Representative shall not meet the requirements of this section. If Contractor's Representative or any key personnel change, Contractor shall provide to Contract Administrator the name, business, cell, and home phone numbers of any replacement for the new Contractor's Representative or key personnel at least five (5) Business Day(s) before the replacement takes over the duties of the former Contractor's Representative or key personnel.

13.2 Personnel Requirements

Contractor shall adhere to the following requirements:

- (i) Contractor shall hire and maintain qualified personnel to provide service under this Contract.
- (ii) Before and during their employment or contract with Contractor, all employees and subcontractors involved in the performance of this Contract including office personnel shall be provided adequate training regarding the required duties and standards of performance under this Contract.
- (iii) In performance of services, Contractor's employees and subcontractors shall adhere to Applicable Law.

City may require Contractor to remove any unacceptable employee, as determined by City, from service related to this Contract.

SECTION 14: PUBLIC EDUCATION

14.1 Public Education Contribution

Contractor shall pay the City a minimum public education contribution as set forth in Appendix B, as adjusted pursuant this Contract, per each incoming ton of materials delivered by or on behalf of the City to the Delivery Facility and accepted by the Contractor.

14.2 Other Public Education Support

In addition to the Public Education Contribution, Contractor shall provide the following public education support:

- (i) Provide technical assistance to increase recycling and decrease contamination;
- (ii) Participate in up to four (4) public education events/presentations per request of Contract Administrator per Contract Year;
- (iii) Provide Processing Facility tours per request of Contract Administrator or Residential Service Customer; and
- (iv) Provide information for public education materials.

SECTION 15: RECORDKEEPING AND REPORTING

15.1 Recordkeeping

Contractor shall create, maintain, and make available records as defined in and/or required by Applicable Law, and any reports reasonably necessary to:

- (i) Document employee and subcontractor training by description of training, date of training, time of training, names of personnel who attended training, name of training instructor, and other information as requested by Contract Administrator.
- (ii) Document Program Recyclable Materials deliveries by City Collection Vendor by collection vehicle type, time delivered to facility, tonnage of material delivered, Unaccepted Loads by date collected, and other information as requested by Contract Administrator.
- (iii) Document revenue share basis by commodity, copies of index pricing, and other information as requested by Contract Administrator.
- (iv) Document Processing Fee Cap basis and other information as requested by Contract Administrator.
- (v) Document public education activities conducted related to Contract and/or City by description of activity, date, time, number of persons who attended (excluding Contractor and staff), and name of instructor.
- (vi) Summary of overall public education activities conducted by Contractor for customer's utilizing the Processing Facility by number of tours, number of persons who attended (excluding Contractor and staff), summary of educational campaigns and activities (such as Earth Day fairs, recycling association fairs, etc.) and other information included in Contractor's annual report.
- (vii) Document Program Recyclable Materials Characterization Audit and other information as requested by Contract Administrator.
- (viii) Document any hours Contractor failed to accept materials during required hours of operations.
- (ix) Document City Collection Vendor vehicle turnaround time by vehicle, arrival time

at the Delivery Facility scale, departure at the Delivery Facility scale and average daily City Collection Vendor vehicle turnaround time and other information as requested by Contract Administrator.

- (x) Such other documents and reports as City or Contract Administrator may reasonably require to verify compliance with the Contract or to meet City's reporting requirements with the State.

All of Contractor's records shall be available to Contract Administrator at reasonable times and places throughout the term of this Contract and for a period of five (5) years after last or final payment.

The terms of this section shall survive the termination or expiration of this Contract.

15.2 Reporting

15.2.1 Reporting Frequency

Contractor shall submit a monthly and annual report for those items identified in Section 15.1 of this Contract. Contractor shall submit all monthly reports to the Contract Administrator within seven (7) calendar days following the end of each calendar month. Contractor shall submit all annual reports to the Contract Administrator within thirty (30) calendar days following the Contract Year end.

15.2.2 Report Format

Within fifteen (15) Business Days of the Effective Date of this Contract, Contractor shall submit to the Contract Administrator for his/her approval the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Contract. Contractor shall submit all reports in electronic and hard copy format approved by the Contract Administrator.

SECTION 16: VISITATION RIGHTS, INSPECTION RIGHTS, AND AUDIT RIGHTS

16.1 Visitation Rights

City shall have the right to have its representative present at the Facility during hours of operation to observe and monitor Contractor's compliance with the provisions of this Contract, provided that such observation and monitoring shall be conducted in a manner to minimize interference with Facility operations. During such observations and monitoring, City and its representatives and invitees shall comply with all reasonable rules and regulations adopted by Contractor.

16.2 Inspection Rights

16.2.1 City's Right to Inspect Records, Books, Data and Documents

City shall have access, upon twenty-four (24) hours' advance written notification to Contractor, to all books, records, data and documents of Contractor related to the services or terms of this Contract for inspection, and audit, at City's own expense.

16.2.2 City's Rights to Inspect Facilities and Equipment

City shall have access, upon twenty-four (24) hours' advance written notification to Contractor, to inspect Contractor's Facility and equipment as City deems reasonably

necessary to determine whether the Facility and equipment provide the services required to be provided by Contractor under this Contract and fulfill the terms hereof and/or the terms of the RFP documents, if applicable. City shall conduct the inspection of Facility and equipment during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections of the Facility and equipment by City.

16.3 Audit Rights

The Parties agree that Contractor's books, records, documents, accounting procedures, practices, price lists or any other items related to the services or terms of this Contract are subject to inspection, examination, and copying by City or its designees. Contractor is required to retain all records related to this Contract for the duration of the term of this Contract and a period of five (5) years following expiration and/or termination of the Contract. If an audit, litigation or other action involving such records begins before the end of the five (5) year period, the records shall be maintained for five (5) years after the date that all issues arising out of the audit, litigation or other action are resolved or until the end of the five (5) year retention period, whichever is later.

The terms of this section shall survive the termination or expiration of this Contract.

SECTION 17: PROCESSING FEE AND RECYCLABLE REVENUE SHARE

17.1 Loads Containing Materials from Residential Service Customers

17.1.1 Processing Fee

For all Loads which contain materials Collected from Residential Service Customers, Contractor may charge City a Processing Fee as set forth in Attachment B, as adjusted pursuant this Contract, for such materials in Loads delivered by the City Collection Vendor and accepted at the Delivery Facility based on the incoming net weight of the Load as reported by the scale at the Delivery Facility.

17.1.2 Recyclable Revenue Share

For all Loads which contain materials Collected from Residential Service Customers, Contractor shall pay City a Recyclable Revenue Share for materials delivered by the City Collection Vendor and accepted at the Delivery Facility based on the following:

- (i) Composition of Program Recyclable Materials according to the most recent Program Recyclable Materials Characterization Audit conducted pursuant to this Contract; and
- (ii) Recyclable Revenue Share Basis in Attachment C.

The calculation for the Recyclable Revenue Share for Residential Service Customer material shall be as follows:

$$\begin{aligned} & \text{Net Revenues} = \\ & \text{Gross Recyclable Revenue} - \text{Processing Fee accrued by City} \\ & \text{If Net Revenues} > 0 \\ & \text{Then} \\ & \text{City Recyclable Revenue Share} = \text{Net Revenues} \times 60.0\% \\ & \text{If Net Revenues} = 0 \\ & \text{Then} \\ & \text{City Recyclable Revenue Share} = 0 \\ & \text{If Net Revenues} < 0 \\ & \text{Then} \\ & \text{Net Revenues not to exceed Processing Fee Cap} \end{aligned}$$

Net Revenues will be calculated as per incoming net weight of the Load as reported by the scale at the Delivery Facility for Loads delivered by the City Collection Vendor and accepted at the Delivery Facility.

If the Net Revenue is greater than zero, then the City Revenue Share will be calculated as the 60% of the Net Revenues.

If the Net Revenue is equal or less than zero then the City shall pay the Net Revenue to the Contractor and shall not exceed the Processing Fee Cap. If the Net Revenue results in City owing more than the Processing Fee Cap times the incoming net weight of the Load as reported by the scale at the Delivery Facility for Loads delivered by the City Collection Vendor and accepted at the Delivery Facility, the Contractor shall charge the City the Processing Fee Cap times the incoming net weight of the Load as reported by the scale at the Delivery Facility for Loads delivered by the City Collection Vendor and accepted at the Delivery Facility only.

The City shall not owe the Contractor any amounts in excess of the Processing Fee Cap times the incoming net weight of the Load as reported by the scale at the Delivery Facility for Loads delivered by the City Collection Vendor and accepted at the Delivery Facility.

17.2 Loads Containing Materials Predominantly Collected from Multi-Family Dwellings

17.2.1 Processing Fee

For all Loads which the majority of the materials by weight are Collected from Multi-Family Dwellings, Contractor may charge City a Processing Fee as set forth in Attachment B, as adjusted pursuant this Contract, for such materials in Loads delivered by the City Collection Vendor and accepted at the Delivery Facility based on the incoming net weight of the Load as reported by the scale at the Delivery Facility.

17.2.2 Recyclable Revenue Share

For all Loads which the majority of the materials by weight are Collected from Multi-Family

Dwellings, Contractor may retain all revenues from Recyclable Materials from sale of Recovered Materials.

SECTION 18: FEE ADJUSTMENTS, MONTHLY STATEMENTS, AND PAYMENT

18.1 Annual Fee Adjustment

Processing Fee, Public Education Contribution, and Disposal Fee in Attachment B shall remain fixed from the execution of this Contract through October 31, 2019. On November 1, 2019 and every November 1st thereafter for the life of this Contract, Processing Fee, Public Education Contribution, and Disposal Fee as established in Attachment B may be adjusted, increased or decreased, according to this section.

The annual rate adjustment shall be based on the most recent CPI-All Urban Consumers, Unadjusted 12 months ended September, Item: All items. Upon approval by City, the annual rate adjustment shall not exceed five percent (5.00%) per year.

Example: Assume that the CPI-All Urban Consumers, Item: All items unadjusted index for September 2019 is 114.5 and on September 2018 it was 105.5. The calculation for the annual rate adjustment to be implemented on November 1, 2019 is as follows:

$$\frac{114.5 - 105.5}{105.5} = 8.53\%$$

Then

Total Annual Adjustment = 5.00% applied to rates as of November 1st, 2019

18.2 Monthly Statement

Contractor shall submit to the Contract Administrator a monthly statement for all Recyclable Revenue Share less Disposal Fees or Processing Fee Cap plus Disposal Fees for the preceding calendar month.

Contractor shall separately submit to the Contractor Administrator on the monthly statement the amount of Public Education Contribution to be paid for the preceding calendar month. The Public Education Contribution shall be separate from the Recyclable Revenue Share and Disposal Fees or Processing Fee Cap and Disposal Fees.

Contractor shall submit the monthly statement with payment with detailed documentation and any required payment to the City for services performed the prior calendar month in accordance with Section 18.3 to the City on or before the tenth (10th) calendar day of each month. Detailed documentation shall include documentation of tonnage by Recyclable Material and Residue and Contamination, copies of Recyclable Revenue Share index pricing report by Recyclable Material, documentation of actual monthly sales price by Recyclable Material, and other information as requested by Contract Administrator to review invoices and payments. All fees in Appendix B are inclusive of all costs including, but not limited to, taxes and profits. Contractor shall not charge City for any fees other than those specifically authorized in Appendix B. All references to incoming Tons means the net tonnage reported at the scale house. No adjustments shall be made to incoming Tons for shrinkage of materials or loss materials.

18.3 Payment

If the Recyclable Revenue Share is greater than zero, the Contractor shall pay the City for such month (i) the Recyclable Revenue Share less Disposal Fees and (ii) the Public Education Contribution.

If Net Revenues is equal to zero, the City shall pay the Contractor for such month the Disposal Fees, and the Contractor shall pay the City the Public Education Contribution for such month.

If the Net Revenues are less than zero for the calendar month, the City shall pay the Contractor for such month the Net Revenues not to exceed the Processing Fee Cap per incoming Ton on such a month plus Disposal Fees, and the Contractor shall pay the City the Public Education Contribution for such month.

Contractor shall pay any administrative charges as provided herein within ten (10) Business Days' notice of such charges. Contractor shall pay any and all other payment on or before the tenth (10th) calendar day of each month.

Contractor shall submit invoices with the required backup documentation to the Contract Administrator per Section 18.2. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. Invoices shall be based on services performed according to this Contract. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

SECTION 19: OWNERSHIP OF PROGRAM RECYCLABLE MATERIALS

Title to Program Recyclable Materials shall pass to Contractor once Contractor takes possession of the materials at the Delivery Facility. After the risk of loss of Program Recyclable Materials delivered to Contractor on behalf of City passes to Contractor, if any such Program Recyclable Materials are lost, damaged, or scavenged, Contractor shall be liable to City for that sum of funds that would have been paid to City in accordance with the provisions of this Contract if such materials had not been lost, damaged, or scavenged.

SECTION 20: ADDITION AND DELETION OF RECYCLABLE MATERIALS

The City reserves the right to delete glass from the program with a minimum of sixty (60) calendar days' notice to the Contractor. If City deletes glass from the program with a minimum of sixty (60) calendar days' notice to the Contractor, City reserves the right to add glass to the program if the Parties agree it is economically and technically feasible. In addition, City reserves the right to add other Recyclable Materials to the program or delete Recyclable Materials from the program if the Parties agree it is economically and technically feasible.

SECTION 21: INDEMNIFICATION AND LIMITATION OF LIABILITY

21.1 Indemnification by Contractor

CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND SAVE HARMLESS CITY AND ITS COUNCIL, OFFICERS, EMPLOYEES AND AGENTS AND THEIR

OFFICERS, TRUSTEES, EMPLOYEES AND AGENTS FOR ANY LOSS, DAMAGE OR DEMANDS, CLAIMS, CAUSES OF ACTION AND FROM ALL SUITS OF WHATEVER NATURE ARISING FROM OR RELATING TO IT OR ITS SUBCONTRACTORS' PERFORMANCE OR NONPERFORMANCE UNDER THIS CONTRACT. CONTRACTOR MUST EXERCISE ALL REASONABLE AND CUSTOMARY PRECAUTIONS TO PREVENT ANY HARM OR LOSS TO ALL PERSONS AND PROPERTY RELATED TO THIS CONTRACT.

The terms of this section shall survive the termination or expiration of this Contract.

21.2 Limitation of Liability

THE CITY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH CONTRACTOR'S PERFORMANCE OF OR FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER, EVEN IF THE CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

The terms of this section shall survive the termination or expiration of this Contract.

SECTION 22: INSURANCE REQUIREMENTS

22.1 No Insurance by City

Contractor shall be solely responsible for any insurance required under the terms of this Contract and for any additional insurance it deems necessary. City does not carry nor will carry insurance policies covering Contractor.

22.2 Contractor Insurance Requirements

22.2.1 Specific Insurance Requirements

Contractor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability – as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this Contract. Coverage not required for delivery services.

B. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits throughout Contract not less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises – Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage

NOTE: The aggregate loss limit applies to each project.

2. Workers' Compensation and Employer's Liability: Workers' Compensation and Employer's Liability: Workers' Compensation Statutory limits as required by the Labor Code of the State of Texas and Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.
3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the HR Director or designee.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City. The coverage shall include defense of claims against the City as additional insured.
 - b. The Contractor's insurance coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policy shall not affect

coverage provided to the City, its officers, officials, and employees, boards and commissions or volunteers.

d. The Contractor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.

2. Waiver of Subrogation – All Coverages

Each insurance policy required by this Contract shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the Contractor for the City.

3. Notice of Cancellation - All Coverages

Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either Party, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) calendar days prior written notice for non-payment of premium.

E. **ACCEPTABILITY OF INSURERS**

The City prefers that insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard and Poors.

F. **VERIFICATION OF COVERAGE**

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be provided on forms approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. **HOLD HARMLESS AND INDEMNIFICATION**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONTRACTOR, ITS

OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

H. **PROOF OF INSURANCE**

Contractor is required to submit proof of insurance on a form acceptable to the City. Certificates of Insurance similar to the ACCORD form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. City, at its own discretion, may require a copy of any policy presented to the City.

SECTION 23: ADMINISTRATIVE CHARGES

Contractor understands that if Contractor does not timely perform its obligations pursuant to the terms of this Contract or violates any provision of this Contract, City will suffer damages which are difficult to determine and adequately specify. Contractor agrees, in addition to any other remedies available to City, that City may withhold payment from Contractor in the amounts specified below as administrative charges for failure of Contractor to fulfill its obligations.

The following acts or omissions shall be considered a breach of the Contract and City may require payment by Contractor of the charges set forth for each act or omission:

- (i) Failure to accept materials during required hours of operation at any time during Contract term.
\$250 per hour, up to \$2,500 per day plus all costs incurred by City and/or City Collection Vendor.
- (ii) Failure to deliver reports as required.
\$100 per day
- (iii) Failure to maintain records in accordance with recordkeeping procedures.
\$100 per day
- (iv) Failure to achieve vehicle turnaround time in accordance with Contract.
\$50 per vehicle in excess of truck turnaround time on such day
- (v) Failure to maintain scale house in accordance with Contract.
\$250 per day

- (vi) Disposal of Program Recyclable Material as solid waste.
\$1,000 per ton

City may impose administrative charges if the Contract Administrator determines that performance consistent with the provisions of the Contract has not occurred. The Contract Administrator shall notify Contractor in writing or electronically of each act or omission under the terms of this Contract reported to or discovered by City or its designee. It shall be the duty of Contractor to take whatever steps or action may be necessary to remedy the cause of the complaint.

City may deduct the full amount of any administrative charges from any payment due to Contractor. The remedy available to City under this paragraph shall be in addition to all other remedies which City may have under law, at equity, or pursuant to the terms of this Contract.

For the purposes of this Contract, Contractor shall not be deemed to be liable for administrative charges where its inability to perform any service hereunder is the result of an event of Force Majeure as set forth in this Contract, provided however, that Contractor shall obtain approval for any such delay from the Contract Administrator prior to 3:00 PM, Central Time of any day any service to be provided hereunder is delayed.

Contractor's obligations to make payments for administrative charges under this section occurring prior to the expiration or termination of this Contract shall survive termination or expiration of this Contract.

SECTION 24: PERFORMANCE BOND

Upon Contractor's execution of this Contract, Contractor shall make, execute, and deliver to City a good and sufficient performance bond in a form approved by City's legal counsel, to secure the full, complete and faithful performance of the terms and conditions herein. For the first Contract Year, Contractor shall make, execute, and deliver to City a good and sufficient performance bond in the amount equal to or greater than the estimated Processing Fees pursuant to this Contract from November 1, 2018 through October 31, 2019. For each Contract Year after the initial Contract Year, Contractor shall make, execute, and deliver to City a good and sufficient performance bond in the amount equal to or greater than the actual Processing Fees pursuant to this Contract from November 1st through October 31st of the prior Contract Year. Contractor shall renew the performance bond in accordance with this Contract each year throughout the term of the Contract and any renewal periods. Contractor shall ensure the performance bond is signed by the president or authorized officer of Contractor, together with the signature of the corporate secretary and the imprint of the corporate seal. The surety shall be a surety company duly authorized to do business in the State, having an "A" or better rating by A.M. Best or Standard and Poors, included on the list of surety companies approved by the Treasurer of the United States of America, and acceptable to City.

SECTION 25: FORCE MAJEURE

Except for any payment obligation by either party, if City or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Contract by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably

necessary for City or Contractor to correct the adverse effect of such event of Force Majeure.

An event of Force Majeure shall mean the following events or circumstances to the extent that they delay City, the City or Contractor from performing any of its obligations (other than payment obligations) under this Contract:

- (i) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Contractor, its agents, and assigns), landslides, earthquakes, epidemics, quarantine and pestilence; and
- (ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.

In order to be entitled to the benefit of this section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The Parties agree that, as to this section, time is of the essence.

SECTION 26: TERMINATION

This Contract shall terminate upon any one of the following:

- (i) The written agreement of the Parties.
- (ii) The expiration of the term(s) of this Contract.
- (iii) Receipt of both written notice from Contractor to Contract Administrator and non-refundable payment from Contractor to City of twenty-five thousand U.S. dollars (\$25,000.00) a minimum of one (1) year in advance of effective date of termination.

Upon occurrence of any of the following events in regard to Contractor, City may terminate this Contract without liability to Contractor and pursue all of its legal, contractual, and equitable remedies for default by Contractor.

- (i) The filing of a voluntary petition for bankruptcy relief by or on behalf of the Contractor, or the filing of an involuntary petition for bankruptcy relief against the Contractor, which is not dismissed or otherwise disposed of to the City's satisfaction within thirty (30) days thereafter.
- (ii) The appointment of a receiver of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- (iii) Filing of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (iv) Committing an act of default of a provision of this Contract.
- (v) Failing to timely and fully pay any or all impositions pursuant to this Contract.
- (vi) As otherwise provided by this Contract.

SECTION 27: ACTS OF DEFAULT OR DEFAULT

Failure of Contractor to fully, completely and timely comply with each obligation of Contractor agreed to herein shall be an act of default. Contractor understands, acknowledges, and agrees that anything other than full compliance with this Contract shall be an act of default unless waived in writing by City. Contractor understands, acknowledges, and agrees that a breach of this Contract which may not otherwise result in a default, shall constitute a default when the breaches, even if different breaches, are frequent or regular or repetitive. City may terminate this Contract and pursue all legal, contractual, and equitable remedies upon a default of this Contract. Substantial compliance short of full compliance is an act of default unless waived in writing by City.

SECTION 28: DISPUTE RESOLUTION

In the event of a dispute between Contractor and the City or its representative over the interpretation or application of the terms of this Contract, the matter shall be referred to the Contract Administrator. If the Contract Administrator is unable to resolve the dispute, the matter shall be referred to a person designated by the City. Additionally, the parties shall each pay one-half of the costs of the mediation process (mediator fee, etc.). Regardless of these procedures, neither Party shall be precluded from exercising any rights, privileges or opportunities permitted by law to resolve any dispute.

In the event of a dispute which may arise under this Contract, the City does not agree to arbitration.

SECTION 29: NOTICE

Except as otherwise provided in this Contract, all notices, demands and other communications (other than reports required to be furnished by Contractor to City as provided in this Contract and routine communications) required by or related to this Contract shall be in writing and directed as follows:

To Contractor: Austin Ellis
General Manager
FCC SA
5200 Simpson Stuart Rd
Dallas, TX 75241

To City: City Manager
City of Lewisville
151 W. Church Street
Lewisville, Texas 75057

With a copy to: City Attorney
City of Lewisville
151 W. Church Street
Lewisville, Texas 75057

Any such notice, demand or other communication shall contain an express reference to this

Contract. Any Party may change its address for the purposes of this Contract upon written notice to the other Party.

The following methods of delivery are acceptable: hand-delivery; overnight commercial air courier; or certified first-class U.S. mail, return receipt requested. Any such notice, communication or delivery shall be deemed delivered and effective upon actual receipt by the party to whom addressed.

SECTION 30: MISCELLANEOUS

30.1 Applicable Laws

Contractor shall at all times observe and comply with all federal, State and local Applicable Law which in any manner affect the Contract or the work, and SHALL INDEMNIFY AND SAVE HARMLESS THE CITY AGAINST ANY CLAIM ARISING FROM THE VIOLATION OF ANY APPLICABLE LAWS WHETHER BY THE CONTRACTOR OR HIS EMPLOYEES.

30.2 Governing Law and Venue

This Contract is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Contract is in Denton County, Texas.

30.3 Protection of Resident Workers

The City actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor and its subcontractors shall establish appropriate procedures and controls so no services or products under the Contract will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Contractor's or subcontractor's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services or manufacturing products under the Contract. The audit will be at the City's expense.

30.4 Immigration Reform and Control Act (8 U.S.C. §1324a)

The City supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor shall ensure that its subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor and its subcontractors shall at all times during the

term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate this Contract with the Contractor if the City determines that (a) the Contractor or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Contractor fails to ensure that its subcontractors submit the aforementioned declaration; or (c) the Contractor or its subcontractors fail to timely notify the City of an IRCA violation.

30.5 Relationship of Parties

Contractor is, and shall remain at all times, an independent contractor with respect to activities and conduct while engaged in the performance of services for City under this Contract. No employees, subcontractors or agents of Contractor shall be deemed to be employees of City for any purpose whatsoever, and none shall be eligible to participate in any benefit program provided by City for its employees. Contractor shall be solely responsible for the payment of all wages and salaries, taxes, withholding payments, fringe benefits, insurance premiums, continuing education courses, materials or related expenses on behalf of its employees, subcontractors, and agents. Nothing in this Contract shall be construed to create a partnership, joint venture, or agency relationship among the parties. No Party shall have any right, power or City to act as a legal representative of another Party, and no Party shall have any power to obligate or bind another Party, or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever.

30.6 Third Parties

This Contract is between City and Contractor and creates no right of or duties to any other person. No other person or entity is or shall be deemed a third Party beneficiary of this Contract.

30.7 Assignment and/or Subcontracting

Contractor may not assign this Contract or use subcontractors to perform the terms of this Contract without the prior written consent of City. No assignment or subcontract shall relieve Contractor of its liability under this Contract. In the event Contractor elects to use any subcontractors and City provides prior written permission to Contractor to use subcontractors, Contractor shall have primary responsibility for full and complete satisfactory and acceptable performance under this Contract. However, the Contract may be assigned for the purpose of financing after notification to and written approval of the terms of such assignment by City.

30.8 No Franchise Intended

This Contract shall not constitute a franchise or exclusive right to Process Program Recyclable Materials on behalf of City. Contractor shall not make any representations in any manner to the contrary.

30.9 Binding Effect

This Contract shall be binding upon City and Contractor and their respective successors, heirs, legal representatives and permitted assigns.

30.10 Disclosure

Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City or submits to the City an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City to comply with the filing requirements of Chapter 176.

30.11 Texas Government Code Chapter 2270

Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Contract serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Contract.

30.12 Texas Government Code Chapter 2252

Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Contract, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

30.13 No Penalties

No provision of this Contract is to be interpreted as a penalty upon any Party to this Contract. The Parties hereby agree that the rights of City in the event Contractor takes or fails to take certain actions pursuant to this Contract are reasonable, and that the Parties desire such certainty with regard to such matters.

30.14 Further Assurance

Contractor and City agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Contract and give effect to it. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Contract, the Parties declare their intention to cooperate with each other in effecting the terms of this Contract.

30.15 Time of the Essence

For purposes of this Contract, the Parties agree that time shall be of the essence and the representations and warranties made are all material and of the essence of this Contract.

30.16 Headings

The headings used herein are for convenience only and shall not be used in interpreting this Contract.

30.17 No Waiver

A waiver of any breach of any provision of this Contract shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.

30.18 Entire Contract/No Assignment

This Contract and any documents incorporated herein constitute the entire agreement of the Parties and supersede any and all prior agreements, oral or otherwise. This Contract may only be modified or amended in a writing signed by both Parties. Notwithstanding anything to the contrary stated herein or in the attachments to this Contract, no future agreements, revisions or modifications that may be required under this Contract are effective or enforceable unless such terms, revisions or modifications have been reduced to writing and signed by City and Contractor. Contractor shall not be entitled to any claim for extras of any kind or nature.

30.19 Severability Provision

If any term or provision herein is determined to be illegal or unenforceable, the remainder of this Contract will not be affected thereby. It is the intention of the Parties that if any provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible to be legal, valid and enforceable.

30.20 Knowledge

Contractor agrees that it has investigated and examined all conditions and requirements of this Contract that may affect its full and complete performance of this Contract and enters into this Contract having completed such investigations and examinations to its full satisfaction and solely relying on such investigations and examinations.

30.21 Multiple Counterparts

This Contract may be executed in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

30.22 Attorney Fees

In the event of litigation between the parties regarding this Contract, each Party shall be responsible for its own attorney's fees and costs.

30.23 Authorization

Each Party hereby warrants and represents that the person signing on its behalf has full power to enter into and perform this Contract and bind the Party to this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each Party further acknowledges and agrees that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

CITY OF LEWISVILLE, TEXAS
Approved by the Lewisville City
Council _____

By: _____
Donna Barron, City Manager

Date: _____

CONTRACTOR:
FCC SA, INC.

By:  _____
Inigo Sanz, Managing Director Americas

Date: 10/11/2018


5200 Simpson Stuart Rd
Dallas, TX 75241

2814682259
Telephone Number

inigo.sanz@fccenvironmental.com
E-mail Address

98-1103589
Federal Tax ID Number

Attest: _____
Julie Worster

Attest:  _____
ANDREA RODRIGUEZ

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

ATTACHMENT A: CHARACTERIZATION AUDIT PROTOCOL

The initial Characterization Audit shall be conducted in November 2018. Subsequent Characterization Audits shall be conducted in October of each Contract Year. If the Characterization Audit results in a Contamination rate higher than 25.00%, a second audit shall be conducted within sixty (60) days upon request of the City. Request shall be made within ten (10) Business Days after the audit results were received, finalized and accepted by the City and the Contractor. The City and the Contractor shall agree on an audit week. Audits will not be conducted immediately after a holiday or during inclement weather.

Each Characterization Audit shall include a Recycling Characterization Audit and a Residue Characterization Audit. The Contractor, at the Contractor's sole expense, shall conduct Characterization Audits in accordance with the following:

Recycling Characterization Audit

1. Each Recycling Characterization Audit will be monitored by the Contractor and the City if City desires. The City may take pictures and video prior to and during the audit.
2. Unless agreed to via email or other writing by the City, the City and the Contractor shall agree on an audit date a minimum of thirty (30) calendar days in advance.
3. The Processing Facility scales, including the vehicle and baler scales, shall be calibrated within ninety (90) calendar days of the Recycling Characterization Audit. The Contractor shall provide documentation to the City of the scales' calibration.
4. The City and the Contractor will agree to the description of each commodity, including Program Recyclable Materials and other Recyclable Materials Processed into Recovered Materials, in advance of the Recycling Characterization Audit in written form. Any Recyclable Material Marketed by the Processing Facility shall be included in the description of Recyclable Material commodity and accepted Recyclable Materials.
5. The Recycling Characterization Audit will be conducted based on two (2) random Loads per each scheduled collection day for a calendar week from the Single Stream Program Recyclable Material collected from Residential Service Customers via City Program unless more Loads are agreed by all Parties. The total tonnage used for the Recycling Characterization Audit will be approximately fifty (50) Tons.
6. The City and the Contractor will agree upon a day to randomly draw routes from each collection day at least two (2) weeks in advance of the Recycling Characterization Audit.
7. The vehicles selected for the Recycling Characterization Audit will be weighed full and empty to capture the tare weight of the truck and the weight of the load. All weights shall be recorded to a hundredth of a Ton. On-file tare weights will not be acceptable during the Recycling Characterization Audit.

8. The Contractor shall store the Loads from the selected routes in a segregated area. The segregated area will have physical barriers in place to separate Recycling Characterization Audit materials from any other materials that are delivered to the Processing Facility.
9. The Contractor will empty, clean, and remove any and all materials from the segregated area prior to 6:00 a.m., local time of the initial Recycling Characterization Audit Load delivery day. The Contractor shall maintain such segregated area empty, clean and free of any and all materials other than Recycling Characterization Audit Loads.
10. Immediately prior to Processing the Recycling Characterization Audit materials, the Contractor will empty, clean and free of debris the system, including but not limited to the sort line, bunkers, balers, compactors, bins, waste containers, dust system etc.
11. The Contractor will ensure the number of employees available for the Recycling Characterization Audit is appropriate to sort material and conduct the Recycling Characterization Audit. The number of employees utilized for sorting materials will be consistent with typical operations.
12. After approval of City to commence the Recycling Characterization Audit, the Contractor shall load the materials onto the Processing line and run at normal Processing speed (25-30 Tons per hour, or as designed) or slower. Contractor will Process the materials into the various commodity categories and Residue and Contamination.
13. The Contractor will bale, City and Contractor shall weigh, and City shall record the weight of each material by Recyclable Material commodity categories and Residue and Contamination (for material that is not enough to make a full bale, Contractor will place the material in "Gaylord" type box or other container to fully account for 100% of each material type).
14. Re-run recirculate when approximately 2/3 of audit material is processed and 1/3 of audit material is on the floor.
15. Once the audit material is processed, the Contractor will empty, clean and remove any and all debris from the system, including but not limited to the sort line, bunkers, balers, compactors, bins, waste containers, dust system etc., consistent with efforts prior to the Recycling Characterization Audit (see item 10). The City and the Contractor shall agree as to the categorization of such material collected will count as commodity category or Contamination/Residue.

Residue Characterization Audit & Recovery Rate

1. Each Residue Characterization Audit will be monitored by Contractor and City if City desires.
2. The Residue Characterization Audit will be conducted based on a minimum of two (2) samples collected a minimum of ten (10) minutes apart from the trash compactors. Each sample shall weigh approximately one hundred (100) pounds.

3. The collection of samples shall be mutually agreed upon by City and Contractor. The sample point shall be always the trash compactor.
4. Contractor shall store the Residue Characterization Audit samples in a segregated area. The segregated area will have barriers in place to separate Residue Characterization Audit materials from any other materials that are delivered to the Processing Facility.
5. The Contractor will classify the materials into the proposed material categories, but at a minimum each commodity utilized for the Recycling Characterization Audit, and Contamination and place the materials into the individual bins/cans for each category with the exception of the materials listed below that will be considered Contamination.

The Recoverable Materials are subject to the following size and quality parameters:

SIZE:

1. Fiber (ONP/MP) – is based on materials being larger than 24 square inches. Recovery rate applies only to 2-dimensional paper that is larger than 6 inches in both dimensions. Contaminated and/or 3-dimensional materials will be excluded from the residue audit for purposes of calculating recovery rate. Film plastic is not considered a contaminant as removal of these are sorter dependent.
2. OCC - Recovery rate applies only to 2-dimensional flattened OCC larger than 225 square inches with at least one outside dimension being 16 inches or larger. Contaminated and/or 3-dimensional materials will be excluded from the residue audit for purposes of calculating recovery rate.
3. Plastic Containers – is based on **3-dimensional** objects larger than 16 square inches. Clumped plastic and interlocked items that are not plastic containers shredded or torn containers, black or very dark colored containers, containers that are muddy, dirty, or obscured more than 66% by a label, containers smaller than 2 inches in more than one dimension, indeterminate polymer types (not marked with a recycling symbol #1-#7) will be excluded from test results. Bottles with liquid in them are excluded from the recoverable materials in the residue.
4. Glass containers – mixed broken glass contained in the residue should be minimized, but is not included in the calculation of Recoverable Material in the residue
5. Tin/steel cans – is based on pieces between 2” and 8” having a ferrous metal content of >60%. Clumped, interlocked, contaminated and multi-material objects or items that are not steel food or beverage cans will be excluded from the residue audit for purposes of calculating recovery rate.
6. Aluminum (AL) – is based on all pieces between 2” and 8” having a substantial Non-Ferrous portion or element in their construction. Clumped, interlocked and multi material items that are not Aluminum will be excluded from test results.
7. Any Recoverable Material in unopened bags or containers within the residue will be excluded from the test results.
8. Any recyclables in the “mixed broken glass”, which is the 2” minus fraction is excluded from the missed recyclable count (small recyclables and pieces of recyclables go with the 2” minus fraction). Since they end up in the trash, anything in the unders of the fine screen/glass

breaker is excluded.

9. Residue - Any 2D fibers less than 6" on one side, or 24 square inches will be considered residue. 3D fiber is excluded as it should be recovered by manual sorting. Unopened bags or containers that contain recyclables will be excluded from the recyclable part of the audit and included in the residue. Containers must be free and clear of liquid. These containers will be part of the residue, not the recyclables. Fiber moisture must be less than 20%. If more than this fiber is part of residue.

QUALITY:

1. Incoming fiber must be at moisture level less than 20%.
2. Incoming material must not be frozen, clumped together, or comingled in a container such as a bag, box or previously baled.

10. The Contractor will assign bins/cans to each material category and weigh to a pound and record the weight of each bin/can empty. All weights shall be documented with City representatives present.

11. Once all the materials from the sample have been sorted into their designated bins/cans, the Contractor will check all bins/cans to confirm materials are placed in the appropriate bin/can. After the Contractor has performed a quality control check, the City shall check all bins/cans to confirm materials are placed in the appropriate bin/can. The City shall communicate any issues immediately to the Contractor.

12. Each commodity and Contamination shall be weighed to a pound. All weights shall be documented with City representatives present.

13. At the end of the Residue Characterization Audit day, tally sheets of all weights for each sample shall be provided to City.

14. The Contractor will weigh all Residue and Contamination including materials in the compactor and other sources. The City and Contractor may agree for certain sources of Residue and Contamination to be presumed 100% Contamination. All other sources of Residue and Contamination will be presumed to have the composition based on the Residue Characterization Audit.

General Characterization Audit Reporting Protocol

1. Following the Characterization Audits, the City will calculate the estimated audit tonnage by material category and Residue and Contamination based on the Recycling Characterization Audit.
2. Then, the City will calculate the estimated audit tonnage by material category and Contamination in the total Residue and Contamination reported by the Recycling Characterization Audit by applying the composition based on the Residue Characterization Audit.

3. Then, the City will aggregate the tonnage by Recovered Material category from the Recycling Characterization Audit to the tonnage by material category from the Residue Characterization Audit.
4. Next, the City will calculate the recovery rate to determine whether Contractor is in compliance with the requirement to recover 95% of Program Recyclable Materials. If the 95% recovery rate is not met, a second audit shall be conducted within sixty (60) days upon request of the Contractor. If the 95% recovery rate is not met, the quantity of Program Recyclable Materials will be proportionately increased based on the composition of Program Recyclable Material not recovered according to the Residue Characterization Audit to achieve the 95% recovery rate.
5. The composition of the aggregated tonnage by Recovered Material category from the Recycling Characterization Audit will be used for calculation of the Recyclable Revenue Share and Disposal Fees.
6. Within five (5) business days of the completed Characterization Audit, the City will provide the Contractor a report detailing the Characterization Audit results.
7. If the audit results are disputed, then the City or the Contractor may request a new audit to be completed at Contractor's sole cost, within thirty (30) Business Days after receiving the audit report.
8. The City may take pictures prior to and during the audit.

ATTACHMENT B: FEES, RECYCABLE REVENUE SHARE AND PUBLIC EDUCATION CONTRIBUTION

Table B.1: Fees, Recyclable Revenue Share and Public Education Contribution

	Single Stream Recyclable Materials Processing
Processing Fee for Loads (if Program includes glass) containing materials predominantly Collected from:	
Residential Service Customers	\$ <u>81.45</u> per incoming Ton
Multi-Family Dwelling ¹	\$ <u>64.45</u> per incoming Ton
Processing Fee for Loads (if Program excludes glass) containing materials predominantly Collected from:	
Residential Service Customers ²	\$ <u>Varies</u> per incoming Ton
Multi-Family Dwelling ^{1, 2}	\$ <u>Varies</u> per incoming Ton
Recyclable Revenue Share for Loads containing materials Collected from:	
Residential Service Customers	<u>60.0%</u> per incoming Ton
Multi-Family Dwelling ¹	Not Applicable
Disposal Fee	
Residential Service Customers ³	\$ <u>25.00</u> per Contamination Ton
Multi-Family Dwelling	Not Applicable
Public Education Contribution	\$ <u>1.00</u> per incoming Ton

1. Predominantly Collected from Multi-Family Dwellings

2. For Residential Service Customers and Multi-Family Dwelling, the Processing Fee is based on the percentage of usable glass from the Recycling Characterization Audit. See Table B.2 below for Processing Fee for Loads (excluding glass) containing materials predominantly Collected from Residential Service Customers.

3. Disposal Fee applies to Disposal of Unaccepted Loads from Residential Service Customers delivered by or on behalf of the City. In addition, Disposal Fee applies to Disposal of Contamination from Loads from Residential Service Customers in excess of nineteen percent (19.00%) if City Program includes glass or twenty-six percent (26.00%) if City Program excludes glass.

Table B.2: Processing Fee for Residential Service Customers Loads if Program Excludes Glass

Residential % Glass Processing Fee (\$/tn) ¹	0.00- 3.99%	4.00- 4.99%	5.00- 5.99%	6.00- 6.99%	7.00- 7.99%	8.00- 8.99%	9.00- 9.99%	10.00- 10.99%	11.00- 11.99%	12.00- 12.99%	13.00- 13.99%	14.00- 14.99%	15.00- 15.99%	16.00% or more
	\$71.45	\$72.22	\$72.99	\$73.76	\$74.53	\$75.30	\$76.07	\$76.83	\$77.60	\$78.37	\$79.14	\$79.91	\$80.68	\$81.45
Multi-family Dwelling % Glass Processing Fee (\$/tn) ¹	0.00- 3.99%	4.00- 4.99%	5.00- 5.99%	6.00- 6.99%	7.00- 7.99%	8.00- 8.99%	9.00- 9.99%	10.00- 10.99%	11.00- 11.99%	12.00- 12.99%	13.00- 13.99%	14.00- 14.99%	15.00- 15.99%	16.00% or more
	\$58.45	\$58.91	\$59.37	\$59.83	\$60.30	\$60.76	\$61.22	\$61.68	\$62.14	\$62.60	\$63.07	\$63.53	\$63.99	\$64.45

1. For Residential Service Customers and Multi-Family Dwelling, the Processing Fee is based on the percentage of usable glass from the most recent Recycling Characterization Audit. For example, the processing fee is \$71.45 per Ton for Residential and \$58.45 per Ton for Multi-family Dwelling for 0.00% to 3.99% reusable glass reported by the most recent Recycling Characterization Audit.

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ATTACHMENT C: RECYCLABLE REVENUE SHARE

Recyclable Materials	Revenue Share Basis
Newspaper	The greater of Pulp & Paper Week, ONP #6, Southwest region, (1st issue of the month) regionally average price or average monthly actual sales price
Old Corrugated Cardboard	The greater of Pulp & Paper Week, OCC #11 Corrugated Containers, Southwest region, (1st issue of the month) regionally average price or average monthly actual sales price
Chipboard	The greater of Pulp & Paper Week, OCC #11 Corrugated Containers, Southwest region, (1st issue of the month) regionally average price or average monthly actual sales price
Magazines, Catalog, and Phone Books	The greater of Pulp & Paper Week, OMG #10, Southwest region, (1st issue of the month) regionally average price or average monthly actual sales price
Cartons	The greater of the average monthly actual sales price, verified market price, or zero
Other Program Recyclable Material- Paper	The greater of Pulp & Paper Week, Mixed Paper #2, Southwest region, (1st issue of the month) regionally average price or average monthly actual sales price
Plastic #1	The greater of RecyclingMarkets.net, Plastics PET Baled, Houston (Southcentral) region, (2nd business day of the month) regionally average price, average monthly actual sales price or zero
Plastic #2 Natural	The greater of RecyclingMarkets.net, Plastics Natural HDPE Baled, Houston (Southcentral) region, (2nd business day of the month) regionally average price, average monthly actual sales price or zero
Plastic #2 Colored	The greater of RecyclingMarkets.net, Plastics Colored HDPE Baled, Houston (Southcentral) region, (2nd business day of the month) regionally average price, average monthly actual sales price or zero
Other Program Recyclable Material- Plastic	The greater of the average monthly actual sales price, verified market price, or zero
Aluminum	The greater of RecyclingMarkets.net, Aluminum Cans (Sorted, Baled, picked up), (1st issue of the month) regionally average price or average monthly actual sales price
Steel/Tin	The greater of RecyclingMarkets.net, Steel Cans (Sorted, Baled, picked up), (1st issue of the month) regionally average price or average monthly actual sales price
Other Program Recyclable Material- Metal	The greater of RecyclingMarkets.net, Steel Cans (Sorted, Baled, picked up), (1st issue of the month) regionally average price or average monthly actual sales price
Glass	The greater of the average monthly actual sales price, verified market price, or zero
Residue and Contamination	Zero