

**AGREEMENT NO. 2019-27**  
**RECYCLABLE MATERIALS PROCESSING AND MARKETING SERVICES**

**THIS NON-EXCLUSIVE AGREEMENT** ("Agreement") is made and entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida, herein after referred to as the "CITY" and Republic Services of Florida, Limited Partnership, a Delaware limited partnership, with an address of 5210 W. Linebaugh Avenue, Tampa, Florida 33624 hereinafter referred to as "CONTRACTOR."

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. CONTRACTOR'S SERVICES**

- A. CONTRACTOR agrees to diligently provide all materials, services, and labor for the performance of Recyclable Materials Processing and Marketing Services in accordance with the terms of this Agreement and the technical specifications attached to this Agreement as **Exhibit "A,"** which is attached hereto and incorporated herein by reference.
- B. This Agreement shall commence on November 1, 2018 and shall end on September 30, 2019, unless terminated by either party prior to that date pursuant to the terms contained herein.
- C. This Agreement is non-exclusive and the CITY may enter into separate agreements for the same tasks and work to be completed pursuant to this Agreement, or use such other methods as in CITY'S sole opinion are required for the completion of the work.

**2. COMPENSATION AND PAYMENT FOR CONTRACTOR'S SERVICE**

- A. The CONTRACTOR'S Fee will be as follows for the term of this Agreement:
  - 1. Commingled Containers    \$177.28 per ton
  - 2. Residential Fiber                \$177.28 per ton
  - 3. Pre-sorted OCC                \$177.28 per ton
- B. If the Average Market Value (AMV) is less than the CONTRACTOR'S Fee, the CITY shall pay CONTRACTOR the dollar for dollar difference. The payment per Ton shall be calculated pursuant to the Fee Schedule attached hereto as **Exhibit "B,"** and incorporated herein by reference.
- C. CONTRACTOR acknowledges and accepts that the formula outlined in this section and as provided in Exhibit B shall be used for calculating revenue throughout the term of this Agreement. It is intended to reflect the current value of the CITY'S Recyclables, but might not be an exact calculation of that value. Any and all costs associated with accepting, processing, marketing, and transporting the CITY'S Recyclables shall be the responsibility of the CONTRACTOR. CONTRACTOR acknowledges and agrees that no minimum amount of work is guaranteed under this Agreement.
- D. Each month, the CONTRACTOR shall calculate the Average Market Value (AMV) of the CITY'S Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S.

Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages as defined in Exhibit "B," the Fee Schedule. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.

- E. The parties acknowledge and agree that the obligations of CITY to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which CITY is a party, are and shall remain subject to the provisions of Florida Statutes, Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. CITY agrees to exercise all lawful and available authority to satisfy any financial obligations of CITY that may arise under this Agreement; however, since funds are appropriated annually by the City Commission on a fiscal year basis, the CITY'S legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if, a request for such appropriations is excluded from the budget approved by the City Commission). If the City Commission fails to appropriate funds, this Agreement shall automatically terminate, and CITY shall pay CONTRACTOR for all services rendered prior to the date of termination. Notwithstanding the foregoing, no Commissioner, officer, employee, director, member or other natural person or agent of CITY shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by CITY under this Section. This Agreement shall not constitute an indebtedness of CITY nor shall it constitute an obligation for which CITY is obligated to levy or pledge any form of taxation or for which CITY has levied or pledged any form of taxation

### 3. METHOD OF PAYMENT

- A. The CITY shall pay CONTRACTOR through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Florida Statutes, Section 218.70, *et seq.*, upon receipt of CONTRACTOR'S invoice and written approval of same by the CITY'S Administrative Agent indicating that services have been rendered in conformity with this Agreement. CONTRACTOR shall submit an invoice for payment to the CITY for those specific tasks as described in the Scope of Services that were completed during that invoicing period.
- B. CONTRACTOR'S invoices shall be in a form reasonably satisfactory to the City of North Port Finance Department, who shall initiate disbursements.

### 4. INDEMNIFICATION

- A. To the extent permitted by Florida law, CONTRACTOR shall indemnify, defend and hold harmless the CITY, its Commissioners, officers, agents and employees, from all liabilities, fines, claims, assessments, suits, judgments, damages, losses and costs, including consequential, special, indirect, and punitive damages, (including, but not limited to, reasonable attorneys' fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorneys' fees) (collectively, "Claims"), to the extent caused by any acts, actions, breaches, neglect or omissions of CONTRACTOR, or CONTRACTOR'S officers,

employees, agents, subcontractors, or other persons employed or utilized by CONTRACTOR in the performance of, or the failure to perform, the Agreement. CONTRACTOR shall not have any indemnification obligations for any Claims to the extent caused by the CITY. This Agreement does not constitute a waiver of sovereign immunity or consent by the CITY or its subdivisions to suit by third parties.

- B. The CITY shall provide all available information and assistance that CONTRACTOR may reasonably require regarding any Claim. In the event of a Claim, the CITY shall promptly notify CONTRACTOR in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided for receipt of notices in this Agreement.
- C. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the CITY and such insurance coverage will not be deemed a limitation on CONTRACTOR'S liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this Indemnity provision, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).
- D. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statutes, Section 768.28.
- E. The terms of this section shall survive termination or completion of the Agreement.

## 5. CONTRACTOR'S INSURANCE

### A. INSURANCE

Before performing any work, CONTRACTOR shall procure and maintain, during the life of the Agreement, the insurance listed below, unless otherwise specified. The policies of insurance shall be primary and written on forms acceptable to the CITY and placed with insurance carriers approved by the Insurance Department of the State of Florida, and meet a minimum financial AM Best and Company rating of no less than "A-VIII."

No changes are to be made to these specifications without the City Manager or designee's prior written approval. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with CONTRACTOR.

1. Workers Compensation and Employers' Liability Insurance: Coverage to apply for all employees at the statutory limits provided by state and federal laws. Include proof of current Workers' Compensation Coverage or Workers' Compensation Exemption (notarized affidavit). The policy must include Employers' Liability with a limit of \$1,000,000 each accident; \$1,000,000 each employee; and \$1,000,000 policy limit for disease.
2. Comprehensive Commercial General Liability Insurance: Occurrence form required. Aggregate must apply separately to this Agreement. Minimum \$1,000,000 each occurrence; \$1,000,000

general aggregate; \$1,000,000 products and completed ops; and \$100,000 damage to rented premises.

3. Commercial Automobile Liability Insurance: To include all vehicles owned, leased, hired and non-owned with limits of not less than \$1,000,000 per accident for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.
4. Environmental/Pollution Liability Insurance: Minimum \$1,000,000 per occurrence and \$3,000,000 policy term general aggregate.
5. General requirements: The City of North Port, Florida, is to be named as additional insured on CONTRACTOR'S Comprehensive Commercial General Liability Policy. Evidence of same shall be required. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities under the Agreement.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the CITY, its Commissioners, officers, officials, employees and volunteers, and the CITY'S insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by CONTRACTOR for the CITY. It is CONTRACTOR'S responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. Additionally, CONTRACTOR, its officers, officials, agents, employees, volunteers, and any subcontractors, agree to waive all rights of subrogation against the CITY and its insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions for which CONTRACTOR or its agents may be responsible.

C. POLICY FORM

1. All policies required by this Agreement, with the exception of Workers' Compensation, or unless specific approval is given by Risk Management through the CITY'S Purchasing Office, are to be written on an occurrence basis and shall name the City of North Port, Florida, its Commissioners, officers, agents, employees and volunteers as additional insured as their interest may appear under this Agreement. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the CITY'S Purchasing Office. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, CONTRACTOR agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
2. Insurance requirements itemized in this Agreement, and required of the CONTRACTOR, shall be provided by or on behalf of all subcontractors to cover their operations performed under this Agreement. The CONTRACTOR shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors

3. Each insurance policy required by this Agreement shall:
  - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
  - b. Be endorsed to state that coverage shall not be cancelled except after notice is delivered in accordance with the policy provisions. The CONTRACTOR is to notify the CITY'S Purchasing Office by written notice via certified mail, return receipt requested.
4. The City shall retain the right to review, at any time, coverage, , and amount of insurance.
5. **The procuring of required policies of insurance shall not be construed to limit CONTRACTOR'S liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of CONTRACTOR'S liability for indemnity of the CITY shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the CONTRACTOR and its carrier.**
6. The CONTRACTOR shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the CITY is an additional insured under the policy. CONTRACTOR'S insurance is considered primary for any loss, regardless of any insurance maintained by the CITY. CONTRACTOR is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.
7. All Certificates of Insurance are to be furnished to the CITY'S Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the CITY'S Purchasing Office before the CONTRACTOR will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall evidence compliance with the insurance requirements provided herein.
8. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to CONSULTANT'S insurer(s) and the CITY's Purchasing Office as soon as practicable after notice to the insured.

**6. RESPONSIBILITY OF THE CONTRACTOR**

- A. CONTRACTOR acknowledges that it is familiar with the Technical Specifications identified in Exhibit A and that it will perform the services as required.
- B. If CONTRACTOR is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

- C. Upon commencement of this Agreement the CONTRACTOR shall accept deliveries of the CITY'S Recyclables during the scheduled receiving hours as specified in this Agreement.
- D. The CITY reserves the right to designate or remove other Recyclable Materials as the CITY'S Recyclables if the contracting parties agree it is technically feasible.
- E. The Sarasota County-owned Jackson Road Transfer Station, located at 250 South Jackson Road, Venice, Florida, shall be capable of accepting delivery of Recyclable Material from all types of delivery vehicles, including but not limited to the following: packer trucks, roll-off trucks, tractor-trailer transfer vehicles, and rear-discharging tilt-bed collection vehicles.
- F. The Jackson Road Transfer Station shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the Jackson Road Transfer Station site to exit from the facility site shall not exceed fifteen (15) minutes. Delays caused by equipment failure not due to negligence of the CONTRACTOR or other fault of the delivery vehicle shall not be included in the turn-around time computation. The CONTRACTOR will provide the CITY with access to its records to verify vehicle turnaround time within twenty-four (24) hour notice.
- G. The Jackson Road Transfer Station shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming and outgoing Recyclable Materials delivery vehicles and vehicles transporting Recyclable Materials to markets. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall have the scales calibrated and inspected on a yearly basis, at a minimum, or more frequently as requested by the Administrative Agent.
- H. The CONTRACTOR shall weigh all trucks that enter the Jackson Road Transfer Station, perform recordkeeping, and generate reports of incoming materials as required herein or requested by the CITY. The CONTRACTOR may use tare weights. If the CONTRACTOR chooses to do so, all tare weights must be recalibrated at least every sixty (60) calendar days.
- I. CONTRACTOR'S obligation to accept delivered Recyclable Materials upon the commencement of this Agreement is of importance to the CITY. In the event that CONTRACTOR fails or refuses to accept Recyclable Materials upon the commencement of this Agreement, the CONTRACTOR shall be liable for all hauling, processing, transportation, disposal charges and any other related costs, in excess of payments that would have been made under this Agreement, which may be incurred by the CITY with respect to recycling and marketing such materials.
- J. CONTRACTOR warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for CONTRACTOR), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award of this Agreement.
- K. CONTRACTOR shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent firms in effect at the time CONTRACTOR'S services are rendered. CONTRACTOR covenants and agrees that it and its employees shall be bound by the standards of conduct in Florida Statutes, Section 112.313, to the extent applicable, as it relates to

work performed under this Agreement. CONTRACTOR agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed by such subcontractor for CITY.

- L. CONTRACTOR shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof.
- M. The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services. CONTRACTOR shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.
- N. CONTRACTOR shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at CONTRACTOR'S offices for inspection and copying during normal business hours and upon reasonable notice by the CITY, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.

#### **7. OBLIGATIONS OF CITY**

- A. Upon commencement of this Agreement the CITY will deliver the CITY'S Recyclables to the Sarasota County-owned Jackson Road Transfer Station, located at 250 South Jackson Road, Venice, Florida, during the scheduled receiving hours specified herein. The CITY'S Recyclables will be delivered Dual Stream.
- B. The CITY'S Administrative Agent is designated to do all things necessary to properly administer the terms and conditions of this Agreement, including, but not limited to:
  - 1. Review of all CONTRACTOR payment requests for approval or rejection.
  - 2. Periodic reviews of the work of the CONTRACTOR as necessary for the completion of the CONTRACTOR'S services during the period of this Agreement.
- C. The CITY shall not provide any services to the CONTRACTOR in connection with any claim brought on behalf of or against the CONTRACTOR.

#### **8. SCHEDULED RECEIVING HOURS**

- A. The Jackson Road Transfer Station to which the CITY delivers Recyclables shall be open and available to receive the CITY'S Recyclables from at least 7:00 a.m. to 5:00 p.m. Monday through Friday, and from 7:00 a.m. to 12:00 p.m. on Saturday.
- B. The Jackson Road Transfer Station to which the CITY delivers the CITY'S Recyclables may be closed on Holidays, but will be required to be open from 7 a.m. to 5 p.m. on the Saturday following the holiday.

- C. No reductions in scheduled receiving hours shall be made without the prior written approval of the CITY'S Administrative Agent.

**9. MATERIALS REJECTION**

- A. The CONTRACTOR shall not reject any load of the CITY'S Recyclables.
- B. If the CONTRACTOR determines that a load of the CITY'S Recyclables contains an excessive amount of Rejects, the CONTRACTOR shall inform the CITY'S Administrative Agent of the delivery location, vehicle number, date, time, and estimated quantity and type of Rejects of such load and the CITY'S Administrative Agent will work to reduce the quantity of Rejects in the future.
- C. If any Hazardous Waste is detected within a load of the CITY'S Recyclables, the CONTRACTOR will properly isolate and containerize the materials and promptly contact the CITY'S Administrative Agent who will arrange for disposal.

**10. TRANSPORT, PROCESSING, AND MARKETING**

- A. The CONTRACTOR shall bear all costs associated with transporting the CITY'S Recyclables from the Transfer Station to its Recovered Materials Processing Facility, Processing Recyclables, and transporting and marketing Recovered Materials.
- B. The CONTRACTOR must maintain complete and accurate records of material inflows and outflows. These records are subject to review by the CITY during normal business hours.
- C. The CONTRACTOR shall employ a local manager charged with the responsibility of overseeing this Agreement. The CONTRACTOR'S local manager or other competent person shall be available to communicate with the CITY'S Administrative Agent or other CITY designee during normal operating hours and shall be available as needed outside of normal hours.
- D. The Recovered Materials Processing Facility design shall incorporate material processing systems capable of receiving and processing Recyclable Materials in accordance with this Agreement. The systems shall be designed to achieve the maximum product recovery rates.

**11. DISPOSAL**

- A. Unless the CONTRACTOR has prior permission from the CITY, the CONTRACTOR shall not dispose of and/or landfill any Recyclable Materials or Recovered Materials collected under this Agreement. The CONTRACTOR shall not knowingly, or without reasonable assumption, sell Recyclable Materials or Recovered Materials to another agent that landfills or disposes of material other than through recycling. This does not apply to Rejects and Residue.
- B. The CONTRACTOR is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue, generated at the Jackson Road Transfer Station and Recovered Materials Processing Facility.

**12. PUBLIC RECORDS LAW**

In accordance with Florida Statutes, Section 119.0701, CONTRACTOR shall comply with all public records laws, and shall specifically:

- A. Keep and maintain public records required by the CITY to perform the service.
    - 1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GSI-SL for State and Local Government Agencies. (see <http://dos.dos.state.fl.us/library-archives/records-management/generalrecords-schedules/>).
    - 2. "Public records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the CITY (the "Public Records").
  - B. Upon request from the CITY'S custodian of public records, provide the CITY, at no cost, with a copy of the requested Public Records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All Public Records kept electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format compatible with the information technology systems of the CITY.
  - C. Ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, if CONTRACTOR does not transfer the records to the CITY following completion of the Agreement, for the time period specified in General Records Schedule GSI-SL for State and Local Government Agencies.
  - D. Upon completion of the Agreement, transfer, at no cost, to the CITY all tangible Public Records in CONTRACTOR'S possession or keep and maintain such Public Records. If CONTRACTOR keeps and maintains public records upon the completion of the Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records.
  - E. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7063 OR HOTLINE (941) 429-7270; E-MAIL: [kpeto@cityofnorthport.com](mailto:kpeto@cityofnorthport.com).
  - F. Failure of CONTRACTOR to comply with these requirements shall be a material breach of this Agreement. Further, CONTRACTOR may be subject to penalties under Florida Statutes, Section 119.10.
- 13. TIMELY PERFORMANCE OF CONTRACTOR'S PERSONNEL**
- A. The timely performance and completion of the required services is vitally important to the interest of the CITY. The personnel assigned by the CONTRACTOR to perform the services of this

Agreement shall comply with the Technical Specifications attached as Exhibit A. The CONTRACTOR shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the CONTRACTOR'S key personnel must receive the CITY'S Administrative Agent's written approval before said changes or substitution can become effective

- B. CONTRACTOR specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth, subject only to delays caused through no fault of CONTRACTOR or the CITY. Time is of the essence in the performance of this Agreement.

#### 14. TERMINATION

- A. Termination for Cause. In the event there should occur any material breach or material default in the performance of any covenant or obligation of CONTRACTOR which has not been remedied within thirty (30) calendar days after receipt of written notice from the CITY specifying such breach or default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within thirty (30) calendar days, provided that the CONTRACTOR has undertaken the cure within such thirty (30) calendar days, and proceeds diligently thereafter to cure in an expeditious manner), the CITY may, if such breach or default is continuing, terminate this Agreement for cause upon ten (10) days written notice to the CONTRACTOR.
- B. If terminated for cause, the CONTRACTOR shall be liable for and shall pay to CITY all damages, costs, and charges incurred by the CITY in completing the work for the remainder of the of this Agreement.
- C. Upon receipt of Notice of Termination, CONTRACTOR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise, deliver or otherwise make available to CITY all data, drawings, specifications, reports, estimates, summaries, such other information as may have been required under the terms of Agreement whether completed or in process.
- D. The following events shall, without limitation, constitute a material breach or a material default by CONTRACTOR for purposes of this Section:
  - 1. Abandonment. If CONTRACTOR abandons operation of the Jackson Road Transfer Station for a period of seven (7) calendar days unless caused by event of Force Majeure. As used herein, the term "abandon" shall refer to voluntary cessation of the operation of the Jackson Road Transfer Station and a withdrawal of all operating and maintenance personnel.
  - 2. Processing. The failure of CONTRACTOR to process the CITY'S Recyclables for a period of seven (7) consecutive days at any time after the start of this Agreement. Processing shall include processing at the designated Recovered Materials Processing Facility or any other Recovered Materials Processing Facility utilized due to extenuating circumstances. The use of a Recovered Materials Processing Facility, other than as designated herein, shall first be approved for use by the CITY'S Administrative Agent.

4. Hazardous Waste. If the CONTRACTOR'S hazardous substance contingency plan, as required by Section 3.7.1 of Exhibit A, shall fail to comply with all federal and state regulations regarding the handling of Hazardous Waste.
  5. Nonpayment. The failure of CONTRACTOR to pay amounts owed to the CITY under the terms of this Agreement within thirty (30) calendar days after such amounts become finally due and payable, unless the CONTRACTOR has requested an extension and the extension has been granted.
  6. Bankruptcy. If CONTRACTOR shall be generally not paying its debts when they become due; shall have filed, or consented by answer or otherwise to the following against it of a petition for relief or reorganization and bankruptcy or insolvency law of any jurisdiction; shall make an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency law; shall consent to the appointment of custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; shall be adjudicated insolvent or shall take corporate action for the purpose of any of the foregoing.
  7. Third Party Obligations. The default by CONTRACTOR with respect to any obligation to any third party pertaining to the CONTRACTOR, which may permit any third party, either immediately or following notice and/or the passage of time to accelerate the maturity of any obligation of the CONTRACTOR, to assume control of the CONTRACTOR or take possession of or to transfer or cause to be transferred to any third party any portion of the assets of the CONTRACTOR, but only if such default materially interferes with or prevents CONTRACTOR'S performance under the terms of this Agreement.
  8. If the CONTRACTOR shall fail to diligently perform its work in accordance with the requirements of this Agreement.
- E. Termination With or Without Cause. The performance of work under this Agreement may be terminated with or without cause by the City Manager in whole or in part or whenever the City Manager determines that termination is in the CITY'S best interest. Any such termination shall be effected by the delivery to the CONTRACTOR of a written notice of termination at least sixty (60) days before the date of termination, specifying the extent to which performance of the work under the Agreement is terminated and the date upon which such termination becomes effective. Except as otherwise directed, the CONTRACTOR shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims. CONTRACTOR will be paid only for such work performed and materials supplied up to the termination. Under no circumstances shall the CITY make any payment to CONTRACTOR for services that have not been performed or that are performed subsequent to the termination date. However, under no circumstances shall such termination of this Agreement be effective prior to December 31, 2018.

- F. CONTRACTOR'S Termination for Cause. In the event there should occur any material breach or default in obligations of the CITY, which has not been remedied within thirty (30) calendar days after receipt of written notice thereof from the CONTRACTOR specifying such breach or default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within thirty (30) calendar days, provided that the CITY has undertaken the cure within such thirty (30) calendar days, and proceeds diligently thereafter to cure in an expeditious manner), the CONTRACTOR may, if such breach or default is continuing, terminate this Agreement upon written notice to the CITY.
- G. If the CITY fails to cure its breach or default as specified in the Section, the CONTRACTOR may terminate this Agreement upon ten (10) days written notice.
- H. CONTRACTOR'S Termination due to Sarasota County's Contract Termination. Understanding that CONTRACTOR cannot perform the services detailed in this Agreement without an existing contract with Sarasota County, CONTRACTOR may terminate this Agreement if CONTRACTOR'S contract with Sarasota County is terminated prior to September 30, 2019. CONTRACTOR must give the CITY sixty (60) days advance written notice of such termination, or such shorter period of time if CONTRACTOR does not have sixty (60) days advance notice of the termination of the contract with Sarasota County.

**15. INDEPENDENT CONTRACTOR**

CONTRACTOR is and shall be, in the performance of all work services and activities under this Agreement, an independent CONTRACTOR and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision, and control. CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an independent CONTRACTOR and not as employees or agents of the CITY. CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this Agreement. CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**16. ENTIRE AGREEMENT**

This Agreement constitutes the sole and complete understanding between the parties and supersedes all agreements between them, whether oral or written with respect to the subject matter.

**17. AMENDMENT**

No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in the compensation for the services, the City Commission for the CITY and the duly authorized representative for CONTRACTOR shall agree in writing to this change. For all other changes the City Manager or designee and CONTRACTOR'S representative may agree to amendments that do not increase compensation to CONTRACTOR.

**18. ASSIGNMENT**

CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Manager or designee, (which consent shall not be unreasonably withheld or delayed), except that claims for the money due or to become due to CONTRACTOR from the CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the CITY.

**19. WAIVER**

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

**20. GOVERNING LAW, VENUE, AND SEVERABILITY**

The rights, obligations and remedies of the parties under this Agreement shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party

**21. AUTHORITY**

The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

**22. NO HIRE**

CONTRACTOR shall not hire any CITY employee associated with this project throughout the duration of the Agreement and for a period of one (1) year after completion.

**23. NOTICES**

Any notice, demand, communication, or request required or permitted hereunder shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

**As to CITY:**  
Solid Waste Manager  
City of North Port Public Works Department  
1100 N. Chamberlain Blvd.  
North Port, Florida 34286  
Tel: (941) 240-8074

**With copies  
of Notices to:**  
City Attorney's Office  
4970 City Hall Boulevard  
North Port, Florida 34286

Tel: (941) 429-7260

**As to CONTRACTOR:** General Manager  
5210 West Linebaugh Ave  
Tampa, FL 33624  
Tel: (813) 439-9013

Notices shall be effective when received at the addresses specified above. Changes in the respective addresses which such notice is to be directed may be made from time to time by either party by written notice to the other party. Nothing in this Article shall be construed to restrict the transmission of routine communications between representatives of CONTRACTOR and City

**24. PARAGRAPH HEADINGS**

Paragraph headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

**25. ATTORNEYS' FEES**

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party shall be reimbursed all costs, expenses, and reasonable attorney fees through all proceedings (at both trial and appellate levels).

**26. SCRUTINIZED COMPANIES**

A. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or less, when submitting a bid or proposal, and prior to entering into a contract with the CITY, every person or entity shall certify on a form provided by the CITY, that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel.

B. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or more, when submitting a bid or proposal, and prior to entering into a contract with the CITY, every person or entity shall certify on a form provided by the CITY, that all of the following are true:

1. It is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel; and
2. It is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector list, created pursuant to Florida Statutes, Section 215.473; and
3. It is not engaged in business operations in Cuba or Syria.

**C. PENALTY:**

1. If a false certification is submitted or the person or entity has been placed on one of the above-noted Lists of Scrutinized Companies or has engaged in business operations in Cuba or Syria,

the person or entity will be in breach of the Agreement terms and the CITY may terminate the Agreement

2. A person or entity that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2 million or twice the amount of the Agreement, plus all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of the false certification; and
3. A person or entity that has been found to have provided a false certification shall be ineligible to bid on any contract with the CITY for three (3) years after the date the CITY determined that a false certification has been submitted.

IN WITNESS WHEREOF, the parties have executed the agreement as of the date first above written.

ATTEST:

CITY OF NORTH PORT, FLORIDA

\_\_\_\_\_  
Kathryn Peto, Interim City Clerk

By: \_\_\_\_\_  
Peter D. Lear, CPA, CGMA, CITY MANAGER

APPROVED AS TO FORM AND CORRECTNESS:

By: \_\_\_\_\_  
Amber L. Slayton, City Attorney

REPUBLIC SERVICES OF FLORIDA, LIMITED PARTNERSHIP  
By: Republic Services of Florida GP, Inc., its General Partner

BY: \_\_\_\_\_  
Signature

Date: 10-19-18

STATE OF FLORIDA  
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 19th day of Oct., 2018, by Howard Peterson, who is personally known to me or who produced \_\_\_\_\_ as identification.

Bette Lynn Fisher  
Notary Public



1. **Definitions.** As used herein and in the attached Agreement, the following terms shall have the meanings set forth below:
  - A. **Average Market Value (AMV)** – a market index used to determine the amount to be paid under this Agreement for the CITY’S Residential Recyclables delivered to the JRTS based on monthly fluctuations in the commodity market.
  - B. **The CITY’S Recyclables** – Recyclables collected by the City of North Port, Florida, including but not limited to the following: paper; plastics except Styrofoam and film; aluminum and steel/tin cans; glass containers; and aseptic/gable-top containers; and which may be modified upon mutual agreement by the CITY and the CONTRACTOR.
  - C. **Dual Stream** – A recycling process that requires Recyclable Materials to be sorted into fiber and container streams prior to delivery to the Jackson Road Transfer Station.
  - D. **Administrative Agent** – The Administrative Agent of the City of North Port Solid Waste Division or any other department or division as may be designated by the City Administrator to administer this Agreement.
  - E. **Hazardous Waste** – Waste which is defined as hazardous waste in Chapter 62 - 730, Florida Administration Code (FAC), as may be amended; the U.S. Environmental Protection Agency definition pursuant to the Resource Conservation and Recovery Act, 42 USC, Section 6901, *et. seq.*, and implementing regulations, as may be amended; or Chapter 403, Part IV, Florida Statutes, Section 403.703(21).
  - F. **Holidays** – Christmas Day, New Year’s Day, Thanksgiving Day, Independence Day and Labor Day.
  - G. **JRTS** – The Sarasota County-owned Jackson Road Transfer Station located at 250 South Jackson Road, Venice, Florida, at which Recyclables will be delivered to and/or accepted by the CONTRACTOR pursuant to this Agreement.
  - H. **Processing** – The manual or mechanical separation of Recyclable Materials to conform to the specifications for each marketable Recovered Material.
  - I. **Recovered Material(s)** – Recyclable Materials which have been processed to market specifications.
  - J. **Recovered Materials Processing Facility** – The facility engaged in the storage, processing, marketing, and/or reuse of Recovered Materials.
  - K. **Recyclable Materials, or Recyclables** – Materials that may be reclaimed for recycling or reuse.

**RECYCLABLE MATERIALS PROCESSING AND MARKETING SERVICES**  
**EXHIBIT A – TECHNICAL SPECIFICATIONS**

- L. Rejects – Materials, other than Residue, that cannot be recycled and that cannot be processed into Recovered Materials.
- M. Residue – The portion of the Recyclable Materials stream accepted by the CONTRACTOR that is not converted to Recovered Materials due to breakage and/or transportation or Processing inefficiencies.
- N. Ton – A unit of weight equal to 2,000 pounds, also referred to as a short Ton.
- O. Transfer Station – A facility engaged solely in the acceptance, storage, and transportation of Recovered Materials and solid waste.

**2. Record Keeping**

The CONTRACTOR shall create, maintain, and make available records as defined in and required by all applicable local, state, and federal laws, rules and regulations, and any reports as are reasonably necessary to document and track information described herein. All records provided to the CITY shall be in an Excel spreadsheet or other format as approved by the CITY'S Administrative Agent.

**3. Reporting**

- A. Hazardous substance contingency plan: The CONTRACTOR shall maintain a hazardous substance contingency plan. The plan shall detail what actions will be taken by the CONTRACTOR upon discovery of hazardous substances at the facilities. The plan must comply with all state and federal regulations. Non-conformance with such regulations shall cause rejection of the plan. Failure to correct the plan within thirty (30) days may be considered by the CITY as an event of default under the terms of this Agreement.
- B. Contingency Plan: The CONTRACTOR'S contingency plan shall describe the standard operating procedures that will be implemented by the CONTRACTOR at the JRTS in the event it is affected by a natural or man-made disaster or extreme weather event. The plan is subject to review and approval by the CITY'S Administrative Agent.
- C. Monthly Reports: By the fifteenth (15<sup>th</sup>) of each month, the CONTRACTOR shall submit to the CITY'S Administrative Agent an electronic report summarizing deliveries of the CITY'S Recyclables at the JRTS during the previous calendar month and payments due to the CITY. Monthly reports of the CITY'S Recyclables received and processed shall include delivery date and time, vehicle number, material type, and quantity.
- D. Formats: The format and contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Agreement is subject to the review and approval of the CITY.
- E. Review of Records: The CITY or any of its duly authorized representatives shall have access, within seven (7) calendar days of notification, to all of CONTRACTOR'S books, records, data and documents related to this Agreement for inspection and audit at the CONTRACTOR'S expense.

**RECYCLABLE MATERIALS PROCESSING AND MARKETING SERVICES**  
**EXHIBIT A – TECHNICAL SPECIFICATIONS**

- F. Document Retention: The CONTRACTOR will maintain and allow access to books, records, data, documents, and reports relating to this Agreement for three (3) years following the conclusion or termination of this Agreement.

**4. Invoicing and Payment**

- A. No later than the fifteenth (15th) day of each month, the CONTRACTOR shall submit a monthly invoice detailing the total payment due to the CONTRACTOR in a form acceptable to the CITY, for the CITY'S Recyclables delivered to the JRTS during the previous month.
- B. The CITY shall pay CONTRACTOR through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Florida Statutes, Section 218.70, *et seq.*, upon receipt of CONTRACTOR'S invoice and written approval of same by the CITY'S Administrative Agent indicating that services have been rendered in conformity with this Agreement.

**5. Taxes**

CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required by Federal, State and local law. CONTRACTOR is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.

**6. Force Majeure**

- A. Except for any payment obligation by either party, if the CITY or CONTRACTOR is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the CITY or CONTRACTOR to correct the adverse effect of such event of force majeure.
- B. An event of "Force Majeure" shall mean the following events or circumstances to the extent that they delay the CITY or CONTRACTOR from performing any of its obligations (other than payment obligations) under this Agreement:
1. Strikes and work stoppages unless caused by a negligent or willful act or omission of CONTRACTOR or its agents or assigns;
  2. Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of CONTRACTOR, its agents, and assigns), landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather;
  3. Adoption or change (including a change in interpretation, enforcement or permit requirement) of any federal, state, local or foreign law after the commencement of this Agreement, preventing or materially impacting performance of or compliance with the obligations hereunder;
  4. Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities; and
  5. Suspension, termination or interruption of utilities necessary to the operation of the Designated Facilities.

**RECYCLABLE MATERIALS PROCESSING AND MARKETING SERVICES**  
**EXHIBIT A – TECHNICAL SPECIFICATIONS**

- C. In order to be entitled to the benefit of this section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure.
- 7. Protection of Resident Workers
  - A. The CONTRACTOR shall establish appropriate procedures and controls so no service under this Agreement will be performed by any worker who is not legally eligible to perform such services.
  - B. The CITY shall have the right to immediately terminate this Agreement if the CITY determines that the CONTRACTOR has failed to perform satisfactorily with respect to its employment practices in support of Federal Immigration and Nationality Act (INA).
  - C. The CONTRACTOR shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and shall require all subcontractors to confirm employment eligibility in the same manner.

# RECYCLABLE MATERIALS PROCESSING AND MARKETING SERVICES

## EXHIBIT B – FEE SCHEDULE

Each month, the CONTRACTOR shall calculate the AMV of the City's Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages of the City's Recyclables, as defined in the table below, which calculates the AMV for June 2018.

### Commingled Containers

<u>Material</u>	<u>Index Description</u>	<u>Index Value</u>	<u>Market Value (\$/Ton)</u>	<u>Material %</u>	<u>AMV (\$/ Ton)</u>
Steel Cans	\$/ Ton, sorted, baled and delivered	165.00	\$165.00	5.20%	\$8.58
Aluminum Cans	Cents/lb , sorted, baled and delivered	77.00	\$1,540.00	3.60%	\$55.44
PET	Cents/lb , baled and picked up	16.75	\$335.00	13.00%	\$43.55
Natural HDPE	Cents/lb , baled and picked up	39.50	\$790.00	3.00%	\$23.70
Colored HDPE	Cents/lb , baled and picked up	14.50	\$290.00	3.40%	\$9.86
Plastics #3-#7	Cents/lb , baled and picked up	-1.50	-\$30.00	3.80%	-\$1.14
Glass (3 Mix)	\$/ Ton, delivered	-22.50	-\$22.50	52.50%	-\$11.81
Aseptic Containers	None at this time	0.00	\$0.00	0.50%	\$0.00
Rejects	N/A	-93.86	-\$93.86	15.00%	-\$14.08
				100.00%	\$114.10
Example Calculation: \$177.28 - 114.10 = \$63.18 /ton paid by City to Contractor					

### Residential Fiber

<u>Material</u>	<u>Index Description</u>	<u>Index Value</u>	<u>Market Value (\$/Ton)</u>	<u>Material %</u>	<u>AMV (\$/ Ton)</u>
Newspaper	PS 8 baled, F.O.B. seller's dock	7.50	\$7.50	14.50%	\$1.09
Corrugated Containers	PS 11 baled, F.O.B. seller's dock	72.50	\$72.50	29.80%	\$21.61
Mixed Paper	PS 1 baled, F.O.B. seller's dock	-10.00	-\$10.00	51.00%	-\$5.10
Rejects	N/A	-93.86	-\$93.86	4.70%	-\$4.41
				100.00%	\$13.18
Example Calculation: \$177.28 - 13.18 = \$164.10 /ton paid by City to Contractor					

**Pre-sorted OCC**

<u>Material</u>	<u>Index Description</u>	<u>Index Value</u>	<u>Market Value (\$/Ton)</u>	<u>Material %</u>	<u>AMV (\$/Ton)</u>
<b>Corrugated Containers</b>	PS 11 baled, F.O.B. seller's dock	72.50	\$72.50	100.00%	\$72.50
Example Calculation: $\$177.28 - 72.50 = \$104.78/\text{ton}$ paid by City to CONTRACTOR					

Note: The index values for June 2018 are used for estimation purposes only and are subject to fluctuation