

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: March 6, 2023

RE: **Recyclable Materials Processing Agreement with Republic Services of Florida, Limited Partnership**

The Solid Waste and Recycling Division of Public Works collects approximately 7,000 tons of material per year in our City-wide residential and commercial recycling programs. This material, once collected by City recycling trucks, requires cleaning and sorting into sellable recycling commodities. Once the materials are cleaned, sorted and bailed, they are sold on the secondary recycling markets to help offset the costs associated with the City's recycling programs.

In September of 2022, the Solid Waste & Recycling Division issued a Request for Proposals (RFP) for recycling processing services for all residential and commercial recyclable material collected. Republic Services was the sole respondent to the RFP. A Notice of Intent to Award was issued on February 23, 2023. Through lengthy negotiations with Republic Services, City staff was able to come to an acceptable processing agreement with Republic in a difficult recycling market for both parties.

Republic's scope of work under the attached Agreement includes:

- Accepting all collected program recyclables for processing
- Processing, cleaning and bailing recyclables
- Selling recyclables on the secondary markets
- Disposing of program residue
- Providing recycled material reports

The Agreement is for an initial one-year period and may be extended for two additional one-year periods upon mutual written consent of the parties. The processing fee to be paid to Republic for the first 6 months of the initial term is \$155 per ton. The fee will be increased by 5% to \$162.75 per ton for the second 6 months of the initial term, and will be increased by 5% for each additional 1-year renewal term exercised by the parties. The total processing fee to be paid to Republic will be offset by the revenue generated by selling the City's recyclables on the secondary recycling markets. Based upon current market conditions, it is estimated that the City will make a net payment to Republic of \$622,000 for the first year of the Agreement. For comparison purposes, the cost to simply send all collected recycling materials to the

Polk County landfill is estimated at \$265,979. As a result, the ultimate net cost to the City to recycle for the current fiscal year is estimated to be \$356,021. As noted, these figures could change depending upon the prices generated in the secondary recycling market.

Funding for Republic's services under the attached Agreement is provided in the FY 2023 Solid Waste Budget and Solid Waste Fund in the estimated amount of \$622,000.00. It is recommended that the City Commission award RFP No. 2308 to Republic Services of Florida, LP and authorize the appropriate City officials to execute the attached Recyclable Materials Weighing, Acceptance, Processing and Marketing Agreement on behalf of the City.

Attachment

**RECYCLABLE MATERIALS WEIGHING,
ACCEPTANCE, PROCESSING, AND
MARKETING AGREEMENT**

Between

CITY of Lakeland, Florida

and

Republic Service of FL, LP

CONTRACT NO. RFP 2308

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SECTION 1.0 DEFINITIONS

Wherever used in this Contract, the following terms shall have the meanings indicated, which shall be applicable of both the singular and plural thereof:

- a. Administrator – The CITY employee designated by the Public Works Director to be the CITY’s official representative regarding matters pertaining to this Contract.
- b. Applicable Law – Any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard, or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued, or enforced by a government body during the term of this Contract, and relate in any manner to the performance of the CONTRACTOR under this Contract.
- c. Average Market Value (AMV) – A calculation of market indices used to determine the revenue paid by the CONTRACTOR to the CITY for Single Stream Recyclables delivered to the Designated Facility, based on monthly fluctuations in the commodity market. Exhibit A explains how the AMV is calculated and provides an example.
- d. CITY – The CITY of Lakeland or its authorized representatives, successors, or assigns.
- e. Contamination: Means the sum of the following materials which are addressed by this Agreement: rejects, hazardous materials, and excess moisture, and the remedies for each defined herein.
- f. Contract – Contract shall mean this agreement between the CITY and CONTRACTOR, including the exhibits and any written amendments.
- g. Contract Documents – The Contract Documents shall mean, collectively and in hierarchical order, the Contract, the CITY’s Request for Proposal, CITY-approved addendum and exceptions, and CONTRACTOR’s proposal which are intended to be complementary, and what is required by any one of them shall be as binding as if required by all. In the event of a conflict, the order of hierarchy shall be the order listed herein.
- h. CONTRACTOR – The person, persons, partnership, company, or corporation undertaking the performance of the services required by the Contract Documents.
- i. Day – A calendar day.
- j. Designated Facility – The facility at which the CITY’s Program Recyclables will be accepted by the CONTRACTOR.
- k. Excess Moisture- Means water puddling or dripping from loose loads delivered to the Designated Facility by the City.
- l. Force Majeure – Means 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 Contract: strikes and work stoppages unless caused by a negligent or willful act or omission of CONTRACTOR or its agents or assigns; 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; and acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.
- m. Hazardous Materials – Means those materials included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “contaminants,” or “hazardous wastes” in the Comprehensive Environmental Response, Compensation and

Liability Act of 1980, as amended (42 USC Sections 9601, et seq.); the Hazardous Materials Transportation Act, as amended (49 USC Sections 1801, et seq.); the Resource Conservation and Recovery Act, as amended (42 USC Sections 9601, et seq.); the Toxic Substance Control Act as amended (15 USC Section 2601 et seq.); the Environmental Protection Act, R.S.O. 1990, C.E. 19; the Environmental Protection Act, S.C. 1991 c. 15.3, as amended; and in any of the regulations adopted, published, and promulgated pursuant to said laws, or in any other Laws and Regulations.

- n. Holidays –New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- o. Market Disruption- Means Recyclable Materials which cannot be recovered because of a loss of all available markets as agreed to by the City.
- p. Performance Bond – A bond provided by the CONTRACTOR to protect the CITY against loss in the event the terms of this Contract are not fulfilled; a surety company will assume liability for the CONTRACTOR’s default.
- q. Processing – The manual or mechanical separation of Recyclable Materials to conform to the specifications for each marketable Recovered Material
- r. Processing Fee – A per ton fee paid by the CITY to the CONTRACTOR for Single Stream Recyclables delivered to the Designated Facility
- s. Program Recyclables – Recyclable Materials collected by or on behalf of the CITY, including Single Stream Recyclables and other Recyclable Materials mutually agreed upon by the CITY and CONTRACTOR during the term of the Contract
- t. Recovered Materials – Recyclable Materials that have been diverted or removed from the Solid Waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent Processing, but does not include materials destined for any use that constitutes disposal.
- u. Recyclable Materials (Recyclables) – Materials that are capable of being recycled and would otherwise be Processed or disposed of as Solid Waste.
- v. Rejects – Materials, other than Residue, that cannot be Processed into Recovered Materials.
- w. Residue – That 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.
- x. Single Stream Recyclables – CITY Commercial and Residential Program Recyclables that include a mixture of two or more of the following materials: newspaper, magazines, old corrugated cardboard, telephone directories, office paper, junk mail, paperboard, and other paper fiber products; aluminum beverage and food containers; steel, tin and bimetal cans; flint (clear), green and amber (brown) glass bottles and jars; plastic containers numbered one through seven (#1-7); aseptic containers; and other Recyclable Materials mutually agreed upon by the CITY and CONTRACTOR during the term of the Contract.
- y. Solid Waste – Any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, Processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations. (Subsection 403.76(5), F.S.)

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SECTION 2.0 CONTRACT TERM AND EXTENSIONS

2.1 Commencement Date and Initial Term.

The Commencement Date of the Contract shall be December 19, 2022, in accordance with the conditions of the Contract. The Initial Term of this Contract shall be for One (1)-year from December 19, 2022, to December 18, 2023.

2.2 First Extension by Mutual Agreement.

CITY and CONTRACTOR further agree that the term **may** be extended for an additional one (1)-year by mutual written agreement between the Parties (the “First Extension”) at any time prior to 60 days before the end of the Initial Term.

2.3. Second Extension by Mutual Agreement.

CITY and CONTRACTOR further agree that the term **may** be extended for an additional one (1)-year by mutual written agreement between the Parties (the “Second Extension”) at any time prior to 60 days before the end of the First Extension.

2.4. Continuity Extension.

If the CITY requests a First Extension and the Contractor does not agree to the First Extension, the CITY can, at its sole option, exercise up to two (2) six (6)-month Continuity Extensions, for the purposes of program continuity while finding alternate solutions, with forty-five (45)-day notice to the Contractor before the end of the Initial Term. In the event the parties have agreed to a First Extension and Contractor does not agree to a Second Extension after request by the City, the CITY and the Contractor can by mutual agreement, exercise up to two (2) six (6)-month Continuity Extensions to follow the First Extension, for the purposes of program continuity while finding alternate solutions, with forty-five (45)-day notice to the Contractor before the end of the First Extension. Each six-month Continuity Extension must be noticed separately by the City to be in effect.

SECTION 3.0 CITY’S RESPONSIBILITIES

The CITY is responsible for ensuring all Program Recyclables collected by or on behalf of the CITY are delivered to the Designated Facility. The CITY does not guarantee the specific tonnage of Recyclable Materials that will be delivered.

3.1 Exclusivity

Throughout the term, CITY agrees that all CITY Single Stream Recyclable Materials shall be delivered to the CONTRACTOR. CONTRACTOR agrees that during the term CONTRACTOR will:

- a. Provide a Designated Facility for unloading the CITY Recyclable Materials; and

- b. Process all materials delivered for weighing, accepting, processing and marketing subject to this agreement and attachments.

3.2 Ownership of the Recyclable Materials

Until unloaded at the Designated Facility, the Recyclable Materials shall be at all times owned by CITY, subject to its obligations, duties and responsibilities under this Agreement. The CITY hereby agrees that full ownership of the Collected Materials shall be automatically transferred to the CONTRACTOR at the time the CITY Recyclable Materials are weighed, unloaded, and accepted at the Facility, free and clear of all liens, security interests, or claims of any third party, provided, however, that the title to any Hazardous Materials delivered to the Facility shall remain with the CITY.

SECTION 4.0 CONTRACTOR'S RESPONSIBILITIES

4.1 Compliance with Contract Documents

CONTRACTOR shall comply with all terms, conditions, and requirements of the Contract Documents and shall provide all services as specified in the Contract Documents.

4.2 General Scope of Work

In exchange for the Processing Fee and any Revenue Share compensation from CITY-delivered Recyclables, in addition to other obligations herein and duties and responsibilities set forth herein, CONTRACTOR shall be responsible for and shall bear all costs and expenses associated with:

- a. Operating the Designated Facility to fulfill the scope;
- b. Operating in a safe and legal manner at all times to complete the scope;
- c. Accepting and Processing all Recyclable Materials in a manner so that they can be recycled and/or sold to markets;
- d. Selling recyclable material to best optimized markets available (highest value, ethical, sustainable) subject to the limitations provided in Section 4.8;
- e. Disposing of any non-recyclable materials and any other wastes (except for Hazardous Materials) subject to the limitations provided in Section 4.8;
- f. Providing required reports;
- g. Providing the CITY with a list of buyers for every Sellable Commodity on a monthly basis;
- h. Providing timely payments to the CITY, if required.

4.3 Scheduled Receiving Hours

The Designated Facility shall be open and available to receive Program Recyclables Monday through Friday of each week between the hours of 7:00 a.m. and 5:30 p.m., Eastern Time, except for weeks in which Holidays are observed. For weeks in which a Holiday is observed, the Designated Facility shall be open and available to receive Program Recyclables Monday through Friday, excluding the day the Holiday is observed, between the hours of 7:00 a.m. and 5:30 p.m., Eastern Time, and between the hours of 7:00 a.m. and 5:30 p.m., Eastern Time, on the Saturday following the day the Holiday is observed. Additionally, the CONTRACTOR shall be available to open the facility and to receive Program Recyclables for extended hours up to six (6) times per year, at no additional cost. Notwithstanding the foregoing, CONTRACTOR reserves the right to cease operation of the Designated Facility in its entirety or transfer their interest in the operations of the Designated

Facility to an outside third party. CONTRACTOR will provide CITY with reasonable notice of their intent to cease operations of the Designated Facility and this Contract will terminate on the date the CONTRACTOR ceases operation of the Designated Facility.

4.4 Scales

The CONTRACTOR shall have and maintain certified scales at the Designated Facility that are tested at least annually by a scale company registered with the Florida Department of Agricultural and Consumer Services. A copy of all annual scales test reports must be provided to the Administrator. Prior to entering into a Contract, CONTRACTOR must provide a copy of the most recent certified scales test report to the Administrator. Additionally, scales must be tested by a scale company registered with the Florida Department of Agriculture and Consumer Services within ninety (90) calendar days of the effective date of the Contract and a copy provided to the Administrator. The CONTRACTOR shall give the CITY the right to make unannounced visits to the CONTRACTOR'S scale house to observe weighing activities.

4.5 Material Acceptance

- a. Beginning on the Commencement Date, the CONTRACTOR shall accept deliveries, at the Designated Facility, of CITY-delivered Single Stream Program Recyclables, including Recyclables delivered from a variety of different trucks including, but not limited to, packer trucks, roll-off trucks, tractor-trailer transfer vehicles, rear-discharging tilt-bed, and side-discharging tilt-bed collection vehicles, and self-haul vehicles;
- b. CONTRACTOR shall ensure that all inbound Program Recyclables are weighed, and a weight ticket presented to the delivery vehicle driver;
- c. CONTRACTOR shall ensure a turn-around time of no more than thirty (30) minutes for collection vehicles;
- d. CONTRACTOR shall identify and maintain adequate records of all Program Recyclables delivered to the Designated Facility. Tonnage for Single Stream Recyclables shall be recorded separately;
- e. Modifications may be made to the types of Program Recyclables accepted by the CONTRACTOR upon mutual agreement by the CITY and CONTRACTOR;
- f. CONTRACTOR shall have a backup plan in place in the instance that the Designated Facility is unable to accept Program Recyclables for any reason. The backup plan must be submitted within thirty (30) days of Contract execution and be deemed acceptable by the CITY. The backup plan must provide for comparable service (including scales, delivery receipts, and reporting records), and delivery of material within the same designated receiving hours and location limits (within a seven (7) mile radius of the Solid Waste Manager's office (501 Evelyn Avenue, Lakeland, FL 33801)).

4.6 Material Rejection

- a. In the event the CONTRACTOR has reasonable suspicion that a load of Program Recyclables contains more than twenty percent (20%) Rejects by weight, the CONTRACTOR must follow the following procedures in order to deem the load to have more than twenty percent (20%) Rejects:

- i. For each load which the CONTRACTOR deems twenty percent (20%) has been exceeded, CONTRACTOR shall inform the delivery vehicle driver before leaving the Designated Facility, as well as the Administrator, that the load is suspected of containing more than twenty percent (20%) Rejects;
 - ii. CONTRACTOR shall keep the load in question separate from other materials received at the Designated Facility until such time that the Administrator inspects the load. The CITY may also request its delivery vehicle driver to stay at the Designated Facility until such time that the Administrator arrives;
 - iii. If the Administrator, upon visual inspection, concurs that the load contains more than twenty percent (20%) Rejects by weight, the CONTRACTOR may reject all or part of the load, and the CITY will remove and dispose of that part of the load that is rejected, or compensate the CONTRACTOR for the service at an agreed upon price. Loads subject to this provision shall not be subject to the provisions of Section 4.8;
 - iv. If the Administrator does not concur that the load contains more than twenty percent (20%) Rejects by weight, then the CONTRACTOR must demonstrate to the CITY, in a means acceptable to the CITY, and in the presence of the Administrator or his or her designee, that the twenty percent (20%) threshold has been exceeded. If the load does not contain more than twenty percent (20%) Rejects by weight, the CONTRACTOR shall Process the load and compensate the CITY for the total weight of the load as Program Recyclables. If the load does contain more than twenty percent (20%) Rejects by weight, then the CONTRACTOR may reject all or part of the load, and the CITY will remove and dispose of that part of the load that is rejected or compensate the CONTRACTOR for the service at an agreed upon price;
 - v. In the event the procedures outlined above are not followed, CONTRACTOR shall compensate the CITY for the total weight of the load as Program Recyclables.
- b. If any Hazardous Waste is detected in Program Recyclables delivered to the Designated Facility, CONTRACTOR shall immediately notify the delivery vehicle driver and note the incident by taking a photograph of the Hazardous Waste load and the truck, including the truck number that delivered the Hazardous Waste. CONTRACTOR is responsible for properly isolating and containerizing such waste in accordance with all Applicable Law. If the CONTRACTOR documents that the Hazardous Waste originated in a load of Program Recyclables, the CITY shall dispose of the Hazardous Waste or pay the CONTRACTOR for the cost of such disposal.
- c. If any Excess Moisture is detected in Program Recyclables delivered to the Designated Facility, CONTRACTOR shall immediately notify the delivery vehicle driver and the City Administrator and note the incident by taking a photograph of the load with Excess Moisture and the truck, including the truck number. CONTRACTOR is responsible for properly isolating the material to allow for City inspection of the Excess Moisture. The City will decide whether to inspect loads with Excess Moisture or direct the Contractor to reload the material into the same or a designated truck for a \$50 re-load charge. The CITY shall dispose of the Recyclable Material with Excess Moisture. Such material shall not be counted as Rejects for the purposes of determining Section 4.6.a responsibility.

4.7 Process and Marketing

CONTRACTOR is responsible for all requirements and activities and shall bear all costs associated with Processing Program Recyclables and marketing Recovered Materials produced as a result of this Contract.

4.8 Disposition of Program Recyclables and Recovered Materials

The CONTRACTOR shall not dispose of or landfill any Program Recyclables or Recovered Materials Processed pursuant to this Contract. The CONTRACTOR shall not sell such Program Recyclables or Recovered Materials to another agent that landfills or disposes of material other than through recycling.

- a. This prohibition does not apply to Rejects and Residue.

This prohibition does not apply to Recyclables which have been separated but cannot be recovered due to a Market Disruption.

- b. Disrupted Recyclable Material

1. The CONTRACTOR and the City recognize that Market Disruptions are common features in multiple commodity markets utilized in residential recycling. Both the City and the Contractor acknowledge that recyclable materials markets can sometimes get disrupted for long or short periods of time.
2. A recyclable material market disruption shall only be approved by the City for bales or loose Recyclables from City trucks which have been properly separated and at least a truckload quantity exists, and the Contractor has not found a suitable positive or negative market to sell the materials to for at least 20-business days from receipt by the City of written notice from the CONTRACTOR. Such approval shall not be unreasonably withheld.
 - i. The CONTRACTOR will notify the City when CONTRACTOR feels that there has been a Market Disruption by written, dated, and signed letter;
 - ii. The City will acknowledge in writing within 24 hours of receipt of notice that it has received the letter, and the 20-business day cycle shall commence at that point. If the City does not acknowledge receipt of CONTRACTOR's letter within 24 hours, the 20-business day cycle shall begin 24-hours after the letter has been received.
 - iii. The City shall have the right to inspect the affected material during this time;
3. If it is determined that no market can be found for the material and both parties agree, the Market Disruption will be approved by the City and the material shall be sent to a landfill during the disruption;
4. If a recyclable material market disruption causes disposal at a landfill:
 - i. the recyclable material will still be collected as a recyclable material by the City;
 - ii. However, for the purposes of pricing based on Section 5 Pricing (below), the percentage represented by that commodity for determining the Average Market Value (AMV) will become 0% and index pricing will not apply. Rather, the percentage represented by that commodity for the purposes of

determining the Average Market Value (AMV) will be placed in a category called "Disrupted Recyclables" and be multiplied by the landfill tip fee (currently \$36.50) as a percentage of the total;

5. The following procedures will also be applied to Program Recyclables having an approved Market Disruption.
 - i. During the approved market Disrupted Recyclables period:
 1. If a market is found in the following three (3)-months after the City approves the Market Disruption, CONTRACTOR shall notify the CITY accordingly;
 2. The Contractor will ship the material to the new market beginning the first day of the following month;
 3. Provided the material is accepted by the new market for a period of at least 60 days, the Market Disruption will be considered closed;
 4. Utilizing this cycle, the CONTRACTOR and CITY will review the status of the Disrupted Recyclable each quarter the contract is in effect, and if no market is found, the market disruption will continue;
 - ii. If a Market Disruption has lasted for at least 12 months and no suitable market has been found by the City or Contractor:
 1. The CITY will evaluate that specific material for removal from the recycling program acceptable materials list;
 2. For the 12-month period after the Market Disruption is approved by the CITY, in all Composition studies performed under this agreement, a "Market Disrupted Materials" category will be added to the study and the affected materials shall be placed into this category and not treated as Rejects or Contamination during the market Disrupted Recyclable period.
 3. After the 12-month period, the Market Disrupted Recyclable materials will be treated as non-program Rejects in accordance with Section 4.6.

4.9 Compliance with Applicable Law

CONTRACTOR shall comply at all times with all Applicable Law and regulations concerning the acceptance, transfer, and Processing of Recyclable Materials, and the temporary storage and marketing of Recovered Materials.

4.10 Recovered Materials Dealer Certification Form

CONTRACTOR shall provide a copy of its current Recovered Materials Dealer Certification Form from the State of Florida Department of Environmental Protection to certify that it is qualified, approved, and licensed to accept and Process Recyclables and market Recovered Materials. CONTRACTOR shall maintain this certification and annually provide the Administrator with a copy throughout the term of this Contract.

4.11 Right to Inspect

The CITY shall have the right, during the CONTRACTOR's hours of operation, to inspect both the operating and maintenance practices and records of the CONTRACTOR at the Designated Facility.

Operating practices shall include, but not be limited to, the receipt, separation, Processing, loading, storage, and transportation of Recyclables and Recovered Materials. The CONTRACTOR shall reasonably accommodate the CITY's inspection rights described herein.

4.12 Tours

CONTRACTOR shall cooperate with the CITY in scheduling Designated Facility tours for visitors and community groups.

4.13 Outreach Programs

CONTRACTOR shall cooperate with the CITY in the development and implementation of those outreach programs that are intended to increase the participation of CITY of Lakeland residents, businesses, and others, in the CITY's recycling program.

SECTION 5.0 PAYMENTS TO THE CITY AND/OR CONTRACTOR

5.1 Compensation and Pricing - Contractor Processing Fee, Processing Fee Adjustment, Revenue Share and Net Payment

The following describes how compensation is determined for the required services in this Contract and the pricing mechanisms.

- a. The CONTRACTOR shall pay the CITY monthly, or CITY shall pay the CONTRACTOR, for each ton of inbound Single Stream Recyclables delivered to the Designated Facility. Net Payment shall be calculated in the following manner based on the Eighty Five Percent (85%) Revenue Share (RS) portion of the Total Commodity Revenue shared by the City under this agreement:

Process Fee (PF) payment \$155
Minus
CITY Revenue Share (RS)
85% of Total Commodity
Revenue

- b. For purposes of determining Net Payment, CONTRACTOR shall retain remaining 15% portion of the Total Commodity Revenue.
- c. Should the City Revenue Share exceed the PF payment, the City will receive the excess Revenue as a Payment from the Contractor.
- d. Sample calculations of Net Payments are attached in Exhibit A.

5.2 Determining Total Commodity Revenue

- a. **Average Market Value (AMV):** At the end of each month, to determine the Total Commodity Revenue, the CONTRACTOR shall calculate the Average Market Value (AMV) of the CITY's Single Stream Recyclables, defined as the weighted sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) from the first posting in the month

tons were received. AMV will be calculated using prices transacted on the nationally recognized SecondaryMaterialsPricing.com and SecondaryFiberPricing.com indices website multiplied by the composition percentages of the CITY's Single Stream Recyclables as defined in Exhibit A and updated through the required Material Audit Studies (Section 5.3).

- b. If at any time during the term of this Contract SecondaryMaterialsPricing.com or SecondaryFiberPricing.com no longer post or otherwise provide the applicable market indices, then the parties shall mutually select an appropriate replacement third-party source for the required information from among the standard sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
- c. **Total Commodity Revenue:** The AMV will then be multiplied by total CITY-delivered tons to determine Total Commodity Revenue for the month:

<p style="text-align: center;">Average Market Value (AMV) multiplied by CITY-delivered Total Monthly Tons to the Designated Facility</p>
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A sample calculation of Total Commodity Revenue is attached in Exhibit A.

5.3 Recyclable Materials Composition Audit Study (Audit Study)

The CITY and the CONTRACTOR acknowledge that the composition of Single Stream changes over time with consumer preferences and packaging/paper evolution, among other variables. The following Recyclable Materials Composition Audit Study procedure will be the sole determinant of those changes beginning in February 2020 for calculating the AMV. By completing the Audit Study on a regular basis, both sides agree that the most recent Audit Study findings will be used to adjust the composition of materials, for the purpose of determining the amount of each recyclable collected for determining Average Market Value (AMV) relative percentages as demonstrated in Exhibit A:

- a. CONTRACTOR shall undertake and the CITY shall participate in a Recyclable Material Composition Study of the CITY's Recyclable Materials two (2) times per Contract Year; CONTRACTOR shall be solely responsible for all costs associated with conducting the Audit Study;
- b. The CONTRACTOR shall contact the CITY and provide available timeframes for each audit at least 30 business days before the Audit Study is to commence. CITY shall at its sole discretion select the dates of the Audit Study;
- c. Beginning in February 2020, the CONTRACTOR shall conduct, and the CITY shall participate in the Audit Study during alternating seasons of each Contract Year. For example, in 2020, the first Composition Audit Study shall be undertaken by the first week of April 2020, which is Spring. The second Audit Study shall be completed in Fall 2020, the third in Winter of 2021, and the fourth in Summer of 2021, and then the cycle repeats Spring, Fall, Winter, Summer, etc.

Audit Study Procedure

- a. The Audit Study will take place at the CONTRACTOR Designated Facility;
- b. Both parties will have at least one (1) designated representative or more during the Audit Study. Either party may determine that an independent subject matter expert represent their interests during the Audit Study, and costs of utilizing the representative will be borne by the Party ordering those services;
- c. The Audit Study will take place over a designated week determined by the CITY;
- d. The CITY or its Designee will arrive before the Audit Study begins and will be on site to oversee sampling and Audit Study procedures. The Audit Study will take place during a time frame between 7:00 am and 6:00 pm Eastern Time, and will be conducted continuously and independently from other facility operations;
- e. The CONTRACTOR agrees to conduct the Audit Study transparently and to share all aspects of the audit with the CITY including weight sheets, spreadsheets, and tally lists. The CONTRACTOR will answer all questions the CITY poses for determining that the audit has been conducted fairly according to these procedures;
- f. A meeting on safety inside the facility will be conducted by the CONTRACTOR with the CITY at the beginning of each Audit week. The CITY will follow CONTRACTOR safety rules during the Audit Study;
- g. The area used for the audit is to be swept clean and free of Recyclables and Rejects;
- h. After CITY vehicles containing Recyclable Materials are weighed, the truck will empty loads into the cleared area for sampling;
- i. A minimum 150-pound sample will be taken from random parts of each Recyclable Material load delivered by the CITY during the audit week, such that a fair characterization is achieved. Loads will be taken randomly from the middle of the dumped material, the top of the material, each side of the material, and the bottom of the material pile, alternating the four cardinal direction sides of the dumped load pile for pulling the sample;
- j. CONTRACTOR or its designee will provide all equipment required, including weighing containers, scales, sorting tables, wheel bucket loader, and tally sheets. All weighing containers shall be weighed and marked with their respective weights;
- k. Each commodity and remaining Contamination are manually separated and weighed in containers, and the container weight is subtracted to determine the percent composition by sample;
- l. De-minimus, un-attached "fines" materials/sweepings less than two (2) inches in diameter will be counted as non-recyclable Contamination and will be weighed and added to the rejects total;
- m. Both Parties agree that Old Corrugated Cardboard (OCC) not in a state of Excess Moisture as defined in this Contract, should be counted as OCC, regardless of slight or moderate dampness where no puddling or dripping from the OCC is found during the Audit. To avoid any future event to the contrary, OCC shall be counted as OCC during the Audit process and moisture deductions shall not be used for this material in determining material composition for Payments;
- n. Disrupted Recyclable Materials, if any, will have their own category according to the provisions of S.4.8.c and shall be collected and measured separately;
- o. Weights are recorded by the CONTRACTOR and a copy of all the tally sheets are furnished at the end of each day during the Audit week to the CITY;

- p. The composition shall be determined as percentages based on the relative sum of all commodity samples as a percent of the total weight of all samples.
- q. If both parties mutually agree, for instance, in the case where changes do not materially impact AMV, Audit Study frequency can be adjusted to once per year upon written agreement for any given contract term year.

5.4 Single Stream Recyclables Processing Fee and Payment:

A Processing Fee (PF) shall be assessed for each ton of material delivered to the Designated Facility for weighing, accepting, processing, sorting, densifying, and marketing CITY-delivered Single Stream Recyclables payable to the CONTRACTOR for each full or prorated month during the term of this agreement. Each month the CONTRACTOR shall receive a PF Payment from the CITY, which shall be based on tons delivered to the Designated Facility.

Processing Fee (PF)
multiplied by
CITY-delivered Total Monthly Tons
to the Designated Facility

ANY CITY net payments to the CONTRACTOR shall come from the City's RS portion Total Commodity Revenue deducted from the Processing Fee. Any remaining deficit to meet the Processing Fee shall be paid by the CITY to the CONTRACTOR.

Per Section 5.1, Total Commodity Revenue will be deducted at a rate of 85% for the purposes of calculating CITY's net payment to the Contractor.

Any remaining revenue after deducting CITY Revenue Share (RS) portion of the Total Commodity Revenue from the Processing Fee will be paid to the City by the CONTRACTOR. For instance, in Year 1 of this agreement, AMV would need to reach \$182.35 for the City to receive payment:

Processing Fee Payment	Revenue/Ton	City Revenue Share	City RS AMT.
\$155.00	\$182.35	85%	\$155.00

Sample calculation of Processing Fee Payments are attached in Exhibit A.

5.5 Adjustments to the CONTRACTOR PF

- a. After the first six (6)-months of the Contract Term, the Processing Fee shall be increased by 5% to \$162.75.

- b. In the event the City and the Contractor mutually agree to extend the Contract for an additional one (1)-Year period (the First Extension, as defined in Section 2.2 above), the Processing Fee shall be increased by an additional 5% over the \$162.75 to \$170.89.
- c. In the event the City and the Contractor mutually agree to extend the Contract for an additional one (1)-Year period after the First Extension (the Second Extension, as defined in Section 2.3 above), the Processing Fee shall be increased by an additional 5% over the \$170.89 to \$179.44.
- d. Continuity Extensions- To avoid any future determination otherwise, beginning with the first day of operation of a properly noticed six (6)-month Continuity extension, the then-current PF shall be increased by two and one-half percent (2.5%) for the extension period. If a second Continuity extension is required, on the first day of operation, the then-current PF shall be increased by another two and one-half percent (2.5%) for the extension period.

5.6 Invoicing and Payment

- e. No later than the tenth (10th) business day of each month, the CONTRACTOR shall submit an electronic monthly report, in a format approved by the CITY, for the previous calendar month detailing:
 - i. Scale ticket weights in the month the CITY Recyclable Material was received and calculated sum of all received weights with back-up copies of all actual scale tickets;
 - ii. Product of the CITY Recyclables weight received multiplied by the current PF;
 - iii. Calculated Average Market Value (AMV). (Note: example of calculating AMV is attached in Exhibit A);
 - iv. Commodity Revenue (AMV multiplied by CITY tons received for the month- See Exhibit A);
 - v. Net Payment Transaction, showing either a deficit or a surplus after utilizing the City's Revenue Share of Total Commodity Revenue deducted from the PF payment (Exhibit A);
 - a. If a surplus, showing City Total Commodity Revenue Share left after payment and due as payment to the CITY;
 - b. If a deficit, showing the deficit to be paid by the CITY to the CONTRACTOR;
 - vi. CONTRACTOR will also attach an Invoice if any payment is due to the CONTRACTOR;
 - vii. CITY shall pay the CONTRACTOR the balance of the PF Payment or CONTRACTOR shall pay the CITY its Revenue Share within thirty (30) days following the end of the month CITY-delivered tons were received.
- f. Electronic copies of scale weight tickets are to be submitted along with the monthly report. If electronic copies are not available, hard-copy scale weight tickets shall be postmarked by the tenth (10th) business day of each month.

SECTION 6.0 PERFORMANCE BOND

Prior to commencing service, CONTRACTOR shall furnish to the CITY, and keep current throughout the term of the Contract, a Performance Bond for the faithful performance of the Contract and all obligations arising hereunder in the amount of two hundred thousand dollars (\$200,000) in a form acceptable to the CITY. The Performance Bond shall be executed by a surety company licensed to do business in the State of Florida, having an "A" or better rating by A.M. Best or Standard and Poor's, and included on the list of surety companies approved by the Treasurer of the United States.

SECTION 7.0 LIQUIDATED DAMAGES

7.1 Basis for Liquidated Damages

The CITY and CONTRACTOR acknowledge and agree that it is difficult or impossible to accurately determine the amount of damages that would or might be incurred by the CITY due to those failures or circumstances described in this Section 7.0 and for which the CONTRACTOR would otherwise be liable. Accordingly, the CONTRACTOR and the CITY have negotiated the terms and amounts of the liquidated damages set forth herein, and the parties agree that the liquidated damages are reasonable under the circumstances. The CONTRACTOR and CITY also have consulted with their legal counsel and confirmed that these liquidated damages are appropriate. Therefore, the following administrative assessments shall constitute liquidated damages, not penalties, for the CONTRACTOR's breach of this Contract.

7.2 Procedure for Assessing Liquidated Damages

- a. The CITY shall not assess, and the CONTRACTOR shall not be required to pay liquidated damages in those cases where the delay or failure in the CONTRACTOR's performance was (a) excused in advance by the Administrator or (b) due to unforeseeable causes that were beyond the CONTRACTOR's reasonable control and without any fault or negligence of the CONTRACTOR.
- b. Prior to assessing liquidated damages, the Administrator shall provide written notice to the CONTRACTOR, indicating the CITY's intent to assess liquidated damages and the basis for the CITY's position.
- c. If a protest is filed within five (5) business days of delivery of written notice to CONTRACTOR, the matter shall be referred to the CITY Manager for resolution. The CITY Manager shall review the issues in a timely manner and then provide a written decision to the CONTRACTOR. The CITY Manager's decision shall be final and non-appealable.
- d. If a protest is not timely filed by the CONTRACTOR, or if the CITY Manager concludes that liquidated damages should be assessed, the amount of liquidated damages shall be added to the CONTRACTOR's next payment to the CITY or deducted from the CITY's next payment to the CONTRACTOR as applicable.
- e. The procedures in this Section 7.0 shall be used in lieu of the procedures in Section 9.27 when resolving disputes concerning liquidated damages; however, the procedures in Section 9.27 will be used, upon the CONTRACTOR's request, if the dispute involves an assessment of liquidated damages that exceeds twenty thousand dollars (\$20,000) in one calendar month.

7.3 Liquidated Damages During Term of Contract

During the Term of the Contract, the Administrator may assess liquidated damages as follows:

Performance Standard Violation	Liquidated Damages
Failing to provide vehicle turnaround time at the Designated Facility of thirty (30) minutes or less. (Section 4.5)	\$100 per occurrence
Failing to accept Program Recyclables during scheduled receiving hours. (Section 4.3)	\$500 per occurrence

Disposing of Program Recyclables or Recovered Materials, other than through Recycling and with the exception of Rejects and Residue, without prior CITY approval. (Section 4.8). However, Program Recyclables that the City has approved as being in a state of "Disrupted Recyclables" material as defined in Section 4.8, shall not be subject to liquidated damages.	\$1,000 per occurrence
Failure to submit timely reports and/or payments to the CITY as required by this Agreement. (Sections 5 and 8)	\$100 per day

SECTION 8.0 RECORDS AND REPORTS

8.1 Recordkeeping

CONTRACTOR shall maintain records for Single Stream Recyclables received at the Designated Facility, including delivery date, truck number, type, weight, and source. Each inbound delivery shall be tracked separate from each other and all other inbound Recyclables.

8.2 Reports

CONTRACTOR shall provide the Administrator with electronic monthly reports, submitted no later than the tenth (10th) business day of each month, and annual reports, submitted within thirty (30) calendar days following the end of the CITY's fiscal year, which runs from October 1 through September 30. All reports shall be in a format reviewed and approved by the Administrator and shall include the inbound tons of Single Stream Recyclables by truck number, as well as the calculated AMV and revenue due the CITY pursuant to Section 5.0.

8.3 Audit Rights; Access to Records

To assure itself of the CONTRACTOR's compliance with the terms of this Contract including, but not limited to, the accuracy of determining and paying revenue to the CITY in accordance with Section 5.0, the CITY, and any of its duly authorized agents and representatives, shall have the right to access, review, inspect, and copy all the CONTRACTOR's books, records, data and other documents related to this Contract and to conduct audits of the same whether by its own employees or by independent retained auditors. The CITY shall provide the CONTRACTOR at least three (3) calendar days' prior written notice of its intent to exercise the rights stated in this section. The rights stated in this section shall survive the expiration or early termination of this Contract until such time as the CITY has received all amounts due and owing pursuant to this Contract.

8.4 Public Records

CONTRACTOR shall comply with all applicable requirements contained in the Florida Public Records Law, including, but not limited to, any applicable provisions in Section 119.0701, Florida Statutes. CONTRACTOR shall:

- a. Keep and maintain public records required by the CITY to perform the services provided hereunder;

- b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 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 term of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY;
- d. Upon completion of the Agreement, transfer, at no cost, to the CITY all public records in the possession of CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

If CONTRACTOR fails to comply with the requirements in this Section 8.4, the CITY may enforce these provisions in accordance with the terms of this Agreement. If CONTRACTOR fails to provide the public records to the CITY within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTRACTOR SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK, DIRECTOR OF COMMUNICATIONS, BY TELEPHONE (863/834-6264), e-mail (KEVIN.COOK@LAKELANDGOV.NET) or mail (KEVIN COOK, DIRECTOR OF COMMUNICATIONS, CITY OF LAKELAND, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801).

8.5 Additional Notifications

CONTRACTOR is required to provide the following notifications to the Administrator:

- a. Notification of the intended sale of the Designated Facility or a change in contracted facility operator, submitted to the CITY at least ninety (90) days prior to such sale or operational change.
- b. Notification of a receipt of a Notice of Violation (NOV) for any violations of Applicable Law that have occurred at the Designated Facility, submitted to the CITY within ten (10) calendar days of receipt of such NOV, accompanied by a copy of the NOV and the corrective action taken or to be taken.
- c. Notification of filing for bankruptcy, submitted to the CITY within ten (10) days of filing for such bankruptcy.

SECTION 9.0 GENERAL PROVISIONS

9.1 Indemnification

To the fullest extent permitted by laws and regulations, the CONTRACTOR shall defend, indemnify, and hold harmless the CITY, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, recklessness, or intentional wrongful misconduct in the performance of the work by the CONTRACTOR, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work, or anyone for whose acts any of them may be liable. In any and all claims against the CITY, or any of its officers, directors, agents, or employees by any employee of the CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work, or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any such Subcontractor, or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the CITY, the CONTRACTOR, or any of his or her Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

9.1.1 Applicability

It is the express intent of the CONTRACTOR that this agreement shall apply for the term of the Contract.

9.1.2 Subrogation

The CONTRACTOR and his or her Subcontractors agree by entering into this Contract to a Waiver of Subrogation for each required policy herein. When required by the insurer or should a policy condition not permit CONTRACTOR or Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR or Subcontractor enter into such an agreement on a pre-loss basis.

9.1.3 Savings Clause

The parties agree that to the extent the written terms of this Indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08 of the Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida Law.

9.2 Limitation of Liability

In no event shall the CITY be liable to the CONTRACTOR for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature, including loss of profit, whether foreseeable or not, arising out of or resulting from the nonperformance or breach of this Contract by the CITY whether based in contract, common law, warranty, tort, strict liability, contribution, indemnity, or otherwise.

9.3 Subcontractors

No assignment or subcontract of this Contract or any right occurring under this Contract shall be made in whole or in part by CONTRACTOR without the express written consent of the CITY. An assignment shall include any transfer of twenty percent (20%) or more of stock or control in CONTRACTOR unless said transfer of stock or control is in a publicly held company. The CITY shall have full discretion to approve or deny any proposed assignment by CONTRACTOR; however, approval shall not be unreasonably withheld. Any assignment of this Contract made by CONTRACTOR without the express written consent of the CITY shall be null and void and shall be grounds for the CITY to declare a default of this Contract and immediately terminate this Contract by giving written notice to CONTRACTOR. Upon the date of such notice, this Contract shall be terminated, and upon any such termination, all obligations of the CITY under this Contract to CONTRACTOR shall cease. The CITY shall be free to negotiate with other contractors or any other person or company for the services which are the subject of this Contract. When the CITY approves an assignment, the assignee shall fully assume all terms, obligations, covenants and promises of CONTRACTOR provided for herein and shall so indicate in writing prior to the CITY's response to a request for approval of the assignment.

9.4 Assignment

Neither party shall assign any of its rights, obligations, or duties under the terms and conditions of this Contract without the express written consent of the other party.

9.5 Licenses

CONTRACTOR will obtain and maintain, at its own expense, all licenses required to comply with all CITY, County, State, and Federal requirements and Applicable Law.

9.6 Insurance

The CONTRACTOR shall procure and maintain the following described insurance, except for coverage specifically waived by the CITY, on policies and with insurers acceptable to the CITY, and insurers with AM Best ratings of no less than A. These insurance requirements shall in no way limit the liability of the CONTRACTOR. The CITY does not represent these minimum insurance requirements to be sufficient or adequate to protect the CONTRACTOR's interests or liabilities but are merely minimums.

Except for workers' compensation and professional liability, the CONTRACTOR's insurance policies shall be endorsed to name the CITY as additional insured. It is agreed that the CONTRACTOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY for liability arising out of the operations of this agreement. CONTRACTOR waives its right of recovery against the CITY, to the extent permitted by its insurance policies.

The CONTRACTOR's deductibles/self-insured retentions shall be disclosed to the CITY and may be disapproved by the CITY. They shall be reduced or eliminated at the option of the CITY. The CONTRACTOR is responsible for the amount of any deductible or self-insured retention.

Insurance required of the CONTRACTOR or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the CITY, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

a. Commercial General Liability

This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the CONTRACTOR and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the CONTRACTOR's employees or damage to property of the CITY or others arising out of any act or omission of the CONTRACTOR or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xxx) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the CONTRACTOR under Subsection 9.1 (Indemnification).

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$1,000,000 Single limit each occurrence
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b. Business Automobile Liability

Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non- owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$1,000,000 Single limit each occurrence
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c. Workers' Compensation

Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statue 440, the CONTRACTOR will provide a copy of State Workers' Compensation exemption.

- i. All subcontractors shall be required to maintain Worker's Compensation.
- ii. The CONTRACTOR shall also purchase any other coverage required by law for the benefit of employees.

d. Evidence/Certificates of Insurance

- i. Required insurance shall be documented in Certificates of Insurance which provide that the CITY shall be notified at least 30 days in advance of cancellation, nonrenewal, or adverse change.
- ii. New Certificates of Insurance are to be provided to the CITY at least 15 days prior to coverage renewals.
- iii. If requested by the CITY, the CONTRACTOR shall furnish complete copies of the CONTRACTOR's insurance policies, forms and endorsements.
- iv. For Commercial General Liability coverage, the CONTRACTOR shall, at the option of the CITY, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.
- v. Receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the CONTRACTOR's obligation to fulfill the insurance requirements herein.

9.7 Default

Each of the following shall constitute a default under this Contract: (a) CONTRACTOR is adjudged to be bankrupt; (b) CONTRACTOR makes a general assignment for the benefit of its creditors; (c) CONTRACTOR fails to comply with any of the terms, conditions or provisions of this Contract; or (d) CONTRACTOR's experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Contract. If, during the term of this Contract, CONTRACTOR shall be in default of this Contract, CITY may suspend its performance hereunder until such delinquency or default has been corrected; provided, however, that no suspension shall be effective unless and until CITY gives written notice of default to CONTRACTOR with at least ten (10) days to cure such default. If CONTRACTOR fails to correct such delinquency or default, CITY may terminate this Contract as provided in Section 9.9 and pursue such remedies as may be available at law or in equity. In addition to the remedies available hereunder, the CITY shall have the right of offset from sums or payments otherwise due the CONTRACTOR any sums or amounts which the CONTRACTOR may owe to the CITY pursuant to the provisions of this Contract and seek such remedy as may be available, including, but not limited to, satisfaction of the Performance Bond. It is not the intention of this paragraph to limit or prevent delay damages or other damages that may occur or the remedies therefor.

9.8 Notices

All notices, requests, consents or other communication required or permitted under this Contract shall be in writing and shall be, as elected by the person giving such notice, either: hand delivered by messenger or courier service or mailed by registered or certified mail, return receipt requested, and addressed to entities as listed below or other such address as any party may designate by written notice complying with the terms of this Section:

If to the CITY:

**CITY of Lakeland
Director of Public Works
228 S. Massachusetts Avenue
Lakeland, Florida 33801**

If to the CONTRACTOR:

**Republic Services of FL, LP
Material Recovery Facility, General Manager
3820 Maine Ave.
Lakeland, FL 33801**

Notice shall be deemed delivered:

- a. On the date delivered if personally delivered; or
- b. On the date upon which return receipt is signed or delivery is refused, as the case may be, if mailed, but in no event later than ten (10) days after a properly addressed notice, with appropriate postage, has been deposited into the U.S. Postal System.

9.9 Termination for Cause

The CITY may terminate this Contract, except as otherwise provided below, by giving CONTRACTOR thirty (30) days advance written notice, to be served as provided in Section 9.8 and which notice may be provided at the same time as and run concurrently with any suspension notice given pursuant to Section 9.7, upon the happening of any one of the following events:

- a. CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy court or a petition or answer seeking an indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- b. By order or decree of a Court, CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within thirty (30) days after the entry thereof, any notice of default shall be and become null, void and of no effect, unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or by, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control shall continue in effect for a period of thirty (30) days; or
- c. CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner payments or other monies due the CITY and said default is not cured within thirty (30) days after receipt of written notice by the CITY to do so; or
- d. CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied which could potentially affect CONTRACTOR's ability to perform pursuant to this Contract and said default is not cured within thirty (30) days after receipt of written notice by the CITY to do so; or

- e. CONTRACTOR has defaulted, by materially failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the CITY pursuant thereto or has wrongfully failed or materially refused to comply with the instructions of the CITY relative thereto and said default is not cured within thirty (30) days after receipt of written notice by the CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by CONTRACTOR of written demand from the CITY to do so, CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof, with CONTRACTOR having the burden of proof to demonstrate 1) that the default cannot be cured within thirty (30) days, and 2) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time; or
- f. In the event that the monies due the CITY under Subsection 9.9 c. above or an unsatisfied final judgment under Subsection 9.9 d. above is the subject of a judicial proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the CITY attorney.

9.10 Right to Secure Services

Notwithstanding anything stated in this Contract to the contrary, if the CONTRACTOR fails to provide services pursuant to this Contract, then the CITY may secure services from other contractors until such time as the matter is resolved and CONTRACTOR is again able to perform pursuant to this Contract. Additionally, if the CONTRACTOR is unable to resume performance at the end of fifteen (15) consecutive working days for any reason or cause, including a suspension of performance caused by an event of Force Majeure as described in Subsection 9.15 below, then the CITY may terminate this Contract by delivering written notice to the CONTRACTOR and all liability of the CITY to the CONTRACTOR under this Contract shall cease.

9.11 Habitual Violations

Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract, if the CONTRACTOR's record of performance shows that CONTRACTOR has frequently, regularly or repetitively materially defaulted in the performance of any of the terms and conditions required herein to be kept and performed by CONTRACTOR, then regardless of whether CONTRACTOR has corrected each individual condition of default, the CITY may declare CONTRACTOR a "habitual violator," whose prior defaults collectively and cumulatively shall constitute a condition of irredeemable default. The CITY shall thereupon issue CONTRACTOR a final written warning citing the frequent, regular and repetitive pattern of CONTRACTOR's defaults and shall warn that any material default by CONTRACTOR subsequent to the occurrence of the last of said cumulative defaults outlined in the written warning shall be grounds for immediate termination of the Contract. In the event of any such subsequent default, the CITY may terminate this Contract upon giving of written final notice to CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and CONTRACTOR shall have no further rights hereunder and immediately upon the specified date in such final notice CONTRACTOR shall proceed to cease any further performance under this agreement.

9.12 Effective Termination Date

If any of the events specified in Subsections 9.9, 9.10, 9.11. above occur, and except as otherwise provided in said subsections, Contract termination shall be effective upon the date specified in the CITY's written notice to CONTRACTOR, and upon said date this Contract shall be terminated. Upon such termination, all liability of the CITY under this Contract to CONTRACTOR shall cease, and the CITY shall have the right to call the Performance Bond and shall be free to negotiate with other contractors for the performance of all services described in this Contract. In addition to all the available remedies for its failure to perform, CONTRACTOR shall reimburse the CITY all direct costs of providing interim services.

9.13 Equitable Remedy

CONTRACTOR recognizes that the failure on the part of CONTRACTOR to comply with the terms of this Contract is likely to cause irreparable damage to the CITY and damages at law would be an inadequate remedy. Therefore, CONTRACTOR agrees that in the event of a breach or threatened breach of any of the terms of the Contract by CONTRACTOR, the CITY shall be entitled to an injunction restraining such breach or to a decree of specific performance, or both, together with recovery of those reasonable attorneys' fees, costs, and expenses incurred in obtaining said equitable relief until such time as a final and binding determination is made by the court. The foregoing equitable remedy shall be in addition to, and not in lieu of, all remedies or rights, which the CITY may otherwise have by virtue of any breach of this Contract by CONTRACTOR. The CITY shall also be able to seek injunctive relief to prohibit any act or omission by CONTRACTOR or its employees that constitutes a violation, or to prevent the occurrence of any threatened default by CONTRACTOR of this Contract.

9.14 Termination for Convenience

The CITY has the right to terminate this Contract without cause upon delivering six (6) months advance written notice to the CONTRACTOR.

9.15 Force Majeure

9.15.1 Suspension of Service

Subject to the CITY's right to secure services as provided in Subsection 9.10, either party shall be excused from performance (except for each party's payment obligations hereunder) when an event of Force Majeure caused its nonperformance directly or indirectly. Within five (5) days after the occurrence of an event of Force Majeure, the affected party shall deliver written notice to the other party describing the event in reasonably sufficient detail and how the event has precluded the party from performing its obligations hereunder. Thereupon, the obligations of the party giving the notice so far as they are affected by the event of Force Majeure shall be suspended during, but no longer than the continuance of, the event of Force Majeure and for a reasonable time thereafter required to remedy the physical damages or return to normal operations or both.

9.15.2 Resumption of Service

Any party excused from performing any obligations under this Contract due to the occurrence of an event of Force Majeure shall promptly, diligently and in good faith take

all reasonable action required in order for it to be able to commence or resume performance of its obligations under this Contract.

9.15.3 Notifications

The party whose performance is excused due to the occurrence of an event of Force Majeure shall, during such period, keep the other party duly notified of all such actions required in order for it to be able to commence or resume performance of its obligations under this Contract.

9.15.4 Payment Obligations

No event of Force Majeure shall excuse either party from its payment obligations hereunder and the CITY shall not be liable for any loss by CONTRACTOR due to an event of Force Majeure.

9.16 Claims and Contract Clarification

- a. All claims of CONTRACTOR, all questions concerning interpretation or clarification of the Contract or the acceptable fulfillment of the Contract on the part of CONTRACTOR, and all questions as to compensation and to extension of time shall be submitted, in writing, to CITY for determination.
- b. A claim by CONTRACTOR must be made within fifteen (15) calendar days of CONTRACTOR's learning of the cause for the claim. The claim must be submitted to CITY with as much supporting detail as can be reasonably developed at the time the claim is made. CITY may grant additional time to develop additional detail to the extent the CITY requires. CITY will determine the outcome of CONTRACTOR's claim. At all times CONTRACTOR shall proceed with services in accordance with the determinations, instructions, and clarifications of CITY while CITY is determining the outcome of CONTRACTOR's claim.
- c. If any requirement of the Contract is unclear to CONTRACTOR, CONTRACTOR shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any cost and expenses arising from its failure to do so.
- d. Nothing set forth above shall impair CITY's rights and remedies to enforce CONTRACTOR's obligations under the Contract.

9.17 Independent Contractor

Nothing stated in this Contract is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto, or as constituting CONTRACTOR as an agent, representative or employee of the CITY for any purpose whatsoever. CONTRACTOR is and shall remain an independent contractor with respect to all services performed under this Contract. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, and employees, permitted contractors and permitted subcontractors. CONTRACTOR will have full control over agents, employees, permitted contractors and subcontractors it may see fit to employ to assist in performance of this Contract.

9.18 Employee Status

Persons employed by CONTRACTOR in the performance of services and functions pursuant to this Contract shall have no claim to pension, workers' compensation, unemployment compensation,

civil services or other employee rights or privileges granted to the CITY's officers and employees either by operation of law or by the CITY.

9.19 Equal Opportunity

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, sex, age, or national origin and will insure that applicants are employed, and employees are treated during employment without regard to race, color, religion, sex, age, or national origin. This provision shall include, but not be limited to the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.20 Right to Require Performance

The failure of the CITY at any time to require performance by CONTRACTOR of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same.

Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.

9.21 Severability

In the event that any provision of this Contract shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Contract or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Contract shall, as so amended, modified, or supplemented, or otherwise affected by such action remain in full force and effect.

9.22 Administrator and Contractor

9.22.1 Administrator

It is recognized that questions in the day-to-day conduct of performance pursuant to this Contract will arise. The CITY shall designate and shall advise CONTRACTOR in writing of the CITY's designated Administrator to whom all communications pertaining to the day-to-day conduct of this Contract shall be addressed. The Administrator shall have the authority to transmit instructions, receive information and interpret and define the CITY's policy and decisions pertinent to the services covered by this Contract.

9.22.2 Contractor's Representative

CONTRACTOR shall designate or appoint in writing to the CITY, one or more representatives of CONTRACTOR who are authorized to act on behalf of CONTRACTOR at all times during the normal work week regarding all matters involving the conduct of the performance pursuant to this Contract. The CONTRACTOR shall keep the Administrator continually advised of any changes to its designated representatives.

9.23 Entire Contract

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. The parties acknowledge that the parties negotiated this Contract at arm's length with adequate representation on an equal basis and agree that this Contract shall not be subject to any rule requiring construction against the drafter hereof.

9.24 Modification

This Contract constitutes the entire contract and understanding between the parties hereto, and shall not be considered modified, altered, changed, or amended in any respect unless contained in a written document executed by both parties.

9.25 No Contingent Fee

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee or agent working solely for CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee or agent working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the CITY shall have the right to terminate this Contract without liability at its discretion, and to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

9.26 Jurisdiction, Venue and Governing Law

Jurisdiction and venue shall be in the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division, in connection with any action or proceeding arising out of or relating to this bid, proposal, contract, documents or instrument delivered pursuant to, in connection with, or simultaneously with this bid/proposal or breach of any contract entered into with the CITY. This Contract shall be governed by the laws of the State of Florida.

9.27 Dispute Resolution Process

The CITY and CONTRACTOR agree to cooperate and act in good faith at all times when dealing with each other. If a dispute arises between the parties, the parties shall attempt to resolve their differences quickly and informally. If they are unable to do so, they shall seek relief by following the procedures below:

- a. All claims, disputes and controversies arising out of or related to the performance, interpretation, application or enforcement of this Contract, including but not limited to claims for payment and claims for breach of this Contract, shall be referred to non-binding mediation before initiation of any adjudicative action or proceeding, at law or in equity, unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise. All applicable statutes of limitations and defenses based on the passage of time

shall be tolled while the mediation process is pending. The parties will take all reasonable measures necessary to effectuate such tolling;

- b. The CONTRACTOR and CITY agree to participate fully in the mediation process and conscientiously attempt to resolve their dispute. Except as provided below, each party shall bear its own expenses in connection with the mediation. Both parties shall pay equally for the services of the mediator. The mediation shall take place in the CITY of Lakeland, Florida;
- c. Notwithstanding the foregoing, if either party terminates this Contract for cause, the terminating party shall have the right, in its sole discretion, to proceed directly with litigation of any claims or disputes relating to the termination for cause and may include other claims and disputes unrelated to the termination and shall not be required to submit such claims or disputes to the mediation;
- d. The parties agree that any claim filed in state or federal court concerning this Contract shall be heard by a judge, sitting without a jury;
- e. The CITY and the CONTRACTOR hereby knowingly, voluntarily, and permanently waive any right they may have to a jury trial concerning the performance, interpretation, application or enforcement of this Contract;
- f. Each party shall be responsible for its own legal and attorneys' fees, costs, and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Contract, including attorneys' fees, costs, and expenses incurred for any mediation, appellate or bankruptcy proceedings.

9.28 Survival of Provisions

The obligation to pay sums owed pursuant to Section 5.0, liquidated damages pursuant to Section 7.0, and CONTRACTOR's indemnification obligation pursuant to Section 9.0, shall survive the expiration or earlier termination of this Agreement, as shall any obligation arising pursuant to a performance bond or policy of insurance.

EXHIBIT A

CONTRACTOR PAYMENT CALCULATION EXAMPLES

As detailed in this Contract, the CONTRACTOR shall pay the CITY monthly, or CITY shall pay the CONTRACTOR, for each ton of inbound Single Stream Recyclables delivered to the Designated facility subject to adjustments under this agreement. Net Payment shall be calculated in the following manner:

Process Fee (PF) payment \$155

Minus

**City Revenue Share (RS)
85% of Total Commodity
Revenue**

This exhibit further describes with examples how the Net Payments to the CONTRACTOR and CITY, per Section 5.0 of this Contract, are calculated and includes a description of the Pricing Indices to be used.

Sample Calculations of Payment

1. To obtain the **Total Commodity Revenue**, CONTRACTOR will first calculate the **Average Market Value (AMV)** of the CITY-delivered Single Stream material.

Example below utilizes the percentages in the RFP in Section 2.1.3 and the following materials subject to the **AMV**⁻¹. Percentages will change with every Audit Study (2 per year):

Sample Calculation Average Market Value				
Material	Index Description Southeast USA Region	%	August 2019 Market Value Per Ton (Price)	Average Market Value Calculation
Sorted Residential Paper and News (SRPN) (#56)	PS #56, baled, F.O.B. seller's dock	5.61%	\$ 17.50	\$ 0.98
Corrugated Cardboard (#11)	PS 11 baled, F.O.B. seller's dock	34.51%	\$ 32.50	\$ 11.22
Mixed Paper (#54)	PS 54 baled, F.O.B. seller's dock	16.10%	\$ (2.50)	\$ (0.40)
Aseptic Containers (#52)	PS 1 baled, F.O.B. seller's dock	0.25%	\$ -	\$ -
PET Containers (#1)	Baled, cents/lb, picked up	6.05%	\$ 205.00	\$ 12.40
Natural HDPE Containers (#2)	Baled, cents/lb, picked up	1.67%	\$ 560.00	\$ 9.35
Colored HDPE Containers (#2)	Baled, cents/lb, picked up	2.23%	\$ 210.00	\$ 4.68
Mixed Plastic Containers- #3-7	Baled, cents/lb, picked up	2.32%	\$ (1.50)	\$ (0.03)
Bulky Rigid Plastics	Baled, cents/lb, picked up	1.23%	\$ 3.00	\$ 0.04
3-Mix Glass Containers	\$/Ton delivered as recyclable or disposable	6.01%	\$ (22.50)	\$ (1.35)
Aluminum Cans	Baled, cents/lb, picked up	1.33%	\$ 1,000.00	\$ 13.30
Steel Cans	Sorted, Baled, \$/Gross Ton delivered	1.51%	\$ 80.00	\$ 1.21
Scrap Metals	NA	1.18%		N/A
CONTAMINANTS- including rejects, expanded polystyrene, grit, small appliances, and plastic bags	NA	19.59%		N/A
		100%	Total Avg. Market Value (AMV)	\$ 51.39

1. In the event of a "Disrupted Recyclable" material a line will be added to the AMV according to the provisions of S.4.8.c for the purposes of calculation of the disrupted material

- a. In this calculated example, AMV is \$51.39.
 - b. Market indexes to be used in the CONTRACTOR calculations are the Recyclingmarkets.net SecondaryFiberPricing.com and SecondaryMaterialsPricing.com, <http://www.recyclingmarkets.net/secondarymaterials/index.html>.
 - c. The PSI grade numbers and descriptions are defined in the "Guidelines for Paper Stock" in the current year issue of ISRI's Scrap Specifications Circular.
2. To obtain the **Total Commodity Revenue** CONTRACTOR will then multiply the tons delivered in the month the prices were published. In this example, the average total tons delivered per month for 2019 was used:

Average Market Value Calculation	Average Tons per Month 2019	Total Commodity Revenue
\$ 51.39	633	\$ 32,529.87

3. To determine Net Payment to the CITY or CONTRACTOR, since the Average Market Value is under \$182.35, 85% of Total Commodity Revenue will be subtracted from the Processing Fee Total and a net payment to the Contractor by the City shall be made.
- a. The Processing Fee is multiplied by the total tons accepted at the facility (example used is 2019 average month):

Current Processing Fee	Average Tons per Month 2019	CONTRACTOR-required Processing Fee Payment
\$ 155	633	\$ 98,115

- b. In this example, to ensure payment of the Processing Fee to the CONTRACTOR, the CITY makes a 30-Day net payment to the CONTRACTOR of \$70,465 (rounded):

85% of Total Commodity Revenue of \$32,529.87	(less -) Processing Fee Payment Due CONTRACTOR	NET PF Payment to CONTRACTOR from CITY
\$27,650.39	\$ 98,115	\$ 70,464.61

4. When the Average Market Value is over \$182.35 and there is excess revenue after the PF payment to the Contractor is satisfied, the City shall receive the excess revenue from its 85% Revenue Share:

In this example \$197.50 Total Commodity Revenue:

633	TONS	
\$197.50	Average Market Value	
Processing Fee (PF) Payment Due CONTRACTOR	(less -) City Revenue Share 85% of Total Commodity Revenue	NET Excess Revenue Share Payment Due CITY
\$98,115	\$106,264.88	\$8,149.88

EXHIBIT B
MAP OF DESIGNATED FACILITY LOCATION BOUNDARY

(7-mile radius from the Solid Waste Manager's Office)

