

**SERVICES AGREEMENT FOR  
SUPPLY AND OPERATION OF MATERIAL RECYCLING FACILITY**

**THIS AGREEMENT** is dated for reference this 20<sup>th</sup> day of June, 2012.

**BETWEEN:**

**THE CITY OF REGINA**, a city continued pursuant to *The Cities Act* of Saskatchewan (the “City”)

-and -

**HALTON RECYCLING LTD.**, doing business as Emterra Environmental, a body corporate incorporated under the laws of British Columbia (the “Operator”)

**WHEREAS:**

- A. The City wishes to establish the Co-mingled Recycling Collection Program for certain residents of the City;
- B. As part of the Co-mingled Recycling Collection Program, the City will require access to and the services of the Material Recovery Facility in order to transport, process, market and dispose of the Collected Materials;
- C. The City issued request for proposals #1959, which is attached to this Agreement as Schedule A (the “RFP”) and wishes to retain the services of a third party to provide the Services;
- D. The Operator has responded to the RFP and has been identified as the successful proponent pursuant to the terms and conditions of the RFP to provide the Services to the City; and
- E. The City wishes to have the Operator provide the Services and the Operator has agreed to do so, all in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and promises hereinafter contained, and for other good and valuable consideration now paid and delivered by each Party to the other, the receipt and sufficiency of which is hereby acknowledged by each of the Parties hereto, the City and the Operator each agree with the other as follows:

**DEFINITIONS**

1. In this Agreement, the following terms shall have the following meanings:
  - (a) **Applicable Laws** includes the common law and any and all statutes, by-laws; regulations, permits, approvals, certificates of approval, licenses, judgments, orders, injunctions, authorizations, directives, whether federal, provincial or municipal;
  - (b) **Aseptic Containers** means any multi-layered beverage box container.
  - (d) **Award Letter** means the award letter issued to the Operator dated **April 5, 2012**;
  - (e) **Bad Weather** means weather unsuitable for outdoor activities, and or operational duties.
  - (f) **Bags** mean the semi-transparent bags that are provided to certain Designated Residences for the storage of Designated Materials.
  - (g) **Big Blue Bin Vehicles** means the vehicles used to collect the Paper placed in blue collection bins located throughout the City.
  - (h) **Boxboard** means a lightweight paperboard used in making packaging boxes or cartons such as for cereals or shoes.
  - (i) **Business Day** means a day other than a Saturday, Sunday or a statutory holiday in the Province of Saskatchewan.
  - (j) **Cart** means the 360 litre cart that is provided to certain Residences for the storage of Designated Materials.
  - (k) **Change in Law** means the coming into effect or repeal (without re-enactment or consolidation) in Saskatchewan of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Saskatchewan, in each case after the Effective Date of this Agreement;
  - (l) **City Landfill** means the landfill site and related waste disposal assets located at West ½ Section 3, Range 19, Township 18, West of 2<sup>nd</sup> Meridian in the Province of Saskatchewan.
  - (m) **City Representative(s)** has the meaning ascribed to it in section 180 hereto;
  - (n) **Claim or Claims** means claims, actions, suits, executions and demands and all loss, liability, judgements, costs, charges, damages, liens and expenses.



- (o) **Coloured High Density Polyethylene (CHDPE Plastic)** shall mean opaque plastic containers labelled with the #2 code.
- (p) **Collected Materials** collectively means Designated Materials and Contaminants that are collected as part of the Co-Mingled Recycling Collection Program.
- (q) **Collected Material Processed** shall be calculated as the sum of:
  - (i) the Tonnes of Marketed Materials shipped to an End Market;
  - (ii) the Tones of Residue shipped for disposal;
  - (iii) the Tonnes of Residue awaiting disposal; and
  - (iv) the Tonnes of Marketed Materials awaiting delivery to End Markets but which are still at the MRF or a remote material recovery facility.
- (r) **Collection Vehicles** means all vehicle used by the City or its designate to collect Collected Materials and includes Big Blue Bin Vehicles.
- (s) **Commencement Date** means the date specified in the Proponent's Proposal for the commencement of the Services, which date cannot be later than July 1, 2013.
- (t) **Co-Mingled Recycling Collection Program** means the City program for collection from Designated Residences of Designated Materials for transportation to the Designated Facility.
- (u) **Confidential Information** has the meaning ascribed to it in section 255 hereto.
- (v) **Consumer Price Index (CPI)** means the Consumer Price Index for All Items – Regina published by Statistics Canada or a comparable successor to such price index should Consumer Price Index for All Items – Regina be discontinued in its present form.
- (w) **Contaminants** shall mean any materials that are not Designated Materials that are collected as part of the Collected Materials.
- (x) **Contamination Rate** means the monthly percentage, by weight, of Contaminants in the Collected Material that are delivered to the Designated Facility as part of the Co-Mingled Recycling Collection Program, as calculated in the Monthly Composition Audit.
- (y) **Control** of a corporation or other entity is held by a person where securities of the corporation or other entity to which are attached more than 50% of the votes that may be cast to elect directors or persons acting in a similar capacity of the corporation or other entity are held, other than by way of security only, by or for the benefit of such Person.
- (z) **Council** means the City Council of The City of Regina.

- (aa) **Designated Facility** means the location that has been designated by the City to receive Collected Materials from time to time, being either a temporary Transfer Station or the MRF that is located within the City boundary or within a radius of 10 kilometres from the centroid of the City. For greater certainty, the Global Transportation Hub is located entirely within the City's boundary.
- (bb) **Designated Materials** means Paper, Glass, Tin, UCB, Polycoat Containers, PET Plastic, CHDPE Plastic, NHDPE Plastic, HDPE Plastic, and Aseptic Containers as at the commencement of the Agreement, and such other materials that may be designated by the City from time to time.
- (cc) **Designated Residences** means all residences approved by the City to be part of the Co-Mingled Recycling Collection Program from time to time.
- (dd) **Effective Date** means the date first written above.
- (ee) **End Market** collectively, means corporations, organizations or partnerships willing to accept or purchase Marketable Materials and includes brokers. For greater certainty, End Markets includes the SARCAN program, but does not include a landfill, transfer station or any disposal facility.
- (ff) **Environmental Laws** means any and all statutes, by-laws, regulations, permits, approvals, certificates of approval, licenses, judgments, orders, judicial decisions, injunctions, and authorizations related to environmental matters which are applicable to the Services.
- (gg) **Equipment** means the vehicles and any other equipment or materials used by the Operator in the provision of the Services;
- (hh) **Force Majeure** means an event beyond the reasonable control, and not attributable to the negligence or wilful misconduct of the Party affected, including but not limited to the following: flood, earthquake, storm, lightning, fire, drought, flood, explosion, war, riot, strike, civil disturbance, sabotage or electrical outage, provided, however, that Force Majeure shall not include any equipment failure due to normal wear and tear or due to neglected maintenance or repair.
- (ii) **Glass** means glass jars, bottles and containers used as food packaging.
- (jj) **Good Industry Practice** means that degree of skill, care, prudence, foresight and operating practice which would reasonably be expected from a skilled and experienced Operator engaged in the same type of undertaking as the Operator under the same or similar circumstances.
- (kk) **Health and Safety Obligation(s)** means any obligation imposed on the Operator by the Applicable Laws or compliance with Good Industry Practice or the



Agreement in respect of health and safety at work, including all applicable requirements of the *Occupational Health and Safety Act* (Saskatchewan), and regulations, as may be amended from time to time.

- (ll) **High Density Polyethylene (HDPE Plastic)** means recyclable plastic, used for items such as milk containers, detergent containers and base cups of plastic soft drink bottles.
- (mm) **Indemnitees** means the City, its elected officials, officers, directors, employees, agents, representatives, successors
- (nn) **Inspector** means the person or persons appointed by the City to monitor and assess the quality and performance of the Operator in providing the Services.
- (oo) **Intellectual Property Rights** means any right in respect of any copyright, trademark, patent, registered design, design right, topography right, service mark, application to register any of the aforementioned rights, trade secret, rights in unpatented know-how, right of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world.
- (pp) **Letter of Credit** has the meaning ascribed to it in clause 215(a) hereto.
- (qq) **Marketable Materials** means the end products produced by the Operator from processing the Designated Materials at the MRF or such other facility as may be required.
- (rr) **Mixed Paper** collectively means recovered paper that is not sorted into specific categories and includes, but is not limited to, Newsprint, Old Corrugated Containers, Boxboard, and Aseptic Containers.
- (ss) **Material Recovery Facility (MRF)** is a specialized facility that receives, separates and prepares Collected Materials for marketing to End Markets and includes all contiguous land and structures and improvements on such land used for the storage and processing of Collected Material.
- (tt) **Natural High Density Polyethylene (NHDPE Plastic)** means translucent plastic containers labelled with the #2 code.
- (uu) **Net Revenue (Net Loss)** means the total value of the invoices that the Operator has received from End Markets for the sale of the Marketable Material to the End Market less direct transportation costs (if any) incurred by the Operator in transporting the Marketable Materials to the End Markets.
- (vv) **Newsprint** shall include newspaper and advertising supplements and other paper grades.

- (ww) **Non-City Material** means material other than the Collected Material received and processes at the MRF.
- (xx) **Old Corrugated Containers** shall mean corrugated containers having liners of either test liner, jute or kraft.
- (yy) **Operating Year** means the twelve month period immediately following the Commencement Date and each subsequent anniversary of the Commencement Date.
- (zz) **Operator Personnel** means all employees, agents, and sub-Operators of the Operator, including all employees and agents of any sub-Operators of the Operator, engaged to provide the Services.
- (aaa) **Operator Representative(s)** means the person or persons designated by the Operator to act as a representative of the Operator under this Agreement.
- (bbb) **Operator Supervisor(s)** mean those individuals engaged by the Operator to supervise the Operator Personnel in the delivery of the Services. Operator Supervisor(s) must be dedicated to the supervision of the Operator Personnel and when acting as an Operator Supervisor.
- (ccc) **Paper** means paper products such as Boxboard, Mixed Paper, Newsprint, Old Corrugated Containers and Sorted Office Paper.
- (ddd) **Performance Security** means the Letter of Credit or certified cheque delivered by the Operator to the City as more particularly described in section 215 of this Agreement.
- (eee) **Polyethylene Terephthalate (PET Plastic)** means plastic resin used to make packaging, particularly soft drink bottles.
- (fff) **Polycoat Containers** means any paper-based carton packaging for beverage and food products that are made of bleached paperboard and polyethylene and some varieties that have a micro-thin layer of aluminum foil in the middle.
- (ggg) **Processing Fee** is the fee payable pursuant to sections 90 and 91 herein.
- (hhh) **Prohibited Act** means:
- i) offering, giving or agreeing to give any employee and/or any elected representative of the City any gift or consideration of any kind for any reason, including as an inducement or reward:



- A) for doing or not doing (or for having done or not having done) any act in relation to the performance of the terms of this Agreement or any other contract with the City; or
  - B) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the City;
- ii) entering into this Agreement or any other contract with the City in connection with which commission has been paid or has been agreed to be paid by the Operator or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the City; or
- iii) committing any offence under:
  - A) the Criminal Code of Canada; or
  - B) any legislation creating an offence in respect of fraudulent acts; or
- (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the City;
- iv) committing any material offence under any Applicable Laws; and
- v) defrauding or attempting to defraud or conspiring to defraud the City.
- (iii) **Proposal** means the Operator's proposal submitted to the City in response to the RFP, dated March 1, 2012. The Proposal is attached hereto and marked as Schedule "B" to this Agreement.
- (jjj) **PST** means all provincial sales taxes, including any harmonized sales taxes that may be payable on account of or as a result of this Agreement.
- (kkk) **Recovery Rate** has the meaning set out in sections 46 to 48 herein.
- (lll) **Recycling Collection Schedule** means Monday through Friday between the hours of 7:30 a.m. and 3:30 p.m. including Statutory Holidays with the exception of Christmas Day. In the event that a regularly scheduled day falls on Christmas Day, the City's collection contractor shall provide the collection services scheduled for Christmas Day on the next following Saturday following Christmas Day.
- (mmm) **RFP** has the meaning ascribed in Recital C hereto;

- (nnn) **Required Recovery Rate** means a Recovery Rate of ninety (90%) percent or greater.
- (ooo) **Residue** means the Contaminants and the Designated Materials not captured during the MRF processing operations.
- (ppp) **SARCAN Materials** mean Used Beverage Containers, PET Plastic, HDPE Plastic, beer bottles, Tin, mixed plastic, Polycoat Containers, used paint, and used electronics.
- (qqq) **Services** collectively means all labour, materials, services, transportation, supplies, tools, equipment, apparatus and incidentals required to:
- (i) transport Collected Materials from a temporary Transfer Station to a material recovery facility if the Operator's MRF is not yet in operation;
  - (ii) process the Collected Materials into Marketable Materials, including but is not limited to, receiving, inspecting, sorting, baling, storing, weighing, loading, marketing and transporting;
  - (iii) marketing Marketable Materials to End Markets;
  - (v) Revenue Sharing; and
  - (iv) disposing of the Residue.

For greater certainty, Services include all of these services even where such services are performed by a MRF that is not owned by the Operator.

- (rrr) **Sorted Office Paper** means high grade paper from offices such as computer paper, sorted white ledger, copier paper and office stationary.
- (sss) **Statutory Holiday** means any of the following days which, from time to time may be added or removed by legislation:
- (i) New Year's Day
  - (ii) Family Day
  - (iii) Good Friday
  - (iv) Easter Monday
  - (v) Victoria Day
  - (vi) Canada Day
  - (vii) Saskatchewan Civic Holiday
  - (viii) Labour Day
  - (ix) Thanksgiving Day
  - (x) Christmas Day
  - (xi) Boxing Day.
- (ttt) **Tin** means tin-coated steel containers, such as cans for food packaging. This includes food cans, Used Beverage Containers, aerosol cans and metal lids from bottles and jars.



- (uuu) **Tipping Area** means the space located within the Transfer Station or MRF where the Collection Vehicles tip and unload the Collected Materials.
- (vvv) **Tonne** means metric ton equal to 2205 lbs.
- (www) **Transfer Station** means a place where Collected Materials are transferred from smaller Collection Vehicles into larger transport vehicles for movement to a MRF.
- (xxx) **Unit Processing Fee** means unit charge specified in Schedule "C" which is attached hereto and forms part of this Agreement.
- (yyy) **Used Beverage Containers (UBC)** means beverage, food and non-food cans made of aluminum material.

## REFERENCES

2. Any reference made in this Agreement to:

- (a) "this Agreement" means this agreement, including the Schedules hereto, as it may from time to time be supplemented or amended and in effect;
- (b) "herein", "hereof", "hereby", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any particular article, section or other provision hereof, and include any and every amendment, restatement, replacement, variation, supplement or novation hereof;
- (c) this Agreement, including without limitation, any agreement collateral or ancillary to this Agreement and any agreement contained in a Schedule hereto, shall, unless otherwise indicated, be construed as a reference to such agreement as it may have been, or may from time to time be, amended, restated, replaced, varied, extended, renewed, supplemented or novated;
- (d) Sections, articles or Schedules, unless otherwise indicated, shall be construed as references to the sections and articles of and Schedules to this Agreement, as the case may be. The provisions of each Schedule shall constitute provisions of this Agreement as though repeated at length herein;
- (e) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor to such entity; and
- (f) except where otherwise specified, any reference to a statute includes a reference to such statute and to its regulations, with all amendments in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute or regulation.

**INTERPRETATION**

3. For all purposes of this Agreement, except as otherwise expressly provided, or unless the context otherwise requires:
- (a) the headings are for convenience of reference and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions;
  - (b) all accounting terms not otherwise defined have the meanings ordinarily assigned to them at the date hereof pursuant to International Financial Reporting Standards ("IFRS") and all computations made pursuant to this Agreement must be made in accordance with IFRS applicable from time to time;
  - (c) any reference to a currency is a reference to Canadian currency;
  - (d) "in writing" or "written" includes printing and typewriting, which may be communicated by facsimile;
  - (e) the word "including", when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter; and
  - (f) words importing the masculine gender include the feminine or neuter gender and words importing the feminine gender include the masculine or neuter gender and words in the singular include the plural, and words importing the neuter gender include the masculine or feminine gender and words in the plural include the singular.

**Invalidity of Provisions; Severability**

4. If any covenant, obligation or agreement of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to persons, or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**Waiver**

5. No failure or delay on the part of any Party in exercising any right, remedy, recourse, power or privilege (for the purposes of this section 5, collectively, a "Right") under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any



Right preclude any other or further exercise thereof or the exercise of any other Right. Except as may be limited herein, any Party may, in its sole discretion, exercise any and all Rights available to it under this Agreement or any other remedy available to it at law or in equity and such Rights may be exercised concurrently or individually without the necessity of making any election.

#### **Governing Law, Attornment**

6. This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein and the Parties hereto hereby irrevocably attorn to the jurisdiction of the courts of Saskatchewan.

#### **Interpretation Not Affected by Party Drafting**

7. Each Party hereto acknowledges that he, she or it and his, her or its legal counsel have reviewed and participated in settling the terms of this Agreement, and the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of this Agreement.

#### **Enurement**

8. This Agreement shall enure to the benefit of be binding upon the Parties hereto and their respective successors and permitted assigns.

#### **Schedules**

9. The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be part hereof:

Schedule A	the RFP
Schedule B	the Proposal
Schedule C	Unit Processing Fee
Schedule D	Monthly Audit Protocol
Schedule E	Recovery Rate Protocol
Schedule F	Operator's Marketing Plan

#### **Inconsistency and Paramountcy**

9. In the event of any inconsistency, ambiguity or conflict among the provisions or documents constituting this Agreement, the provisions or documents shall take precedence and govern in the following order to the extent necessary to eliminate such inconsistency or ambiguity:

- (a) this Agreement;
- (b) Schedule C;
- (c) Schedule D;
- (d) Schedule A;
- (e) Schedule E;
- (f) Schedule F and
- (g) Schedule B.

**CONDITIONS PRECEDENT**

10. Notwithstanding anything else herein contained, this Agreement shall be subject to the following conditions:

- a) within seven (7) Business Days of the date that the Operator and the City have each executed this Agreement, the Operator shall provide the City with the Performance Security as required under section 215 herein
- (b) on or before December 1, 2012, the Operator shall submit to the City:
  - (i) copy of title, or other document providing confirmation that the Operator has secured the land to be used for the MRF or Transfer Station or both, if both are required; and
  - (ii) a Saskatchewan Registry Corporate Profile Report showing that the Operator is licensed to do business in the Province of Saskatchewan.
- (c) within seven (7) Business Days of the date of the Award Letter issued to the Operator, the Operator shall submit to the City:
  - (i) Certificates of Insurance for all insurances required under section 218 (except the insurance required in section 219(c) hereto); and
  - (ii) a current Workers' Compensation Board (Saskatchewan) clearance certificate.
- (d) on or before June 1, 2013, the Operator shall submit to the City:
  - (i) a copy of its contingency plan;
  - (ii) a copy of its strike contingency plan;
  - (iii) a copy of its emergency response plan;
  - (iv) a copy of safety management practices plan; and
  - (v) Certificate of Insurance for the items required in section 219(c) of this Agreement.

(collectively the "Conditions Precedent")

11. All of the Conditions Precedent in section 10 are for the exclusive benefit of the City. In the event that any of the Conditions Precedent are not satisfied, fulfilled or performed on or before the dates specified in section 10 then this Agreement shall be null and void unless the City waives in writing, the satisfaction, fulfillment or performance of any such Conditions Precedent. In the event this Agreement becomes null and void, each of the City and the Operator shall be released from all of their respective obligations under this Agreement.



**TERM**

12. This Agreement shall come into force on the Effective Date and shall continue in force for ten (10) years from the commencement of the Services as set out in this Agreement, being July 1, 2013 and concluding on June 30, 2023, unless terminated earlier in accordance with section 244 of this Agreement (the “**Term**”).
13. The City shall have the option to extend the Term of this Agreement for two (2) consecutive periods of one (1) years each (the “**First Extension**” and the “**Second Extension**”). Each extension period shall be on the same terms and conditions as provided in this Agreement, except that:
  - (a) following the Second Extension there shall be no further rights to extend the term of this Agreement; and
  - (b) the Processing Fee shall be as specified in sections 90, 91 and 92 herein. The City may exercise each extension right by written notice given to the Operator not less than six (6) months before the date of expiry of the Term or First Extension.
14. The City and the Operator agree that the Processing Fee for the First Extension and the Second Extension shall be calculated in the same manner and in accordance with the section 90,91 and 92 herein and be as follows:
  - (a) the Processing Fee for the First Extension shall be equal to the Processing Fee charged for the last year of the Term multiplied by the Escalation Factor; and
  - (b) the Processing Fee for the Second Extension shall be equal to the Processing Fee charged for the First Extension multiplied by the Escalation Factor.
15. In the case of any dispute between the City and the Operator as to the calculation of the Processing Fee during the First Extension or the Second Extension, the Parties agree to resolve any such dispute in accordance with the dispute resolution provisions in section 279 of this Agreement.

**OWNERSHIP OF COLLECTED MATERIAL**

16. The Operator acknowledges and agrees that:
  - (a) ownership of and title to the Collected Materials; and
  - (b) all risk, loss and liability relating to the Collected Materials,shall pass to the Operator once the Collected Material has been delivered to the Transfer Station or the MRF.

**COMMENCEMENT**

17. In the event that:

- (a) the Operator cannot receive the Collected Materials on July 1, 2013; and
- (b) the City is required to implement contingency measures to manage the Collected Materials for which the Operator is not able to provide the Services

the Operator acknowledges that the City will suffer damages and loss ("Loss 1") on account of the following:

- (i) the processing costs incurred by the City in order to implement contingency measures relating to the processing or storage of Collected Materials; and
- (ii) the loss of revenue from the sale of Marketable Materials.

18. The Operator acknowledges and agrees that the sum provided for in section 236 of this Agreement is a genuine pre-estimate of the City's Loss 1 resulting from the Operator's failure to receive the Collected Materials on July 1, 2013 and any day or portion of a day thereafter.

19. In the event that:

- (a) the Operator's own MRF cannot perform all of the Services required in this Agreement on July 1, 2014; and
- (b) the Operator is operating a Transfer Station which requires the City to implement contingency measures to manage the Services at a temporary Transfer Station or at a remote material recovery facility

the Operator acknowledges that the City will suffer loss (the "Loss 2") in the amount of the additional expenses the City will incur as a result of supervising this Agreement at a remote MRF:

20. The Operator acknowledges and agrees that the sum provided for in section 236 of this Agreement is a genuine pre-estimate of the City's Loss 2 resulting from the Operator's failure to perform the Services on the Commencement Date and any day or portion of a day thereafter.

21. In the event the Operator cannot perform all of the Services required in this Agreement at the Operator's MRF on or before July 1, 2015, the City shall be entitled to terminate, in its sole discretion, this Agreement, immediately.



**SERVICES****Engagement**

22. The City engages the Operator to provide the Services and to undertake all necessary activities to perform the Services in accordance with the terms and conditions of this Agreement.

**Priority**

23. The Operator acknowledges and agrees that receiving, sorting and processing the Collected Materials from the City and the Services provided to the City pursuant to this Agreement shall be the first priority of the Operator at the MRF or the Transfer Station.

**Weighing**

24. The MRF or any Transfer Station shall have weigh scales capable of weighing the Collection Vehicles. All scales used in performing the Services must be certified for trade by Consumer and Corporate Affairs Canada and be recertified every six months at the Operator's expense. All certification reports shall be provided to the City within thirty (30) days of the date that such reports are issued.
25. The Collection Vehicles shall be weighed coming in and going out of the Designated Facility. The difference between the incoming and outgoing weights of each Collection Vehicle shall be the weight for that load of Collected Materials (the "Collected Material Tonnes").
26. All scales must be capable of printing a scale ticket that shows the following information:
- (a) Collection Vehicle's Driver's Name;
  - (b) Collection Vehicle's Number;
  - (c) Collection Vehicle's Corporation;
  - (d) Collection Vehicle's route number;
  - (e) gross and tare Collection Vehicle weights;
  - (f) load weight of each Collection Vehicle entering the Designated Facility;
  - (g) the Collected Material Tonnes of each Collection Vehicle;
  - (h) individual load weight of each Collection Vehicle exiting the Designated Facility;
  - (i) calculated density of each load of Collected Materials;
  - (j) date and time of load entering the Designated Facility; and

- (k) date and time of loading exiting the Designated Facility.
27. In the event a scale is temporarily out of order, the Operator shall notify the City immediately and the Operator shall make alternate arrangements, as may be satisfactory to the City, in its sole discretion, acting reasonably, to record weights of the Collection Vehicles, at the Operator's cost.
28. The Operator shall provide the driver of each Collection Vehicle with a scale ticket for each load of Collected Material that is tipped at the Designated Facility.

**Receiving Collected Material**

29. The Designated Facility shall be designed and operated by the Operator in such a way as to aid in the efficient receiving and unloading of Collection Vehicles. In particular, the Operator acknowledges and agrees that:
- (a) the Operator shall coordinate all incoming Collection Vehicles and other vehicles at the Designated Facility to ensure efficient and timely unloading and processing;
  - (b) the Collection Vehicles that are part of the Co-Mingled Recycling Collection Program shall have unloading priority at the Designated Facility over all other customer vehicles and the Operator's vehicles;
  - (c) the Designated Facility shall have a Tipping Area that can handle receiving twelve (12) Collection Vehicles daily making an average of two (2) loads per Business Day (24 loads total per Business Day);
  - (d) the Designated Facility shall be able to accommodate the unloading of a minimum of two (2) Collection Vehicles at the same time;
  - (e) the Designated Facility shall be able to safely accommodate each Collection Vehicle and the unloading of all Collected Material;
  - (f) the Designated Facility shall have sufficient space for three (3) Collection Vehicles to queue on the Designated Facility site without such queuing adversely affecting vehicular or pedestrian traffic in the vicinity of the Designated Facility;
  - (g) the Operator will coordinate and operate the Designated Facility such that no Collection Vehicle waits to enter the Designated Facility for a period of time that is longer than fifteen (15) minutes; and
  - (h) the Designated Facility shall have a dedicated receiving area with two or more truck doors of sufficient height and width to provide safe ingress and egress for all Collection Vehicles.



30. The Operator acknowledges and agrees that the Inspector that is present at the Designated Facility as well as the drivers of each Collection Vehicle will monitor and record waiting times of Collection Vehicles at the Designated Facility. In the event that the Inspector or any Collection Vehicle driver advises the City that the requirements of section 29 are not met, then the City shall report such items or matters to the Operator. The Operator agrees that upon receipt of such information from the City, that it shall then immediately modify its operations to ensure that Collection Vehicles are unloaded in accordance with section 29 of this Agreement.
31. In the event the Operator fails to meet the time requirement in subsection 29(g) more than three (3) times per month then such failure shall be deemed a Non-Performance and dealt with in accordance with sections 236 and 237 herein

#### **Sorting of Collected Material**

32. Following the receipt of the Collected Materials pursuant to section 29 herein, the Operator shall sort the Collected Material at the MRF or temporarily at a remote material recovery facility in accordance with the process outlined in the Proposal
33. The Operator acknowledges and agrees that even though Carts will be used for collecting most Designated Materials, some Collected Material may come in Bags and some may come in unsolicited plastic bags. As part of the Services, the Operator shall open all Bags and unsolicited translucent plastic bags and sort the Collected Material contained therein regardless of whether such bag is open or tied, shut or sealed.
34. The Operator's trained employees shall inspect the Collected Material in the Tipping Area.

#### **Contamination**

35. The Operator acknowledges and agrees the Collected Materials will contain Contaminants, some of which may be hazardous, and that the City makes no representations or warranties as to the tonnage of Collected Materials or to the percentage of Contaminants that may be contained in the Collected Materials.
36. The Operator shall receive all Collected Materials regardless of the levels of Contaminants and process all Collected Materials in accordance with the terms and conditions of this Agreement.
37. It will be the Operator's responsibility, at its sole cost, risk and expense to dispose of all Contaminants, including any hazardous materials contained in the Contaminants in accordance with Applicable Law.
38. In addition to the indemnity in sections 225 to 228 herein, the Operator agrees to indemnify and save the City harmless from any risk, loss, or Claim of any kind arising out of the Operator's contact with the Collected Materials and any Contaminants contained therein.

39. If the Operator determines that a load of Collected Material, in whole or in part, contains high levels of Contaminants then the Operator shall isolate the load from other Collected Material and immediately notify the City. The City shall then have the Inspector or his or her designate inspect such loads of Collected Material for Contaminants. If the City is unable to send the Inspector or his or her designate to inspect the load the Operator shall take photos of such load and shall provide those photos to the City via email within two (2) hours of such load being dumped in the Tipping Area. The photographs shall show the overall load, Contaminants and the Collection Vehicle identification number.

**Storage of Collected Material and Marketable Material**

40. The Operator shall provide for a reserve indoor storage capacity at the Designated Facility of such a size that it can, at any time, accommodate a minimum of three (3) days worth of Collected Material (except Glass and Tin which may be stored outdoors) in the event of an unscheduled equipment breakdown or unscheduled maintenance at the Designated Facility.
41. Any alternate facility that is used by the Operator for reserve storage capacity must be as close to the City's collection routes for the Co-Mingled Recycling Collection Program as possible, with minimal impact to traffic and residential areas. The Operator shall be responsible for transporting the Collected Materials to such reserve storage facility.
42. The Operator shall maintain a storage and inventory management system at its MRF and at any temporary remote material recovery facility, for tonnage of Collected Material waiting processing, Marketable Materials awaiting delivery to End Markets, and of Residue awaiting disposal. The Operator shall be responsible for weighing and storing of such Marketable Materials and reporting the tonnage of each Marketable Material stored and awaiting sale as part of its Monthly, Quarterly and Annual Reports.

**Processing Designated Material into Marketable Material**

43. The Operator acknowledges and agrees that following the completion of the sorting of the Collected Materials as specified in sections 32 to 33 herein, the MRF shall be capable of processing any and all of the Designated Materials received throughout the Term and any renewals thereof into Marketable Material regardless of the tonnage, composition or condition of such Designated Materials.
44. The Operator represents, warrants and covenants that when it is processing the Designated Material into the Marketable Material that the Operator shall:
- (a) use and ensure that the Operator's Equipment is capable of producing a variety of Marketable Material in order to respond to market demands and to optimize revenue;
  - (b) operate the MRF and all of the Operator's Equipment such that the Operator achieves or exceeds the Required Recovery Rate;



- (c) operate the MRF and all of the Operator's Equipment such that the Operator is capable of processing all tonnages and compositions of Designated Materials that may be received from time to time at no additional cost to the City, the Operator acknowledging and agreeing that the tonnage and composition of Designated Materials will fluctuate over the Term and that the City is not representing, warranting or guaranteeing the tonnage or composition of Designated Materials that may be received by the Operator;
  - (d) perform the Services in such a manner that accommodates the Recycling Collection Schedule, as may be amended from time to time;
  - (e) ensure the total throughput capacity for the MRF is as stated in the Proposal; and
  - (f) process the Designated Materials in an environmentally and ethically responsible way.
45. In the event the Operator's MRF is unable to process all of the Collected Material and it is necessary for the Operator to transport the Collected Materials to a remote material recovery facility for performance of the Services, then such circumstance shall be deemed a Non-Performance and dealt with in accordance with sections 236 and 237 herein.

#### **Recovery Rate**

46. The Recovery Rate is calculated as the ratio of the total tonnage of Marketable Materials produced at the Designated Facility to the total tonnage of Designated Materials delivered to the Designated Facility over the same period expressed as a percentage.
47. The Operator's Recovery Rate will be determined on a quarterly basis. For the purpose of calculating the Operator's Recovery Rate, Designated Materials shall be determined from the average of Monthly Recovery Rate Audits for the quarter and the tonnages of Marketable Materials as stated in the Quarterly Report for that quarter.
48. The Operator represents, warrants and guarantees to the City that it shall operate the Designated Facility and carry out the Services in such a fashion that will meet or exceed the Required Recovery Rate at all times.
49. Beginning in the second quarter of the first Operating Year, and thereafter for the remainder of the term of the Agreement or any extensions thereof, if the Operator's Recovery Rate for the quarter is less than the Required Recovery Rate then such failure shall be deemed to be Non-Performance and dealt with in accordance with sections 236 and 237 herein.

#### **Monthly Composition Audit**

50. The Operator shall, at its own cost and expense, conduct at least one (1) inbound composition audit of the Collected Materials per month for the Term of this Agreement or any extension thereof (the "Monthly Composition Audit") in accordance with the protocol in Schedule "D" to this Agreement.

51. Each Monthly Composition Audit shall be performed by the Operator's suitably trained staff with a City employee entitled to be present and shall identify the following:
- (a) the total Collected Material Tonnes per month,
  - (b) proportions of each Designated Material in the Collected Materials;
  - (c) proportion of Contaminants in the Collected Materials;
  - (d) the Contamination Rate; and
  - (e) calculated density of Collected Material.

#### **Independent Audit**

52. For the first two Operating Years of this Agreement the Operator shall, at its own cost and expense, arrange for an independent party to conduct one (1) day of in-bound composition audits of the Collected Materials that are received at the Designated Facility per month (the Independent Audit") in accordance with the protocol in Schedule "D".
53. Each Independent Audit shall be performed by the Operator's suitably trained staff with a City employee entitled to be present and shall identify the following:
- (a) the total Collected Materials Tonnes per month,
  - (b) proportions of each Designated Material in the Collected Materials;
  - (c) proportion of Contaminants in the Collected Materials;
  - (d) the Contamination Rate; and
  - (e) calculated density of Collected Material.

#### **Recovery Rate Audit**

54. The Operator shall, at its own cost and expense, conduct at least one (1) Recovery Rate audit per month during the Term of this Agreement (the "Monthly Recovery Rate Audit") in accordance with the Operator's protocol which formed part of its Proposal and is attached as Schedule "E" to this Agreement.
55. The Parties acknowledge and agree that the Monthly Recovery Rate Audit may be done in conjunction with the Monthly Composition Audit.
56. Each Monthly Recovery Rate Audit shall be performed by the Operator's suitably trained staff with a City employee entitled to be present and shall identify the Recovery Rate for the Operator's MRF or any temporary remote material recovery facility that the Operator may be using to provide the Services.



**Audit Right of the City**

57. In addition to the Monthly Composition Audits, the Independent Audits, or the Recovery Rate Audits, the City shall have the right to perform periodic audits at random and at any time throughout the Term for the purpose of verifying that the Operator is performing all of the Services in compliance with the requirements and obligations set out in this Agreement (the "City Audits").
58. The Operator will, at no additional cost to the City:
- (a) provide a suitable space for the City or its agent to conduct the City Audits;
  - (b) assist the City or its agent with the City Audits by retrieving and transporting audit samples to a suitable audit space available at the MRF;
  - (c) provide any documents or procure the provision of documents relating to the Agreement and the Operator's performance of the Services as may be reasonably required by the City; and
  - (d) co-operate fully and in a timely manner with any reasonable request by the City (whether made by an internal or external auditor), and provide any other assistance as required.
59. In the event that the City Audit determines that the Operator has not complied with any requirement or obligation under this Agreement, the Operator shall immediately remedy such non-compliance and shall reimburse the City for the cost of conducting such City Audit. The City shall also be entitled to recover the cost of such City Audit from the Monthly Invoices submitted by the Operator in accordance with sections 98, 99 and 100 herein.
60. In the event that the City Audit determines that the Operator has complied with all of the requirements under the Agreement, then the cost of conducting such City Audit shall be borne by the City.

**Marketing Marketable Material**

61. The Operator shall carry out its marketing plan for the sale of Marketable Materials in accordance with the Operator's plan which formed part of its Proposal and is attached as Schedule "F" to this Agreement.
62. The Operator shall, at its own cost and expense, be responsible for weighing, transporting and marketing all Marketable Material to reliable and ethical End Markets while optimizing revenue. The Operator shall be responsible for marketing all of all Marketable Materials and shall at minimum undertake the following:

- (a) manage the proposed grade of Marketable Material(s) that is intended to be produced for each of those items with a goal of maximizing revenue;
  - (b) obtain access to markets for the Marketable Materials;
  - (c) sustain suitable markets for the Marketable Materials;
  - (d) enter into contracts with End Markets for the sale of Marketable Materials;
  - (e) transport the Marketable Material to the End Market;
  - (f) arrange all inventory controls for the Marketable Material;
  - (g) track all Marketable Material sent to End Markets; and
  - (h) collect, in a timely manner, all revenue for the Marketable Material from End Markets.
63. The Operator shall provide to the City, if requested by the City, copies of any and all current marketing agreements relating to the sale of all Marketable Materials to primary and secondary markets for each commodity within thirty (30) days of the date that such request is made by the City. As such agreements change, expire and are renegotiated current and revised the Operator shall provide copies of all such agreements to the City.
64. If the Operator determines, after using and exhausting its best efforts at marketing and after documenting and reporting the potential markets' responses to the Marketable Material, that a particular Marketable Material has no market (at that particular time), the Operator and the City shall meet jointly to determine an appropriate course of action and resolution to the any issues that may occur. Parties agree to resolve any such dispute in accordance with the dispute resolution provisions in section 279 of this Agreement
65. In the event the Province of Saskatchewan develops the Multi-Material Recycling Program ("MMRP"), or a similar program that requires the City to sell recyclable materials collected through the Co-Mingled Recycling Collection Program to designated buyers, the Operator acknowledges and agrees that it will be required to sell the Marketable Materials to such designated buyer and to comply with the requirements of MMRP.
66. In the event that the Operator wishes to sell the Marketable Material to itself or to an entity or person under the Control of the Operator then the Operator shall satisfy the City that the sale price of the Marketable Material to the Operator or the entity or person under the Control of the Operator was equal to or exceeded the sale price of the Marketable Materials to an arms-length End Market. Upon receipt of such information the City may, at its sole discretion consent to the sale of the Marketable Material to the Operator or the entity or person under the Control of the Operator.



**Disposing of Residue**

67. The Operator shall, at its own cost and expense be responsible for the weighing, reporting, transporting and disposing of all Residue to a licensed waste management facility, in accordance with Applicable Laws.

**APPLICABLE LAWS**

68. The Operator shall provide the Service in accordance with *The Regina Waste Management Bylaw* No. 8942. Should this Bylaw be amended during the Term of this Agreement or should a new Bylaw be passed by City Council during the Term of this Agreement, the Operator shall make changes necessary to comply with these Bylaw revisions and shall not be entitled to any addition to or deletion from the Processing Fee unless the City Representative determines that the changes require substantial changes in the Operator's service procedure.

**OPERATOR REPRESENTATIONS AND WARRANTIES**

69. The Operator represents, warrants and covenants that it shall at its own cost and expense:
- (a) provide all labour, equipment and materials required to perform the Services;
  - (b) obtain and maintain all licenses, approvals and permits required by any government department, ministry or agency, including the City, for the delivery of the Services, and shall provide, at the request of the City, proof of such licenses, approvals and/or permits
  - (c) not, except in accordance with this Agreement, receive monies or favour for the delivery of the Services, and shall ensure compliance by all Operator Personnel;
  - (d) not sell, rent, lease, promote or donate any Collected Materials except in accordance with the terms of this Agreement;
  - (e) in the event that the work of another contractor retained by the City (such as snow removal, parking, construction, etc.) prevents the Operator from performing the Services, make appropriate arrangements to ensure that there is no disruption of Services;
  - (f) provide the Services in accordance with Good Industry Practice; and
  - (g) comply with all Applicable Laws in delivering the Services.

**Variability**

70. The Operator acknowledges and agrees that:

- (a) there may be considerable variation in the amount of Collected Materials to be collected in a given Business Day and over the Term of this Agreement; and
  - (b) the City makes no guarantee as to the volume or composition of Collected Materials.
71. The City makes no representation or warranty that historical data or information relating to recycling volumes and/or tonnages represents an accurate forecast of future volumes and/or tonnages. In particular, the Operator acknowledges that:
- (a) the Operator is solely responsible and assumes the risk for determining or predicting volumes and/or tonnages of Collected Material to be collected over the Term of the Agreement;
  - (b) there may be seasonal and yearly fluctuations in the volumes and/or tonnages of Collected Material which may be experienced. These are conditions over which the City has no control and the Operator shall be prepared to overcome any problems arising from any variations in quantities whatsoever;
  - (c) the City is actively encouraging customers and other persons to divert waste to recycling wherever possible. Such efforts by the City are likely to change the volumes and/or tonnages of Collected Material to be collected over the Term of the Agreement.
72. The Operator represents that it has factored the above volume/tonnage fluctuations into its determination of the Processing Fee under this Agreement. The Operator hereby waives, releases and discharges the City from any and all claims that may arise at any time in the event the actual volumes and/or tonnages of Collected Material differ from those determined or predicted by the Operator.
73. The Operator agrees that notwithstanding any variation, it is required to meet any and all variation in demand by using extra Equipment, Operator Personnel or overtime if required, in order that Collected Materials shall be processed in accordance with the requirements of this Agreement.

## **CHANGE MANAGEMENT**

### **Changes to Services**

74. The Parties each agree that they will use commercially reasonable efforts to ensure continuous improvement in the way that the Services are performed having regard to a combination of economy, efficiency and effectiveness, sustainability and achieving the best value in the manner in which the Services are performed. In order to ensure continuous improvement in the Services, the Parties agree that either Party may make changes to the Services in accordance with process outlined sections 76 to 89 herein.

### **Changes to Designated Material**



75. The Operator acknowledges and agrees that the City is committed to maximizing the diversion of Designated Material from the Landfill and changes to the Services, including but not limited to the expansion or reduction of what constitutes Designated Materials, the addition or subtraction of Designated Residences or the utilization or new procedures or technologies may be required in order to increase and support the City's diversion goals. The Operator acknowledges that the City may expand or reduce what constitutes Designated Materials in accordance with the process outlined in sections 76 to 89 herein.

**Changes Initiated by the City**

76. The City shall be entitled to make changes to the Services and/or the Agreement in accordance with sections 76 to 83 herein. If the City requires a change, the City shall notify the Operator, in writing, describing the required change in sufficient detail so as to enable the Operator to calculate and provide an estimate of the increase or decrease in its costs (the "Estimate"), if any.
77. As soon as practicable, and in any event within fifteen (15) Business Days after having received notification from the City, the Operator shall deliver the Estimate to the City. The Estimate shall state:
- (a) the impact, if any, which the proposed change will have on the provision of the Services;
  - (b) any amendment which may be required to be made to the Agreement as a result of the proposed change;
  - (c) any change in Operator costs that may result from the proposed change;
  - (d) any loss of revenue that may result from the proposed change;
  - (e) any gain in revenue that may result from the proposed change; and
  - (f) any adjustment to the Processing Fee which the Operator intends to propose.
78. The Operator shall provide, with the Estimate, objective evidence that it has used best efforts to minimize any increase in costs and maximize any reduction in costs, demonstrating that any costs to be incurred or avoided have been measured in a cost-effective manner.
79. The Operator shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money when procuring any work, services, supplies, materials or equipment required in relation to the change in the Services.
80. As soon as practicable after the City receives the Estimate, the Parties shall discuss and use reasonable commercial efforts to reach agreement on the issues set out in the Estimate.

81. If the Parties cannot agree on the Estimate then, unless the City withdraws the proposed change, the dispute will be determined in accordance with section 279 herein.
82. As soon as practicable after the Estimate has been agreed upon or otherwise determined pursuant to section 80 herein the City shall:
  - (a) confirm in writing the Estimate (as such may have been modified), subject to Council approval; or
  - (b) withdraw the proposed change.
83. If the City does not provide the written confirmation referred to in section 82 herein within twenty (20) Business Days of the contents of the Estimate having been agreed or determined, then, the City's proposed change shall be deemed to have been withdrawn.

#### **Changes Initiated by the Operator**

84. If the Operator wishes to propose a change in the Services and/or the Agreement, it must notify the City. The Operator shall:
  - (a) set out in writing the proposed change in sufficient detail to enable to City to evaluate it in full;
  - (b) specify the Operator's reasons for proposing the change;
  - (c) consult with the City with a view to determining whether the City is prepared to agree to the change and, if so, what resulting changes to the Services and/or the Agreement that the City may require;
  - (d) describe the implications of the change, including any anticipated change in the costs of providing the Services and any gain or loss in revenue to the Operator potentially associated with the proposed change;
  - (e) indicate, in particular, whether a variation to the Processing Fee is proposed (and, if so, provide a detailed cost breakdown of such proposed change); and
  - (f) identify any timeframe, if applicable, by which a decision by the City is critical, explaining the reasons why.
85. The City shall evaluate the Operator's proposed change, taking into account all relevant issues, including:
  - (a) whether a change in the Processing Fee is proposed or will occur;
  - (b) whether the proposed change affects the quality of the Services or the likelihood of successful delivery of the changed Services;



- (c) whether the proposed change will interfere with the City's relationship with third parties;
  - (d) whether the Operator has sufficient financial strength to perform the proposed changed Services; and
  - (e) whether the proposed change materially affects the risks or costs to which the City is exposed.
86. As soon as practicable after the City receives full details of the Operator's proposed change, the Parties shall discuss and use reasonable commercial efforts to reach agreement on the proposed change. During such discussions, the City, in its sole discretion, may propose modifications or may reject or, subject to Council approval, may accept the Operator's proposed change.
87. If the Operator's proposed change (with or without modification) is approved by Council, the relevant change in the Services shall be implemented within fifteen (15) Business Days of such approval, unless the Parties agree to a different implementation timeframe.
88. Unless the City, following approval by Council, agrees in writing to an increase in the Processing Fee there shall be no increase in the Processing Fee as a result of a change in the Services and/or the Agreement proposed by the Operator.
89. Where the Operator proposes a change in the Services and/or the Agreement which is accepted by the City and which results in a reduction of the cost to the Operator to provide Services, with the result that the Processing Fee is reduced by an amount equal to the cost reduction, the City agrees to make a one-time payment to the Operator in the Operating Year next following the implementation of the change in the amount of 50% of the cost reduction achieved for that year.

## PAYMENTS

### Processing Fee

90. The City shall, upon receipt of the relevant Monthly Invoice and Monthly Report, pay the Processing Fee to the Operator for the Services rendered during each month during the term of this Agreement or any extension thereof, such Processing Fee shall be calculated as follows:

$$\frac{\begin{array}{l} \text{applicable Unit Processing Fee prescribed in Schedule "C"} \\ \times \\ \text{number of Tonnes of Collected Material Processed in the month} \end{array}}{\text{Processing Fee}}$$

91. For further certainty, the Parties agree that the steps to calculating the Processing Fee are as follows:

- (a) determine the Contamination Rate used to determine which row in Schedule "C" by using the average Contamination Rate from the Monthly Composition Audit and each monthly Independent Audit during the first two Operating Years, and thereafter, based on the Contamination Rate in each Monthly Composition Audit;
- (b) determine the Collected Material Tonnes per Operating Year to determine which column in Schedule "C" by multiplying the Collected Material Tonnes for the respective month by 12;
- (c) using the information from subsections (a) and (b) determine the applicable Unit Processing Fee in Schedule "C";
- (d) determine the number of Tonnes of Collected Material Processed for the month in question based on the Monthly Report;
- (e) multiply the applicable Unit Processing Fee (determined in subsection (c)) by the number of Tonnes of Collected Material Processed (determined in subsection (d)); and
- (f) the result of the calculation completed in accordance with subsection (e) will be equal to the Processing Fee for the month in question.

92. The Parties acknowledge and agree that following the first Operating Year, the Unit Processing Fees identified in Schedule "C" to this Agreement shall be adjusted and re-calculated to account for increases in the CPI. The Unit Processing Fees shall be adjusted, beginning in the second Operating Year, as follows:

Unit Processing Fee for previous Operating Year

x

100% of the percentage change in the CPI over the previous Operating Year

#### **Revenue Sharing**

93. The Operator shall share the Net Revenue (Net Loss) with the City in the following proportions (the "Revenue Sharing"):

- (a) 75% of the Net Revenue (Net Loss) belonging to the Operator; and
- (b) 25% of the Net Revenue (Net Loss) payable to the City from the Operator

94. The Operator acknowledges and agrees that any uncollected invoices or bad debt incurred, experienced or accrued through the marketing of Marketable Materials will not reduce the value of the portion of Revenue Sharing that the City receives.



95. If during the Term, the MRF or any temporary, remote material recovery facility, or any portion thereof is damaged or destroyed by fire or by other casualty such that the Operator cannot provide the Services in accordance with the terms and conditions of this Agreement for a period of thirty (30) consecutive days or longer (the "Downtime") then the City's Revenue Sharing portion for such Downtime shall be equal to an average of the Revenue Share payment for the previous three (3) quarters prior to such fire or other casualty occurred.
96. The City shall have the right to review all of the Operator's documentation relating to the sale of Marketable Materials.

#### **Community Host Fee**

97. The Operator shall pay to the City the sum of \$10 per Tonne of Designated Material from other municipalities delivered to the MRF (the "Host Fee").

#### **INVOICES**

98. During the term of the Agreement and any extensions thereof, the Operator shall provide an invoice to the City within fifteen (15) days after the end of the applicable month with sufficient detail of the Processing Fee and the monthly calculation together with the supporting weigh scale records and details for that month (the "Monthly Invoice").
99. The Monthly Invoice must show the calculation and amount of:
  - (a) payment due to Operator (Processing Fee payment);
  - (b) payment due to the City (Revenue Sharing payment);
  - (c) payment due to the City for the Host Fee; and
  - (d) all applicable taxes.
100. The Monthly Invoice shall specify the calculated net payment due to the Operator or City after set-off.
101. In addition to the payment items listed as part of the Monthly Invoice above, the following payments must be subtracted from the quarterly invoices:
  - (a) Payments Due to the City, including:
    - (i) Liquidated Damages for Loss 1 where the Operator fails to or is unable to accept Collected Materials at a temporary Transfer Station or at the Operator's MRF as specified in sections 17 and 18 herein ;
    - (ii) Liquidated Damages for Loss 2 where the Operator fails to have a permanent MRF operational and providing all of the Services set out in this RFP on or before July 1, 2014 as specified in sections 19 and 20 herein;

- (iii) Liquidated Damages for Operator's delay in unloading Collection Vehicles as specified in section 31 herein;
  - (iv) Liquidated Damages for Operator's failure to meet the Required Recovery Rate in the Recovery Rate Audits for the 4th, 7th and 10th calendar month for each Operating Year or the 1st calendar month of the following Operating Year, as may be applicable for that quarterly invoice as specified in section 49 herein;
  - (v) Liquidated Damages for the Operator's failure to be able to process all of the Collected Materials at the Designated Facility as specified in section 45 herein; and
  - (vi) the City's costs for the City's Audits, as shown on the Monthly Invoice from the City to the Operator as permitted by section 59.
102. The Operator's quarterly invoice shall specify the calculated net payment due to the Operator or City after set-off taking into account less any applicable Liquidated Damages for Non-Performance and the costs for the City's Audits.
103. The City shall make payment to the Operator within thirty (30) days of receipt and acceptance by the City of the invoice. Where the date for payment falls on Saturday, Sunday or a Statutory Holiday, the last day for payment shall be deemed to be the next Business Day following the thirtieth day.
104. In the event the payment due to the City exceeds the payment due to the Operator then the Operator shall pay to the City the City's proportion of the Revenue Sharing by certified cheque, electronic transfer or bank draft issued and delivered to the City no later than thirty (30) days after the last day of the month in which the Marketable Material was loaded and transported to a buyer. Such payment shall be accompanied by the Monthly Report for that Month.
105. The Operator acknowledges and agrees that payment to the Operator will be made by the City out of the funds under the control of the City in its public capacity, and no member of Council or officer or employee of the City may be held personally liable or responsible to the Operator for payment under any circumstances whatsoever.
106. In the event that the City wishes to dispute any invoice received from the Operator, the City shall notify the Operator in writing within fifteen (15) days of the date that the City received the invoice, stating the reasons why the invoice is disputed. For the avoidance of doubt, the City may withhold payment of any disputed amount until any dispute is settled directly between the Parties or in accordance with section 279 herein.
107. Within five (5) Business Days of the Operator's receipt of any notice served by the City pursuant to section 106 herein, the Operator shall respond by notifying the City as to whether or not it agrees with the statements made or with the supporting evidence supplied with the notice. If the Operator indicates that it does agree, or if the Operator fails to make such a response within that time limit, the City shall be entitled to retain on



a permanent basis any amounts withheld by the City and to reclaim from the Operator the amount of any over-payment which may have been made to the Operator.

108. In the event that the Operator responds to the City's notice sent pursuant to section 106 herein that the Operator does not agree with all or any of the statements made in any notice served by the City, then the Parties agree that matter or matters in question shall be determined pursuant to section 279 herein.

#### **Set-off and Moneys Due to the City**

109. Notwithstanding any other provision in this Agreement, the City shall have the right to set-off and retain out of any monies due to the Operator such sum or sums as the City may deem necessary to protect the City from any claims against it by third parties arising out of the Operator's performance or non-performance of this Agreement and any payment to the City of Liquidated Damages which may have been, or may in the future be payable by the Operator under any provision of this Agreement.
110. The Operator agrees that should the amount retained in accordance with section 109 herein prove insufficient to meet the Operator's financial obligations, the City may enforce its claim for any deficiency against the Operator or the Performance Security. Should the amount retained exceed the total of any claims and associated legal costs, the excess will be paid to the Operator without interest within thirty (30) days of a final determination of the amount properly owing.

#### **TAXES**

111. The Operator warrants that it:
- (a) is a registrant for the purposes of the Goods and Services Tax (Canada) (GST) with the following registration # \_\_\_\_\_ <insert GST #>; and
  - (b) will remit the GST and the PST payable on the fees in section 90 and 93 as required by Applicable Law.
112. The Parties agrees that all Canadian G.S.T. and any taxes or duties imposed by the *Excise Tax Act* or the Customs Tariff and tax or duty rate changes or exemptions resulting from amendments, re-classifications, remissions, or clarifications thereof on tax or duty-included goods and materials, whether recognized or not at the time of award, will be passed on to the City.
113. G.S.T. not submitted in accordance with the requested status will be adjusted accordingly for the purpose of Proposal evaluation. If pricing offered does not list applied G.S.T. as a separate item, the City will assume the Proposer has omitted such tax and the Proposal offer will be adjusted accordingly to include the appropriate tax, and the City will consider the Proposal so amended.

114. If the Operator manufactures or purchases any goods with respect to the Services from outside of Canada, the Operator must ensure that its agent or representative is the importer of record, unless otherwise expressly stipulated.
115. The Operator agrees that the City will not be liable for and the Operator shall indemnify the City with respect to any special or dumping duties which may be levied by the Canada Border Services Agency (CBSA), Anti-Dumping and Countervailing Directorate under the provisions of the *Special Import Measures Act* (SIMA), upon any imported goods required in the supply of materials in any order or in the performance of this Agreement awarded as a result of its RFP.

## REPORTING

### Monthly Report

116. Every Monthly Invoice shall be accompanied by the Operator's monthly report (the "Monthly Report"), which, at minimum, shall include:
- (a) dates that Collected Materials were deposited at the MRF or temporary Transfer Station;
  - (b) scale tickets for all Collection Vehicles that deposited Collected Materials at the MRF or temporary Transfer Station during that month;
  - (c) Monthly total tonnage of Collected Material by type and collection route number;
  - (d) monthly tonnage of Collected Material Processed;
  - (e) monthly tonnage of Marketed Materials shipped to market;
  - (f) monthly tonnage of Marketed Materials awaiting delivery to End Markets but which are still at the MRF;
  - (g) the monthly tonnage of Residue generated from the Collected Material;
  - (h) the monthly tonnage of Residue shipped for disposal;
  - (i) the name and location of the licensed waste management facility where the Residue were disposed of;
  - (j) monthly Net Revenue (Net Loss) the Operator received from the sale of Marketable Materials by each Marketable Material and identification of the City's portion thereof;
  - (k) names and location each End Market for the Marketable Materials sold that month;
  - (l) the Processing Fee due to the Operator from the City;



- (m) the Monthly Composition Audit report;
- (n) the Monthly Independent Audit (for the first two Operating Years of this Agreement);
- (o) the Monthly Recovery Rate Audit report;
- (p) the overall Recovery Rate of the MRF for the month;
- (q) the monthly tonnage of Designated Material delivered to the MRF from other municipalities; and
- (r) such other material and information as the City may request from time to time.

117. Monthly reports of the previous month's activities will be due to the City by the last day of each month. Following termination or expiration of this Agreement, the final Monthly Report is due on the 15th of the month following the final month of the term or from the date of termination.

#### **Quarterly Report**

118. The Operator shall provide the City with quarterly reports which shall be due to the City on the 15th day of the 4th, 7th and 10th calendar month for each Operating Year and the 15th day of the 1st calendar month of the following Operating Year (the "Quarterly Report").

119. At minimum, the Quarterly Report shall include:

- (a) dates that Collected Materials were deposited at the MRF or temporary Transfer Station;
- (b) scale tickets for all Collection Vehicles that deposited Collected Materials at the MRF or temporary Transfer Station during that month;
- (c) Quarterly total tonnage of Collected Material by type and collection route number;
- (d) quarterly tonnage of Collected Material Processed;
- (e) quarterly tonnage of Marketed Materials shipped to market;
- (f) quarterly tonnage of Marketed Materials awaiting delivery to End Markets but which are still at the MRF;
- (g) quarterly tonnage of Residue generated from the Collected Material;

- (h) quarterly tonnage of Residue shipped for disposal;
  - (i) name and location of the licensed waste management facility where the Residue were disposed of;
  - (j) monthly Net Revenue (Net Loss) the Operator received from the sale of Marketable Materials by each Marketable Material and identification of the City's portion thereof;
  - (k) names and location each End Market for the Marketable Materials sold that quarter;
  - (l) the Processing Fee due to the Operator from the City;
  - (m) the Monthly Composition Audit report;
  - (n) the Monthly Independent Audit (for the first two Operating Years of this Agreement);
  - (o) the Monthly Recovery Rate Audit report;
  - (p) the overall Recovery Rate of the MRF for the quarter;
  - (q) the quarterly tonnage of Designated Material delivered to the MRF from other municipalities; and
  - (r) such other material and information as the City may request from time to time.
120. Following termination or expiration of this Agreement, the final Quarterly Report is due on the 15th of the month following the final month of the term or from the date of termination.

#### **Annual Report**

121. Annual reports shall be due by October 31st of each year of the term of this Agreement between the City and the Operator (the "Annual Report").
122. At minimum, the Annual Report shall include:
- (a) Annual total tonnage of Collected Material by type and collection route number;
  - (b) annual tonnage of Marketed Materials shipped to market;
  - (c) annual tonnage of Marketed Materials awaiting delivery to End Markets but which are still at the MRF;
  - (d) annual tonnage of Collected Material Processed;



- (e) annual tonnage of Residue generated from the Collected Material;
- (f) annual tonnage of Residue shipped for disposal;
- (g) annual Net Revenue (Net Loss) the Operator received from the sale of Marketable Materials by each Marketable Material and identification of the City's portion thereof;
- (h) the Processing Fee due to the Operator from the City;
- (i) the Operator's cost per Tonne to process Designated Material;
- (j) the Operator's cost per Tonne for Residual disposal (including hauling cost);
- (k) net revenue/Tonne for each Marketed Material;
- (l) average revenue per Tonne for all Marketed Material;
- (m) the Monthly Independent Audit (for the first two Operating Years of this Agreement);
- (n) the Monthly Recovery Rate Audit report;
- (o) the overall Recovery Rate of the MRF for the Operating Year;
- (p) the annual tonnage of Designated Material delivered to the MRF from other municipalities and
- (q) such other material and information as the City may request from time to time.

123. Following termination or expiration of this Agreement, the final Annual Report is due on the 30th of the month following the final month of the term or from the date of termination.

#### **DATA SHARING**

124. The Operator shall keep records and data on a daily and cumulative basis regarding the City's Co-Mingled Recycling Processing Program which shall be available to the City upon request.

125. All data sharing provided to the City must be provided in the following forms:

- (a) batch files must be in a format acceptable to the City (CSV type); and
- (b) must be provided through a secure FTP site .

126. The Operator shall provide the Monthly, Quarterly and Annual Reports in a written format as well as electronically in a form the City can use in subsequent reporting and analysis.
127. The Operator shall maintain records for the Services for the term of this Agreement and any extensions thereof plus a period of two (2) years following the termination of this Agreement.
128. The City may at any time request the Operator to produce for inspection any records and reports relating to the provision of the Services. The City may photocopy such records and reports as it deems appropriate.

#### **CONTRACT MANAGEMENT**

129. During the first year of the Term the Operator Representative will attend monthly meetings with the City Representative on the first Business Day of every month at a time and place to be agreed, to discuss the quality, performance and other matters related to the Services.
130. Following the first year of the Term, the City Representative and the Operator Representative shall attend at least two (2) meetings during each subsequent year of the Term of this Agreement at such place and time as may be agreed to by the Parties, acting reasonably, to discuss the quality, performance and other matters related to the Services.
131. The Operator shall have procedures for reporting incidents to the City and other appropriate officials as required by Applicable Laws.

#### **COMMUNICATION WITH COLLECTION CONTRACTOR**

132. The Operator shall maintain a cordial and collegial working relationship with the Co-Mingled Recycling Collection Program collector to ensure an efficient operation of the Co-Mingled Recycling Collection Program using the methods and communication tools the Operator identified in its Proposal.

#### **TEMPORARY TRANSFER STATION**

133. The Operator acknowledges and agrees that it is essential to the successful operation of the City Co-Mingled Recycling Collection Program that the Operator be able to receive Collected Material beginning on July 1, 2013.
134. The Operator shall endeavour, using its best efforts to have its MRF operational and capable of performing all of the Services on or before July 1, 2013.
135. In the event the Operator, despite its best efforts, is unable to have its MRF operational and capable of performing all of the Services on or before July 1, 2013 then the Operator shall construct its Transfer Station at a location within the City boundary or within a radius of 10 kilometres from the centroid of the City at the site identified in the Operator's Proposal. This Transfer Station shall be capable of receiving the Collected Material, in the manner required in this Agreement, on or before July 1, 2013.



136. If the Operator fails to have its temporary Transfer Station capable of receiving Collected Material, in the manner required in this Agreement, on or before July 1, 2013 then such failure shall be deemed an event of Non-Performance and dealt with in accordance with sections 236 to 237 herein.
137. The Operator shall construct its temporary Transfer Station in accordance with the plans that it provided to the City in its Proposal and shall be capable of receiving all Collected Material.
138. The Operator shall have a scale weigh in and out process at the Transfer Station to ensure that all Collected Materials are weighed at the Transfer Station. The scale at the Transfer Station shall meet the requirements in sections 24 to 28 herein.
139. The Operator acknowledges and agrees that once the Collected Material has been weighed and tipped at the Transfer Station then the Operator shall make arrangements for all of the Services required to be provided in this Agreement in relation to that Collected Material to be done at a material recycling facility, until such time as the Operator's MRF is fully operational and capable of carrying out all of the Services.
140. The Operator acknowledges that any contract that an Operator enters into with a material recovery facility to take Collected Materials until the Operator's own MRF is fully operational and providing all of the Services shall ensure that the Operator is still providing all of the Services of the this Agreement.
141. If the Operator is unable to make contractual arrangements with the material recovery facility to allow participation by the City in the Monthly Composition Audits then the Operator shall conduct Monthly Composition Audits prior to transporting the Collected Material to a remote material recovery facility.
142. The Operator shall provide vehicles in sufficient number and frequency to transfer the Collected Materials from the temporary Transfer Station to a material recycling facility.
143. The Operator agrees and acknowledges that a Transfer Station may only be in operation until July 1, 2014.
144. In the event the Operator is still using its temporary Transfer Station on July 1, 2015 the City shall be entitled, in its sole discretion to terminate this Agreement immediately.

#### **HOURS OF OPERATION**

145. The Operator shall operate the Transfer Station and its MRF to accommodate the Co-Mingled Recycling Collection Program's Recycling Collection Schedule.
146. The Operator acknowledges that should the Recycling Collection Schedule fall on a Statutory Holiday, the City's collection contractor shall not alter the Recycling Collection Schedule or its services and will be responsible for providing the collection service, in

accordance with the established collection route(s) and the Recycling Collection Schedule. The Operator shall adjust its hours of operation of the Designated Facility to be able to accept Collected Material on Statutory Holidays with the exception of Christmas Day.

147. The exception to the Statutory Holiday Recycling Collection Schedule shall be Christmas Day. In the event that a regularly scheduled collection day falls on Christmas Day, the City's collection contractor shall provide the collection services scheduled for Christmas Day on the next following Saturday following Christmas Day and the Operator shall operate the Designated Facility on such a Saturday.
148. If the Co-Mingled Recycling Collection Program does not operate or does not operate for a full day due to Bad Weather or for such other reasons as the City may, in its sole discretion determine, then the City shall notify the Operator of the work stoppage and communicate the City's initial anticipated plan to return to the Recycle Collection Schedule
149. The Recycling Collection Schedule are subject to by the City change during the Term of this Agreement or any extensions thereof, and the Operator is required to accommodate its schedule to ensure that matches the Recycling Collection Schedule. The Operator acknowledges and agrees that it shall perform the Services on whatever days or portion of days the City operates its Co-Mingled Recycling Collection Program and remain open to accepting Collection Vehicles until the last Collection Vehicle has tipped its contents at the Designated Facility for that day.
150. The City shall provide the Operator with 7 days notice of any change in the Recycling Collection Schedule.

## **PLANS**

### **Management Plan**

151. The Operator shall maintain, update and carry out its project management plan in the manner provided for in its Proposal

### **Contingency Plan**

152. The Operator shall maintain throughout the term of this Agreement and any renewals thereof a written contingency plan for the Services that provides for the Operator being able to perform all Services, comply with all terms and conditions of this Agreement, and addresses alternative arrangements for the performance of the Services in the event of, but not limited to, ice storms, spill of materials, extreme snow storms, floods, fire, natural disasters that would require deviation from normal operating procedures, equipment breakdown at the MRF or Transfer Station, the Operator unable to process all Collected Materials, the Operator unable to store all the Collected Materials, a strike by the Operator's employees, Bad Weather, emergencies, other service disruptions at the MRF or Transfer Station, a situation where the MRF or Transfer Station be unable to accept and process Collected Materials from the City for longer than three (3) days of time, or where the Operator is unable to find or deliver Marketable Materials to End Markets.



153. The contingency plan shall be updated annually by the Operator and a copy provided to the City within one (1) month of the updating of such a plan.

#### **Strike Plan**

154. The Operator acknowledges and agrees that its strike contingency plan will address alternative methods for the processing of Collected Material so as to maintain the Services in the event of a labour dispute between the Operator and Operator Personnel. The Operator shall maintain the Services in the event of such a labour dispute.
155. The Operator shall regularly monitor and update its strike contingency plan and shall notify the City within 24 hours of any changes to the contingency plan.
156. The Operator shall implement its strike contingency plan where necessary or at the direction of the City.

#### **Emergency Plan**

157. The Operator acknowledges and agrees that its emergency plan will detail those actions which the Operator will take to ensure the Services are maintained during emergency situations would require deviation from normal operating procedures.
158. The City has authority in an emergency to stop the progress of the Services whenever, in its opinion, such stoppage may be necessary to ensure the safety of life, or the Services, or neighbouring property. This includes authority to make changes in the Services, and to order, assess and award the cost of such work, extra to this Agreement or otherwise, as may in its opinion be necessary. The City will immediately confirm in writing any such instructions to the Operator. The Operator shall take such measures as may be specified by the City that the City considers necessary for the purposes of removing any source of danger or to protect any person, property and the Services from danger.
159. The emergency plan shall be updated annually by the Operator and a copy provided to the City within one (1) month of the updating of such a plan.

#### **Safety Management Practices Plan**

160. The Operator acknowledges and agrees that it has and will follow its written health and safety plan. The Operator's health and safety plan shall have a written accident prevention plan, loss prevention plan, and safety management system plan.
161. The Operator's health and safety plan shall be updated annually by the Operator and a copy provided to the City within one (1) month of the updating of such a plan.

#### **OPERATOR PERSONNEL**

162. In providing the Services the Operator shall:
- (a) provide all labour required to perform the Services;

- (b) ensure that all Operator Personnel have sufficient abilities, skills, knowledge, training, qualifications and experience to safely provide the Services;
  - (c) ensure that sufficient reserve personnel are available to provide the Services at all times; and
  - (d) ensure that all Operator Personnel charged with the operation of vehicles possess a the required class of license.
163. The Operator shall ensure that all Operator Personnel shall be at all times properly and sufficiently trained and instructed in the task or tasks that must be performed, and the need to maintain the highest standards of courtesy and consideration to the public to protect and promote the image and/or reputation of the City.
164. The Operator shall ensure all Operator Personnel have and wear all applicable safety equipment to be worn while performing the Services. The Operator must ensure that all Operator Personnel have and wear protective footwear, gloves, safety vests, eye protection and, upon request, noise protection and dust masks and any other safety equipment required by Applicable Laws or as a result of the operations proposed.
165. The Operator must ensure that a high standard of service, courtesy and consideration is exhibited in all Operator Personnel dealings with citizens, visitors, the general public, as well as other City employees, and that the Operator conducts all of its operations, including its administrative functions, with the utmost regard for enhancing public relations and in recognition of the need to uphold and maintain the positive public image of the City.
166. The Operator shall comply with fair wage practices and the Operator shall comply with Applicable Laws so as to not unlawfully discriminate within the meaning and scope of all legislation which may be in force from time to time, including on the basis of gender, race, religion, marital status, sexual orientation, age and disability.
167. The Operator shall do all such things as may be reasonably required by the City from time to time to facilitate compliance by the City having regard to the need to eliminate unlawful discrimination and to positively promote equality of opportunity and good relations between persons of different backgrounds.
168. The Operator shall take all reasonable steps to ensure that Operator Personnel comply with sections 162 to 167 herein.

#### **MEDIA RELATIONS**

169. The Operator shall notify City Representative or his or her designate of all requests for media interviews related to providing services to the City within one (1) hour of request. Before responding to any inquiries involving controversial issues, the Operator will discuss proposed response with the City Representative or his or her designate.



170. Copies of draft news releases or proposed trade journal articles shall be submitted to the City Representative or his or her designate for review and approval at least five (5) working days in advance of release.
171. Copies of articles resulting from media interviews or news releases shall be provided to the City Representative or his or her designate within five (5) days after publication.

#### **TOURS OF THE MATERIALS RECOVERY FACILITY**

172. The Operator, with reasonable advanced notice to the Operator, may allow the City to conduct tours of the MRF with the assistance and supervision of designated Operator Personnel during normal operating hours of the MRF.
173. The City shall, whenever possible, provide twenty-four hour notice to the Operator of any upcoming tour. The City shall provide appropriate personal protective equipment for all tour participants and shall take all steps reasonably necessary during the tour to not interfere with the Services and to observe all safety rules and procedure for the Materials Recovery Facility.
174. Tour participants shall not be required to sign confidentiality agreements to have access to the Materials Recovery Facility.

#### **OPERATOR OFFICE**

175. The Operator shall maintain an office in Regina, Saskatchewan that will be staffed by a competent person during all times that the Services are being performed. At a minimum, the office hours shall be 7:30 a.m. to 5:00 p.m. on Business Days, including Statutory Holidays, except Christmas Day. The Operator agrees that the telephone number for such office shall be established such that no long distance fees shall apply.

#### **ACCESS TO DESIGNATED FACILITY**

176. The Operator shall allow the Inspector and any other City employees invited by the Inspector access to the Designated Facility at any time during normal operating hours of the MRF.
177. The Operator shall allow the Inspector and other City employees invited by the Inspector access to the Designated Facility outside of normal operating hours when reasonable notice is provided to the Operator.
178. The Inspector and invited City employees shall take all steps reasonably necessary in the exercise of access to not interfere with the Services and to observe all safety rules and procedures for the Designated Facility. The Inspector and the invited City employees shall not be required to sign confidentiality agreements to have access to the Designated Facility.

**CITY REPRESENTATIVES****Chief Administrative Officer**

179. The Deputy City Manager of Operations shall oversee the performance of this Agreement on behalf of the City.
180. The City may designate by notice in writing to the Operator a person or persons to act in place of the Deputy City Manager of Operations under this Agreement (the “City Representative(s)”), and any representative so designated shall have the full power to oversee the performance of this Agreement, and the Operator shall comply with all instructions of the person(s) so designated.
181. The City may, at any time during the Term, change the appointed City Representative on written notice to the Operator.

**Inspectors**

182. The City may from time to time appoint one or more Inspectors to monitor and assist in the management of the Services and this Agreement. The City may, at any time during the Term, change the appointed Inspectors by written notice to the Operator.
183. The Operator acknowledges and agrees that the Inspector may make corrective orders or request that the Operator to stop performing any portion of the Services if the Services are not being executed in accordance with the provisions of the Agreement. The Operator acknowledges and agrees that the Inspector shall monitor waiting times of Collection Vehicles.
184. The Operator agrees to immediately comply with any orders or directions provided by the Inspectors, and shall cause the Operator Personnel to immediately comply with all orders issued by Inspectors.
185. The City may request that Inspectors be permitted to take photographs or video recording of the MRF, the Temporary Transfer Station, or at any material recovery facility not owned by the Operator, other property, Equipment, Collected Materials, Marketable Materials, and Residue for the purpose of monitoring the Services.

**OFFICE SPACE FOR CITY**

186. The MRF shall have a suitably furnished office with a desk, chair, shelving and climate controlled office available for the sole use of Inspectors, City employees, or designates. Such an office must be a minimum of 10 feet x 10 feet and be equipped with one telephone line, one computer line that has access to a high speed broadband connection. The office must have a lockable door.
187. The Operator shall permit Inspectors, City employees, or designates to be stationed periodically at the MRF for monitoring of daily operation, as well full visitation during working hours on a regular basis. Inspectors, City employees, or designates must have access to washroom facilities at the MRF. The MRF must also have one parking spot designated for the sole and exclusive use of an Inspector, City employee, or designate.



## **HEALTH AND SAFETY REQUIREMENTS**

### **General**

188. The Operator acknowledges that it will, at all times, ensure compliance with all Federal, Provincial and Municipal occupational health and safety regulations. The Operator accepts the responsibility for the health and safety of its employees by ensuring its employees have and wear appropriate protective equipment as required and taking all reasonable precautions for the protection of its employees.
189. The Operator acknowledges that it will, at all times, comply with its obligations under *The Occupational Health and Safety Act* (Saskatchewan) and the Regulations made thereunder. In keeping with its obligations as an “employer” under such legislation, the Operator acknowledges that it is responsible for the health and safety of Operator Personnel and for ensuring they comply with their respective obligations under *The Occupational Health and Safety Act* (Saskatchewan).
190. The Operator acknowledges and agrees that it shall provide training for all employees, which will include health and safety and training on how to properly operate Equipment and vehicles and conduct emergency response measures. Upon request, the Operator shall submit its training plan to the City Representative for review.
191. The Operator acknowledges and agrees that it shall take all reasonable precautions to prevent damage to property or injury and to establish, maintain and enforce safety procedures for the protection of all workers and other persons involved with its operations. Further the Operator agrees that it shall ensure that adequate levels of supervision are provided to ensure all safety aspects. There shall be regular monitoring by the Operator’s Supervisor(s) of the employees and the Services under this Agreement.
192. The Operator acknowledges and agrees that the City retains the right to require greater levels of supervision, if in the view of the City, the levels of supervision are not adequate.

### **Public Safety**

193. The Operator acknowledges and at agrees that is shall perform the Services so as to cause the public, including other City Operators and employees, the least inconvenience possible and in particular, ensure that the Operator Personnel will not obstruct any street, thoroughfare or pedestrian walkway longer or to a greater extent than necessary to perform the Services unless instructed to do so by the City.
194. The Operator acknowledges and agrees that it must take all reasonable precautions necessary to ensure the safety of the general public.

### **Policies and Records**

195. The Operator acknowledges and at agrees that it shall at all times have an adequate, thorough and enforced health and safety policy which meets or exceeds legal requirements, industry standards and any standard as may be set by Ministry of Labour Relations and Workplace Safety from time to time.

196. The Operator shall ensure its policies conform to the reasonable requirements of the City and shall provide the City.
197. All required Ministry of Labour Relations and Workplace Safety documentation shall be obtained and filed by the Operator and kept in good standing during the term of this Agreement. Copies of same shall be provided to the City as they become available.
198. The Operator shall provide the City, upon request, with an account of safety activities as required or requested, which shall include medical aids/lost time accidents, records of incidences and accidents, minutes of safety meetings, records of instruction and training, and equipment inspections
199. The Operator shall maintain applicable records with respect to all health and safety instruction and training, which will include frequency and course content, and shall supply the City with such records, as required or requested.

#### **Workers' Compensation Coverage**

200. The Operator understands and agrees that it is not, nor is any of the Operator Personnel, covered by the City under *The Workers' Compensation Act, 1979* (Saskatchewan). The Operator acknowledges and agrees that it shall be solely responsible for and shall pay all dues and assessments payable under *The Workers' Compensation Act, 1979* (Saskatchewan) in respect of itself and/or the Operator Personnel.
201. The Operator agrees to indemnify and save the City harmless if the City is required to pay any Workers' Compensation charges arising from the Operator's provision of the Services, the provision of the Services by a subcontractor of the Operator or if the City is held liable for any damages or injury to any employee, partner, or subcontractor of the Operator while on City-controlled or City-owned property.
202. If the City is required to pay any amount to the Workers' Compensation Board on behalf of the Operator, or any sub-operator, or by reason of any act of omission of the Operator or any sub-operator, the Operator acknowledges and agrees that the City may deduct the amount from any amount owing to the Operator under its or under any other Agreement, or may demand a reimbursement by the Operator to the City for the amount so paid by the City. For further certainty, any right granted to the City pursuant to this section shall be in addition to and not in substitution for any other right at law or in equity which the City has by reason of the failure of the Operator to comply with the provisions of *The Workers' Compensation Act, 1979* (Saskatchewan).

#### **VEHICLES AND EQUIPMENT**

##### **Number of Vehicles**

203. The Operator must, at all times, provide, maintain and operate a sufficient number of vehicles, drivers and other personnel to perform the Services required under this Agreement, and to comply with Applicable Laws throughout the Term.



204. The Operator shall keep sufficient spare Equipment, including vehicles, to ensure that, in the event of Equipment breakdown, Services are continued in accordance with the terms of this Agreement.

#### **Licensing and Maintenance of Vehicles**

205. The Operator is responsible for the maintenance of all vehicles and for all licensing, permits, inspections and insurance as may be required to operate the vehicles and carry out the Services.
206. All vehicles used in the Services must be capable of operating reliably under fully loaded conditions and must be kept in excellent running order at all times. All such vehicles must be capable of transferring Collected Materials without adversely impacting the Collected Material's usability or increasing processing time at the MRF.

#### **Excess Loading of Vehicles**

207. The Operator shall not cause or permit vehicles to be loaded beyond the legal limit specified in *The Traffic Safety Act* (Saskatchewan) or *The Regina Traffic Bylaw 1997*, No. 9900 or any other Applicable Laws.
208. Where, in the opinion of the City, vehicles used by the Operator are causing or are likely to cause damage to any private or public roadway, the City may direct the Operator at the Operator's own expense to make changes in or substitutions for such vehicles, to use alternate routes for hauling, to alter loading, or to remove the cause of such damage in some other manner. The Operator will be responsible for all costs resulting from the overloading of vehicles.
209. All measures taken to comply with sections 203 to 208 herein shall be at the Operator's expense.

#### **SPILLAGE AND LOOSE MATERIALS**

210. The Operator shall promptly clean up any spillage or loose material resulting from its performance of the Services or make all other arrangements as may be required for the immediate clean up a spill. In the event of any spill, the Operator shall at its expense restore the affected areas back to original condition and shall comply with all Applicable Laws when reporting or cleaning up any spill.
211. The Operator shall report all spills or discharges of Collected Materials, pollutants or contaminants to the City.
212. Any vehicle or Equipment suffering oil spills, gasoline spills, antifreeze spills or the release of other known contaminants will cease operations until the Operator Supervisor arrives on site. Absorbent will be laid down immediately on any spill and as soon as the absorbent has had the desired effect, it is to be scraped from the road or affected property. If residue still remains following the use of absorbent, the Operator shall apply another layer of absorbent and will leave the site in a clean and tidy condition. In the event that the Operator fails to respond immediately to a mechanical or oil spill such that asphalt or

other damage occurs, the Operator shall be responsible and liable for all costs and expenses to restore the road or property affected to its original condition.

#### **ENVIRONMENTAL COMPLIANCE**

213. The Operator shall, in the performance of the Services, comply with environmental legislation and other environmental requirements of those federal, provincial, municipal or other governmental bodies, including without limitation *The Environmental Management and Protection Act, 2002* (Saskatchewan) and the regulations and amendments thereto.
214. The Operator acknowledges and agrees there may be additional reporting requirements in relation to any spill, release or discovery of any substance of any amount that has caused, is causing or may cause an adverse effect on the environment. The Operator represents and warrants that it is familiar with these requirements and agrees to report any spill, release or discovery of any substance of any amount that has caused, is causing or may cause an adverse effect on the environment as may be required by Applicable Laws.

#### **PERFORMANCE SECURITY**

215. To secure performance by the Operator of all of its obligations under this Agreement, the Operator shall deliver, as a Condition Precedent of this Agreement, the performance security detailed in this section (the "**Performance Security**"). In order to satisfy its obligation to provide Performance Security, the Operator shall deliver to the City one of the following by the date specified in section 10 herein:
- (a) a three year renewable performance bond in the form as required by the City in the amount of \$3,000,000.00. If the Operator has proposed another form of performance bond which has been approved by the City, the Operator may fulfil its performance security obligation by delivering such alternative bond form provided always that it is in the amount of \$3,000,000.00 for a three (3) year initial term and must be renewed and maintained annually by the Operator for the duration of the term of the Agreement. Where required by the surety issuing the bond, the Operator will renew the bond from time to time so it remains in effect until six (6) months after the expiry or termination of this Agreement; or
  - (b) an irrevocable letter of credit in the amount of three million dollars (\$3,000,000.00) ("**Letter of Credit**"). The Letter of Credit shall be renewed from time to time by the Operator so as to remain in effect until six (6) months after the expiry or termination of this Agreement; or
  - (c) a certified cheque in the amount of three million dollars (\$3,000,000.00), payable to "The City of Regina".
216. The Operator acknowledges and agrees that the Performance Security may be realized upon by the City where the Operator is in breach of its obligations under the Agreement and where the City must incur or has incurred, without limitation, any Non-Performance, indebtedness, liabilities, obligations, costs, fees or expense whatsoever (the



“**Liabilities**”), including any Liabilities incurred to facilitate the Services for Collected Materials and any legal costs or costs in relation to legal proceedings resulting from the Operator’s breach of its obligations under the Agreement. Where required by the terms of the Performance Security, the Operator will be given notice of the City’s intention to realize on the Performance Security. Otherwise, the City may realize on the Performance Security without prior notice to the Operator.

217. Where the Performance Security is drawn upon, and provided that the Agreement has not been terminated by the City, such Performance Security shall be renewed or replaced so that it meets the then applicable threshold set out in section 215 herein.
218. Any Letter of Credit provided as Performance Security shall incorporate the following conditions:
- (a) it must be issued by a Canadian Chartered Bank listed in Schedule 1, 2 or 3 of the *Bank Act* (Canada) and the place of cashing must be named and be within the City of Regina;
  - (b) the letter of credit must indicate that it is issued subject to the Uniform Customs and Practice for Documentary Credits, ICC Publication No. 600 (UPC 600);
  - (c) it must be irrevocable;
  - (d) it must be unconditional;
  - (e) the documents required for cashing must be indicated precisely; and
  - (f) it must be payable to “The City of Regina” as the beneficiary and may require payment upon demand.

#### **INSURANCE**

219. During the Term of this Agreement, the Operator shall maintain and shall ensure that it and its sub-contractors maintain the following insurance coverages:
- (a) maintain comprehensive general liability insurance in the amount of \$5,000,000 dollars per occurrence for bodily injury, death and property damage, including loss of use thereof, arising for any one accident or occurrence. The form of insurance shall include but is not limited to the following:
    - (i) cross-liability or severability of interest clause;
    - (ii) blanket contractual coverage;
    - (iii) owner’s protective liability coverage;
    - (iv) completed operations coverage.

- (b) maintain automobile accident liability in the amount of no less than \$2,000,000.00 dollars per occurrence. The form of insurance shall include, but is not limited to the following:
    - (i) Operator owned vehicles;
    - (ii) non-owned vehicles and;
    - (iii) non-owned automobile liability extension;
    - (iv) operation of attached machinery.
  - (c) maintain equipment insurance covering all Equipment used for the performance of the Services.
  - (d) maintain environmental impairment liability insurance to cover all operations of the Operator, including but not limited to third party bodily injury, death and property damage arising out of sudden and accidental pollution, including but not limited to unexpected and unintentional spills, discharges, emissions, dispersal, leakage, migration, release or escape of pollutants subject to a single pollution incident limit of not less than \$1,000,000.
  - (e) maintain Property and Business Interruption insurance on all property, Equipment and production machinery, including stock and stored Marketable Materials, used in the performance of the Services. Business Interruption Insurance shall be based on a 24 month indemnity period based upon a completed Business Interruption worksheet.
220. Insurance obtained and provided under this Agreement shall:
- (a) be written by an insurer licensed to underwrite insurance in the Province of Saskatchewan, and holding an A.M. Best rating of A- or better;
  - (b) contain a statement whereby the insurer waives all rights of subrogation against any party named or contemplated as an insured party in the required policies;
  - (c) contain an endorsement by the insurer that states that the policies and coverage thereunder shall neither be amended nor cancelled until thirty (30) calendar days after written notice to such effect has been given to all named insureds; and
  - (d) shall name the City as an additional insured on all policies of insurance with respect to the Operator's activities as they relate to this Agreement.
221. The Operator is solely responsible for full payment of any deductible amount which may be due in the event of any and all claims under policies required by this Agreement and shall provide the City with proof of the insurance required pursuant to this Agreement annually in a form satisfactory to the City's Risk Manager.



222. Failure to maintain insurance as required by sections 219 to 221 herein may result in placement by the City of the required insurance at the expense of the Operator.

223. Loss or damage shall not affect the rights of either Party under this Agreement.

#### **REPORTING AN INCIDENT**

224. The Operator shall:

- (a) immediately report all incidents involving Persons, private property, Intellectual Property Claims, or any Claims to the Inspector and provide copies of all Claims and reported damages to the Inspector in written form for each occurrence; and
- (b) in the event of a motor vehicle collision, immediately report the incident to the Regina Police Service.

#### **INDEMNITY AND LIMITATION ON LIABILITY**

##### **Operator's Indemnity**

225. Notwithstanding anything to the contrary in this Agreement, the Operator shall accept full responsibility for and shall indemnify and save harmless the City, its respective employees, contract employees, agents and elected representatives prior to, during, and after the Term, from and against all liability for:

- (a) all actions, claims, demands, costs, charges, losses and expenses (including legal costs on a full indemnity basis), which may arise out of or in consequence of the performance or non performance by the Operator (including the Operator Personnel) of its obligations under this Agreement, or the presence of the Operator (including the Operator Personnel) in any premises or property belonging to the City.
- (b) all actions, claims, demands, costs, charges, losses and expenses (including legal costs on a full indemnity basis), which are related to or are caused by the negligence or wilful misconduct of the Operator and which, for certainty, shall include all actions, claims, demands, costs, charges, losses and expenses related to bodily injury, death and loss or damage to property.

226. The Operator agrees that there shall be no limitation of liability in favour of the Operator to the City for any direct, special, indirect, incidental or consequential damages, including, but not limited to, lost profits, lost business revenue, failure to realise expected savings, or other commercial or economic losses of any kind.

227. The Operator and the City agree that the City has no liability for the Operator's use of the Collected Material delivered to the Designated Facility, including, but not limited to any and all claims arising from claims from third parties who have purchased or otherwise obtained Marketable Material, Residue or other products produced by the Operator or its agents.

228. The Operator shall defend, indemnify and save harmless the City from and against any and all Claims arising from the Operator's receiving, sorting, processing and Marketing the Collected Material and Marketable Material and for the Operator's subsequent sale of Marketable Material or disposal of Residue, or any other product produced from the Collected Material.

#### **City's Indemnity**

229. The City shall defend, indemnify and save harmless the Operator from and against any and all Claims, arising from:
- (a) the City's breach, violation or non-performance of this Agreement; and
  - (b) any negligent acts or omissions or wrongful acts of the City, its elected officials, employees, agents or others for whom it is responsible at law except to the extent that such liability arises from the negligence or wrongful act of the Operator or its officers, employees, or others for whom the Operator is responsible at law.

#### **Survival**

230. The indemnities provided in sections 38, 114, 200 to 202, 225 to 229, 245, 265 and 270 shall survive the termination or expiration of this Agreement and continue in full force and effect without time limit.

#### **Limitation of Liability**

231. Notwithstanding anything contained in this Agreement to the contrary, neither Party shall be liable to the other under this Agreement or under any cause of action relating to the subject matter of this Agreement, whether in contract, tort, strict liability, indemnity, contribution or any other cause of action for or in relation to:
- (a) business interruption, loss of actual or anticipated revenue, income or profits or any other form of economic loss;
  - (b) exemplary or punitive damages; or
  - (c) any other loss, liability or damage that can be considered consequential.
232. The Operator acknowledges and agrees that the City, its respective employees, contractors, agents and elected representatives shall not be liable for, except in the case of gross negligence or wilful misconduct, any property damage, bodily injury, death or personal injury to the Operator, Operator Personnel, or their respective directors or officers, or for any proceeding by any third party against the Operator, Operator Personnel, or their respective directors or officers, arising in the course of the performance of the Operator's obligations under this Agreement or arising otherwise in connection with this Agreement for any reason.



**Legal Counsel:**

233. Notwithstanding the Operator's duty to defend the City in sections 228 and 265 the City reserves the right to appoint its own legal counsel to represent it, at the cost of the Operator, in respect of any Claim.

**Cooperation:**

234. The City and the Operator shall keep each other reasonably informed of any matters and any Claims to which sections 38, 115, 200 to 202, 225 to 229, 245, 265 and 270 of this Agreement apply.

**Beneficiaries of Indemnification Provisions:**

235. The indemnification and hold harmless provisions in this Agreement are for the sole and exclusive benefit and protection of the Parties and their respective councillors, directors, officers, contractors, subcontractors, officials, agents, employees, and representatives ("**Representatives**") and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than the Parties and their respective Representatives, and for the purposes of this Agreement, the Parties hereto are entering into this Agreement as trustee and agent for the benefit of their respective Representatives, as the case may be.

**LIQUIDATED DAMAGES FOR NON-PERFORMANCE**

236. In the event the Operator fails to perform the Services in accordance with its obligations and the standards specified in this Agreement the such failure shall be considered non-performance of the Services ("**Non-Performance**") will result in the City assessing liquidated damages (collectively, the "**Liquidated Damages**") for the Non-Performances identified as follows:

<b>Acts of Non-Performance</b>	<b>Liquidated Damages Resulting from Non-Performance</b>
Loss 1 where the Operator fails to or is unable to accept Collected Materials at a temporary Transfer Station or at the Operator's MRF as specified in sections 17 and 18 herein	\$5000 per day until the Operator can accept the Collected Material at a temporary Transfer Station or at its MRF
Loss 2 where the Operator fails to have a permanent MRF operational and providing all of the Services set out in this RFP on or before July 1, 2014 as specified in sections 19 and 20 herein.	\$500 per day until the permanent MRF is fully operational and providing all of the Services
Collection Vehicle delayed at the Designated Facility as specified in section 31 herein	\$200 per occurrence;
Failure to meet the Required Recovery Rate as specified in section 49	\$500 for each Tonne that constitutes the difference between the Operator's Recovery Rate and the Required Recovery

	Rate in that quarter
Failure to process all of the Collected Materials as specified in section 45	\$5000 per day until the operator can process the Collected Material at its own MRF

237. If the Operator committed a Non-Performance and the City provided notice, in writing to the Operator, of such Non-Performance, then, the Operator acknowledges and agrees that the City shall be entitled to recover from the Operator the applicable Liquidated Damages.
238. The Parties agree that, since it would be difficult to ascertain precisely the losses to the City in the event of Operator's Non-Performance of its obligations under this Agreement, the Parties agree that such Liquidated Damages in section 236 herein, represent a reasonable pre-estimate of the loss and damage which the City will suffer through the Non-Performance of the Operator. The Parties further agree that the City is entitled to recover such Liquidated Damages from the Operator in accordance with section 236 and 237 herein, and that such recovery shall not limit the other remedies available to the City pursuant to this Agreement, including the assessment and recovery of Liquidated Damages.
239. Where the City assesses Liquidated Damages for a month for which the Processing Fee has already been paid, the City shall be entitled to deduct such Liquidated Damages against the following month's Processing Fee and/or to recover such Liquidated Damages by way of a claim against any Performance Security maintained by the Operator.
240. The Operator acknowledges that where Liquidated Damages exceed \$50,000 in the twelve (12) months following the Commencement Date of this Agreement or any subsequent twelve (12) month period, the City shall be entitled to terminate this Agreement. As of the beginning of each fresh twelve (12) month period, any Liquidated Damages will be assessed as though the Operator had no prior Non-Performance events for which the City is entitled to assess and deduct Liquidated Damages.
241. For greater certainty, the rights and remedies referred to in sections 236 to 240 herein shall be considered without prejudice to any other right or remedy the City may have under this Agreement or in law, nor shall they relieve the Operator of any obligations under the Agreement in respect of the Services.

#### **REMEDIES**

242. The rights and remedies of the City as set forth in any provision of the Agreement shall not be exclusive and are in addition to any other rights or remedies provided by law or in equity or pursuant to the provisions of the Agreement.
243. The City's exercise of any remedy provided under the Agreement does not relieve the Operator from any liability remaining under the Agreement.



**TERMINATION**

244. Without prejudice to the exercise of any alternative or additional remedy or of any accrued rights of the City, the City shall be entitled upon the occurrence of any of the following events to immediately terminate the Agreement:

- a) the Operator commits a material breach of this Agreement;
- b) the Operator becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the *Bankruptcy and Insolvency Act* (R.S., 1985, c. B-3 );
- c) the Operator having a winding-up order made or a resolution for voluntary winding-up passed;
- d) the Operator having a provisional liquidator, or receiver or manager of its business or undertaking duly appointed;
- e) the Operator being in circumstances which entitle a creditor to appoint, or have appointed a receiver, a manager or administrative receiver, or which would entitle the court to make a winding-up order;
- f) the Operator persistently violates its health and safety obligations under sections 188 to 202 of this Agreement;
- g) the Operator commits any Prohibited Act;
- h) the Operator undergoes a change of Control; or
- i) the Operator is unable to complete or has discontinued the Services.

**Consequences of Termination**

245. Upon termination of this Agreement:

- a) the Operator shall cease to perform the Services;
- b) the Operator shall be liable to compensate the City for any loss or damages it has sustained as a consequence of any breaches of Agreement by the Operator;
- c) if the Agreement is terminated under section 244 herein the Operator shall fully and promptly indemnify and compensate the City in respect of the cost of causing to be performed the Services as would have been performed by the Operator during the remainder of the Term to the extent that such costs exceed such sums as would have been lawfully payable to the Operator for performing the Services (such costs to include all costs of closing up this Agreement and entering into a new contract with a replacement operator). The City shall be free to have the

Services performed by any person (whether or not employees of the City) as the City may within its sole discretion determine; and

- d) the City shall be under no obligation to make any further payments to the Operator and shall be entitled to retain any payment which may have fallen due to the Operator before termination until the Operator has paid in full to the City all sums due under or arising from the Agreement, or to deduct therefrom any sum due under the Agreement.
246. If the Services should be stopped or otherwise delayed for a period of 45 days or more under an order of any court or other public authority, and providing that such order was not issued as the result of any act or fault of the Operator may, without prejudice to any other right or remedy the Operator may have, terminate this Agreement by giving the City written notice.
247. If the City should within 90 days, fail to pay any sum approved by the City or awarded by the referee or arbitrator to the Operator, then the Operator may upon seven days written notice to the City, stop work or terminate this Contract and recover from the City payment for all Services executed.
248. Upon termination or expiration of this Agreement, the Operator shall cooperate with the City to assist with the orderly transfer of the Service area functions and operations provided by the Operator hereunder to another Operator or to the City as determined by the City in its sole discretion.
249. Prior to termination or expiration of this Agreement, the City may require the Operator to perform and if so required, the Operator shall perform certain transition services necessary to shift the support work of the Operator to another Operator or to the City itself as described below (the "Transition Services") and the City shall pay for such service at the rates set forth in this Agreement.
250. Transition Services may include but shall not be limited to the following:
- (a) working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of Services;
  - (b) notifying all affected Operators and sub operators of the Operator;
  - (c) performing the Transition Service Plan activities;
  - (d) answering questions regarding the Services on an as-needed basis;
  - (e) process all Collected Material to clear the Tipping Area and all processing lines;
  - (f) remove and dispose of all Residue at the City Landfill;



- (g) empty all Marketable Materials from storage areas;
- (h) prepare all Marketable Materials for delivery to End Markets;
- (i) load all Marketable Materials onto vehicles intended for End Markets;
- (j) ship all Marketable Materials to End Markets;
- (k) pay any outstanding payments owed to the City;
- (l) submit any final Monthly Invoice; and
- (m) submit final Monthly, Quarterly and Annual Reports.
- (n) providing such other reasonable services needed to effectuate an orderly transition to a new Operator.

251. In addition to section 230, upon termination of this Agreement, it is hereby agreed that section 109 (Money Due to the City), sections 231 to 232 (Limitation on Liability), sections 255 to 259 (Confidentiality and Privacy), sections and sections 261 to 266 (Intellectual Property Rights) of this Agreement shall continue in full force and effect and be enforceable by the City. For greater certainty, the rights of the City under this section are in addition to any other rights or remedies that the City may have pursuant to the Performance Security.

#### **BOOKS, PAYROLLS, ACCOUNTS AND RECORDS**

252. The Operator will preserve all original books, payrolls, accounts, and records relating to the performance of the Agreement or to claims arising therefrom for a period of three (3) years after the expiration of the Term or the final settlement of all Claims whichever is the longer.

253. At the City's request, the Operator will provide the City with detailed information related to the collection of Collected Material, the performance of the Services or other such information in the custody of the Operator, including the information set out in section 252 herein, which will assist the City in recording and monitoring the effectiveness of the Operator's performance, reporting to Council, and providing statistics and information related to recycling activities and waste collection generally.

254. The City shall be entitled to change the record keeping requirements set out in this Agreement upon reasonable notice, and the Operator shall continue to provide information to the City related to the Services.

#### **CONFIDENTIALITY AND PRIVACY**

255. Except as otherwise provided herein, each Party shall keep confidential the terms of this Agreement and all personal or confidential business information supplied to it or its representatives or advisors under this Agreement (the "Confidential Information"). The

Parties shall not disclose any such Confidential Information to any third party or to any Operator Personnel except as required for the performance of the Services. The City may require that the Operator enter into a confidentiality agreement prior to the Services Commencement Date.

256. The Operator acknowledges and agrees that the City is subject to *The Cities Act* (Saskatchewan) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LAFOIP) (Saskatchewan) and that the City's obligations under this Article 19 of this Agreement are limited by its public disclosure obligations under such legislation.
257. The obligation to maintain the confidentiality of Confidential Information shall not relate to any information which:
- (a) comes into the public domain or is subsequently disclosed to the public (other than through the default of either Party);
  - (b) was already in possession of the Party (without restrictions as to its use) on the date of receipt; or
  - (c) is required to be disclosed by the City under LAFOIP or by either Party by virtue of an order of a court or tribunal, pursuant to a legal proceeding, or as otherwise required by Applicable Laws.
258. The Operator hereby confirms that in performance of this Agreement it will protect personal information as defined in and in accordance with the *Personal Protection and Electronic Documents Act* (PIPEDA) and shall comply with its obligations under PIPEDA, and all statutory re-enactments or modifications thereof, any regulations, rules, orders and codes of practice made pursuant thereto, and any guidelines issued by the Privacy Commissioner.
259. The Operator shall not by itself or through Operator Personnel communicate with representatives of the press, television, radio or other communications media on any matter concerning the Agreement, and shall not otherwise make any representation orally or in writing in respect of any aspect of the Agreement, without the prior written approval of the City.

#### **GREENHOUSE GAS CREDITS**

260. All rights, benefits, title and interest related in whole or in part to any greenhouse gas emission reduction created by Co-Mingled Recycling Collection Program, diversion of Collected Materials from the City Landfill, any processing of Collected Materials at a Designated Facility and any right to claim for its benefit any credit, allowance acknowledgement or offset with respect to such greenhouse gas emission reduction that may arise through the creation of a national program, provincial program or other government regulatory structure shall accrue to and be owned by the City.



**INTELLECTUAL PROPERTY RIGHTS**

261. All Intellectual Property Rights, documents, records, data, or other information produced by the Operator as part of the Services shall belong exclusively to the City. All Intellectual Property Rights belonging to the City shall, at all times, remain the property of the City.
262. The Operator shall not in connection with the performance of the Services use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Right.
263. Any and all Intellectual Property Rights developed under this Agreement or arising from the provision of the Services by the Operator shall belong to the City and the Operator agrees that it shall execute or cause to be executed all deeds, documents and acts required to vest such Intellectual Property Rights in the City.
264. The Operator will pay all royalties and patent license fees or other fees in respect of any Intellectual Property Right required to perform the Services.
265. The Operator shall, at its own expense, defend all suits and proceedings instituted against the City and fully indemnify the City against any award of damages, demands, losses, charges or costs made against the City if such suits or proceedings are based on any claim that any of the products, documentation, parts or equipment, as supplied by the Operator, constitutes an infringement, or an alleged infringement, of any patent or other intellectual property right by the Operator or anyone for whose acts it is liable.
266. If any of the products, documentation, parts or equipment supplied by the Operator constitute an infringement of patent or other Intellectual Property Right and its use is enjoined, the Operator will, at its own expense, procure for the City the right to continue its prior use, replace or modify the supplied item so it becomes non-infringing and meets the City's requirements, or pay the City for its loss of use of the item and for consequential damages or losses which occur as a result of the actual or alleged infringement of any patent or other Intellectual Property Right by the Operator or anyone for whose acts it is liable.

**ASSIGNMENT AND SUB-CONTRACTING**

267. The neither Party may not assign, transfer, convey, or otherwise dispose of this Agreement or its right, title or interest in the Agreement without the prior written consent of the other Party, which consent may be unreasonably withheld.
268. The Operator may only sub-contract the performance of this Agreement or any part thereof with the prior written consent of the City, and shall cease to so sub-contract if the City withdraws its consent. Such consent (if given) shall not relieve the Operator from any liability or obligation under the Agreement and the Operator shall be responsible for the acts, defaults or neglect of any sub-Operator or its agents or employees in all respects as if they were the acts, defaults or neglect of the Operator, notwithstanding that the City may require as a condition of giving any consent to sub-contract a direct warranty and



undertaking from the sub-Operator concerning the provision of the Services and compliance with the Agreement in all respects.

269. The City reserves the right to impose such conditions as it sees fit in giving any consent pursuant to sections 267 to 268. Such conditions may include payment to the City of such reasonable administrative and legal costs as may be incurred by the City and/or the posting of such additional security as the City, acting reasonably, may consider appropriate.
270. In particular, the Operator shall indemnify the City and hold the City harmless from and against any claims, demands, suits, causes of action, losses, damages, liabilities and costs relating to, arising out of, or connected to, directly or indirectly, with the Operator's Services performed by a sub-consultant under the Agreement whether founded in negligence, any other tort, criminal law, breach of contract or the failure to comply with any statute, regulation, bylaw, rule or order made by an authority having jurisdiction including, without limitation and no matter when asserted, claims relating to:
- (a) the injury (physical, psychological or both) or death of any person; and
  - (b) damages to or loss of any property.
271. The indemnity in section 270 herein does not apply to the extent that any claim results from an act or omission amounting to the City's negligence, breach of contract, legal or wilful misconduct or non-compliance with a statute, rule or regulation.
272. The Operator shall not sub-consult or give honouraria for the performance of any part of the Services without the City's prior written consent.

#### **CONFLICT OF INTEREST**

273. The Operator will not undertake other work that creates or might create a conflict of interest with the provision of the Services without the City's prior written consent.
274. The Operator will not serve as a member of any of the City's advisory committees or subcommittees during the term of this Agreement.

#### **RELATIONSHIP OF THE PARTIES**

275. This Agreement is not intended to create a partnership, joint venture or employment relationship between the City and the Operator and no Party will have, nor represent itself to have, any authority or power to enter into any contract, assume any obligations, or make warranties or representations on behalf of the other or to act for or to undertake any obligation or responsibility on behalf of the other Party, except as may be expressly provided in this Agreement.
276. The Operator recognizes, acknowledges and agrees that Operator Personnel are employees, agents, or sub-Operators of the Operator and are not entitled to any of the benefits provided by the City to its employees. The Operator shall be solely and exclusively responsible for the payment of wages, governmental obligations and



deductions, including, without limitation, provincial and federal income tax deductions, Canada Pension Plan, Employment Insurance, Ontario Health Premiums, vacation pay and all other matters arising out of the normal relationship of employer/employee, with respect to the Operator Personnel.

## NOTICES

277. Any notice permitted or required to be given by one Party to the other in respect of the Agreement shall be deemed to have been given to and received by the addressee on the date of delivery if delivered by hand or by facsimile and on the 5th day after the date of mailing if sent by pre-paid registered mail. Any notice to the Operator shall be sufficiently given if handed to the Operator, a Operator Representative, a Operator Supervisor, the Operator's clerks or agents, or delivered to the Operator's last known address, and such notice shall be deemed to have been received on the date so delivered. Any notice to the City pertaining to this Agreement shall be delivered to the City Clerk with a copy to the City Representative. Notice shall be sent as directed below:

To City:

The City of Regina  
Queen Elizabeth II Court  
2476 Victoria Avenue  
P.O. Box 1790  
Regina, Saskatchewan  
Canada S4P 3C8  
Attention: Roberta Engel  
Fax: (306) 777-6806

To Operator:

Halton Recycling Ltd. dba Emterra Environmental  
6362 148<sup>th</sup> Street  
Surrey, British Columbia  
Canada V3S 3 C4  
Attention: Emmie Leung  
Fax: (604) 599-4561

278. Notwithstanding the foregoing provisions with respect to mailing, in the event that it may be reasonably anticipated that due to any strike, lockout, or similar event involving an interruption in postal service, any notice will not be received by the addressee by no later than the fifth (5) Business Day following the mailing thereof, then the mailing of any such notice as aforesaid shall not be an effective means of sending the same but rather any notice must then be sent by an alternative means of delivery as may reasonably be

anticipated will cause the notice to be received reasonably expeditiously by the addressee.

### **DISPUTE RESOLUTION**

279. The Parties agree that in the event that a dispute or conflict arises in any way relating to the Agreement or the Services, the following dispute resolution process shall be followed:
- (a) the dispute shall be referred to the City' Deputy City Manager of Operations and the Vice President of Operations, who shall, acting in good faith, seek to resolve the dispute or conflict in an amicable and constructive manner;
  - (b) if the Deputy City Manager of Operations and the Vice President of Operations are unable to successfully resolve the dispute or conflict within twenty (20) days of reference to them, either Party to the dispute may at any time thereafter prior to the dispute being referred to arbitration, request that a mediator be retained to assist the Parties in resolving the dispute. In the event a request for mediation is made, the Parties shall, within no more than five (5) Business Days, make reasonable attempts to agree on a mediator. If the Parties are unable to agree on a mediator, the Parties agree to accept the mediator appointed by Saskatchewan Justice Dispute Resolution Office (the "**Neutral Appointing Authority**");
  - (c) any negotiated or mediated settlement reached pursuant to subsection 279(a) or subsection 279(b) above may be subject to approval by Council;
  - (d) if a dispute is not resolved within forty-five (45) days of reference to the Deputy City Manager of Operations and the Vice President of Operations or within thirty (30) days of a request for mediation, whichever is the later, either Party to the dispute may at any time thereafter refer the dispute to arbitration, in which event the Parties shall be bound to arbitrate the dispute;
  - (e) any dispute that is submitted to arbitration shall be dealt with in accordance with the following requirements:
    - (i) the Party seeking to initiate arbitration shall give written notice thereof to the other Party and shall set forth a brief description of the matter submitted for arbitration;
    - (ii) within ten (10) days of receipt of the notice of arbitration, the Parties acting in good faith shall attempt to agree upon a single arbitrator for the purpose of conducting the arbitration;
    - (iii) in the event that the Parties cannot agree upon a single arbitrator within the period set forth above, then, a single arbitrator shall be appointed by the Neutral Appointing Authority;



- (iv) any arbitration conducted pursuant to this Agreement shall take place in the City of Regina, and the Parties shall meet with the arbitrator in order to establish procedures which shall govern the conduct of the arbitration and the rendering of an award by the arbitrator. The Parties shall request that the arbitrator provide its decision on the matter in issue within ninety (90) days of the appointment of the arbitrator;
  - (v) the decision of the arbitrator in respect of all matters of procedure shall be final and binding upon the Parties;
  - (vi) the costs of the arbitrator shall be borne between the Parties in the manner specified in the arbitrator's decision or, in the absence of any direction by the arbitrator, such costs shall be borne equally; and
  - (vii) except as modified by this Agreement the provisions of *The Arbitration Act*, (Saskatchewan), as amended from time to time, shall govern the arbitration process.
- (f) The Operator shall continue to perform all of its obligations under the Agreement during the resolution of any dispute or disagreement, including during any period of negotiation, mediation, arbitration or litigation.

#### GENERAL PROVISIONS

280. If either Party shall be unable to carry out any obligation under this Agreement due to Force Majeure, this Agreement shall remain in effect, but such obligation shall be suspended for the period necessary as a result of the Force Majeure, provided that:
- (a) the non-performing Party gives the other Party written notice not later than forty-eight (48) hours after the occurrence of the Force Majeure describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and the expected duration of this disability, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure and the disability;
  - (b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and
  - (c) the non-performing Party uses its best efforts to remedy its inability to perform.
281. For clarity, it is hereby expressly agreed that change in currency, and failure to provide adequate premises, equipment, materials, consumables and/or staff, or other similar matters, are not to be considered as events of force majeure or acts of God.
282. The Operator represents and warrants that the Operator has full corporate power and authority to execute and deliver this Agreement and has the full corporate power and authority to perform the terms and conditions hereof; and has entered into this Agreement

with full knowledge respecting the nature and extent of the Services to be provided and the terms of this Agreement.

- 283. Notwithstanding any of the foregoing, the settlement of strikes, lockouts, and other labour disputes shall be entirely within the discretion of the affected party, and such party shall not be required to settle any strike, lockout or other labour dispute on terms which it deems inadvisable.
- 284. This Agreement, including all referenced Schedules and Appendices, represents the entire and exclusive agreement between the Parties and supersedes all prior contracts, undertakings, representations and understandings, written or oral, between the Parties. Any amendments to this agreement must be written and formally executed by the Parties.
- 285. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered to all of the Parties shall be deemed to be and shall be read as a single agreement among the Parties.
- 286. Execution of this Agreement by any of the Parties may be evidenced by way of a facsimile transmission of such Party's signature (which signature may be by separate counterpart), or photocopy of such faxed transmission, and such faxed signature, or photocopy of such faxed signature, shall be deemed to constitute the original signature of such Party of this Agreement. Any Party delivering an executed counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart of this Agreement, but the failure to do so does not affect the validity, enforceability or binding effect of this Agreement.

The City has executed this Agreement on the 20<sup>th</sup> day of <sup>June</sup>~~May~~, 2012.

THE CITY OF REGINA

28(1) Signature removed

(seal)

Per: \_\_\_\_\_  
City Clerk Amber Smale

**Acting**



The Operator has executed this Agreement on the 13<sup>th</sup> day of May, 2012

(affix corporate seal)\*

\_\_\_\_\_ 28(1) Personal

Per: \_\_\_\_\_  
Signature of Corporate Signing Authority  
Emmie Leung CEO  
Print Name and Position



**\* If the Operator does not have a Corporate Seal or the Corporate Signing Authority does not have access to the Operator's Corporate Seal then the Corporate Signing Authority who executes this Agreement must complete and swear/affirm an Affidavit of Corporate Signing Authority in the form attached to the back of this Agreement.**

**AFFIDAVIT OF CORPORATE SIGNING AUTHORITY**

Canada  
SASKATCHEWAN

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_,  
Print Full Name of Signing Authority

**MAKE OATH/AFFIRM AS FOLLOWS:**

I am a Director or Officer of \_\_\_\_\_. (the "Operator") named in the SERVICES AGREEMENT FOR SUPPLY AND OPERATION OF MATERIAL RECYCLING FACILITY (the "Agreement") to which this Affidavit is attached.

I am authorized by the Operator to execute the Agreement without affixing the Corporate Seal of the Operator

Sworn/Affirmed before me at \_\_\_\_\_,  
Saskatchewan  
on \_\_\_\_\_, 2012  
Month Date

Notary Public in and for the Province of  
Saskatchewan.  
Being a lawyer —or—  
My appointment  
expires:

Signature of Signing Authority