

Solid Waste Disposal Authority of the City of Huntsville, Alabama

Contract

for

Residential Single Stream Recyclables Processing

Contract Initiation Date:

Month day, 2019

Service Initiation Date

August 1, 2019

TABLE OF CONTENTS

1. DEFINITION OF TERMS3

2. INTENT AND PURPOSE5

3. TERM OF CONTRACT5

4. CONTRACT PRICE.....5

5. REVENUE SHARE5

6. ADJUSTMENT OF CONTRACT PRICE DURING TERM OF CONTRACT FOR PROCESSING.....6

7. PERFORMANCE BOND.....10

8. INDEMNIFICATION11

9. SUBCONTRACTORS.....11

10. NONLIABILITY12

11. INSURANCE12

12. CONTRACTOR'S RESPONSIBILITY.....15

13. CONTROL AND PENALTIES16

14. ASSIGNMENT OF CONTRACT16

15. NONDISCRIMINATION.....17

16. SWDA ALCOHOL AND DRUG POLICY.....17

17. FORCE MAJEURE17

18. DEFAULT17

19. CHANGE OF OWNERSHIP18

20. WAIVERS18

21. ILLEGAL AND INVALID PROVISIONS18

22. JOINT AND SEVERAL LIABILITY18

23. BINDING EFFECT.....18

24. AMENDMENT OF THE CONTRACT.....18

25. MERGER CLAUSE19

26. SCOPE OF WORK19

27. Processing and Marketing.....19

28. Payment19

29. Reporting.....19

1. DEFINITION OF TERMS

The following words have the following meanings, regardless of whether the terms are capitalized throughout this Agreement.

AVERAGE MARKET VALUE (AMV) – A market index used to determine the revenue paid by the Contractor to the SWDA for Program Recyclables delivered to the SWDA designated MRF based on monthly fluctuations in the commodity market as defined herein.

CART – A 95- or 96-gallon plastic container with wheels provided by the SWDA to residents for the storage and collection of curbside recyclables.

CONTRACT DOCUMENTS – The Notice to Proposers, Instructions to Proposers, General Specifications, General Conditions, Proposal, Agreement and any addenda or changes to the foregoing documents.

CONTRACT PRICE – All money payable to the Contractor by the SWDA under the Contract Documents.

CONTRACT – The agreement between the SWDA and the Contractor(s) chosen by the SWDA pursuant to the Residential Single Stream Recyclables Processing RFP and the Proposal(s).

CONTRACTOR – Person or persons authorized by the SWDA to perform recycling processing services.

HUNTSVILLE WASTE-TO-ENERGY (WTE) FACILITY – Facility located at 5251 Triana Boulevard, Huntsville, Alabama 35805.

LANDFILL – A facility for the proper disposal of solid waste.

MATERIALS RECOVERY FACILITY (MRF) – A facility where Recyclable Materials and/or Single-Stream Recyclable Materials are separated and processed for marketing to end users or for beneficial use.

MRF FEE – Single Stream Recyclables Process Fee plus Single Stream Recyclable Transfer Fee, if applicable.

NET REVENUE – Revenue from commodity sales that a Contractor for the processing of Single Stream Recyclables realizes from such commodities received under its Contract with the SWDA, less MRF Fee.

PERFORMANCE BOND – Bond from a Surety that guarantees compensation to the SWDA in the event that it must assume the obligations and/or duties of the Contractor in order to continue the service as defined by the Contract's Specifications.

PROCESSING – Receiving, handling, sorting, preparing for marketing, and transporting Single Stream Recyclable Materials at Contractor's MRF.

PROPOSAL – The response to this Residential Single Stream Recyclables Processing RFP submitted by Contractor.

PROPOSER – A person or entity submitting a response to the Residential Single Stream Recyclables Processing RFP.

QUALIFYING UNIT(S) – All residential units receiving residential MSW collection by the City of Huntsville or Madison County Collection System that opt in for recycling services within the SWDA Service Area and occupied by a person or a group of persons. A residential unit shall be deemed occupied if it receives solid waste services from the City of Huntsville, City of Madison, or Madison County. Mobile homes, either individually or grouped in mobile home parks shall be considered residential units and shall be counted as single units. Multi-family units of 4 units or less shall also be classified as residential units only if units receiving residential MSW collection by the City of Huntsville or Madison County Collection System.

RECYCLABLE MATERIALS or RECYCLABLES – Clean and dry paper: newspapers and inserts, magazines and catalogs, junk mail and stationery, shredded paper (in paper bags), computer and printer paper, school and office paper, paperback books and phone books, paper bags, cereal, pizza, and pasta boxes, tissue boxes and beverage cartons, and cardboard (must be broken down flat and must fit inside of the recycling Cart); cans: aluminum cans, bi-metal and steel cans; and plastic: narrow neck bottles with #1 or #2 on the bottom, milk jugs, soft drink bottles, and shampoo bottles. Any changes to the recycling program must be approved by SWDA.

RESIDENT – Occupant of a residential unit.

RESIDUE – The materials processed out of the Single Stream Recyclables that are not Recyclables, as defined above.

RFP – The Residential Single Stream Recyclables Processing Request for Proposal, all addenda, and appendices.

SINGLE-STREAM – Commingled Recyclables that are stored and collected together.

SINGLE-STREAM RECYCLABLE MATERIALS or SINGLE-STREAM RECYCLABLES – Recyclables set out for collection from Qualifying Units.

SINGLE STREAM RECYCLABLE PROCESSING FEE (SSRPF) – The price per ton to process single stream materials at, or within 10 miles of, the designated transloading area of the Huntsville Waste to Energy facility.

SINGLE STREAM RECYCLABLE TRANSFER FEE (SSRTF) – The price per ton to transfer single stream materials from the designated transloading area of the Huntsville Waste to Energy facility to Contractor’s MRF if the Contractor’s MRF is in excess of ten (10) miles of the WTE. If Contractor’s MRF is within ten (10) miles of the WTE, there is no SSRTF.

SWDA – Solid Waste Disposal Authority of SWDA of the City of Huntsville (Alabama), a public corporation under the laws of the State of Alabama.

SWDA MEMBERS – City of Huntsville, City of Madison, Town of New Hope, Town of Owens Cross Roads, Town of Gurley, City of Triana, and Madison County.

SWDA SERVICE AREA – Residents of City of Huntsville, City of Madison, Town of New Hope, Town of Owens Cross Roads, Town of Gurley, City of Triana, and Madison County.

SUBCONTRACTOR – Person or persons who are performing any part of the scope of work other than the Contractor.

SURETY – A party who is legally liable for the debt, default, or failure of a Contractor under a Performance Bond or other bond.

TON – A short ton of 2,000 pounds.

WORK – The scope of work as defined in the Residential Single Stream Recyclables Processing RFP and Contract(s) as approved by the SWDA.

2. INTENT AND PURPOSE

It is the intent of SWDA to provide its residents a comprehensive integrated municipal solid waste and recycling management, including a provision for collection and processing of recyclables.

3. TERM OF CONTRACT

The term of service of this Contract shall be for a period of (to be added after proposals received and awarded): either for two (2) years with five (5) 1-year options or ten (10) years), conforming to the same terms and conditions established with this initial Contract. SWDA shall exercise the extension by providing Contractor with written notice of SWDA's intention to extend at least Ninety (90) days prior to the expiration of the Initial Term. The Contractor awarded the Contract by SWDA agrees that the initiating date of the contract is on or about June 1, 2019, and the preferred initiating date of the term of service under the Contract shall be August 1, 2019, or at a later date proposed by the Contractor as part of the RFP process and as accepted by the SWDA. At the discretion of the SWDA, failure to commence Work on the preferred initiation date for Work under the Contract or the SWDA approved delayed date from the Contractor, may result in liquidated damages of \$5,000.00 per calendar day.

4. CONTRACT PRICE

Contract pricing includes costs and administrative procedures, for the Processing of Recyclables from all Qualifying Units eligible to receive SWDA service.

Contract Price for Processing and transporting of:

To be added after proposals received and awarded

5. REVENUE SHARE

- A. The Contractor shall invoice/pay the SWDA monthly for each Ton of inbound Single Stream Recyclables delivered to the MRF, as determined by the MRF scales. If the proposer is transferring the single stream recyclables to a MRF in excess of ten (10) miles of the WTE location, tonnages shall be verified by the outbound scales at SWDA's designated transloading area. The payment per Ton shall be calculated as follows and as in the Residential Single Stream Recyclables Processing RFP pricing form for Recyclables Processing.
- B. Each month, the Contractor shall calculate the Average Market Value (AMV) of the Single Stream 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 the Residential Single Stream Recyclables Processing RFP Schedule for Recyclables Processing, or as approved by the SWDA, for the first six (6) months. Upon approval by the SWDA, after the first six (6) months, Processor may adjust the composition percentages based on a composition study by the Processor. 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 Recyclable Material pricing information.
- C. The Contractor shall then deduct a MRF Fee as proposed in the pricing form. The fee will be deducted from the AMV for the month for which payment is due to the SWDA. The Contractor shall pay the SWDA a percentage, as provided in the pricing form for Recyclables Processing, of the remaining amount (AMV less Contractor's fee) for each Ton of inbound Single Stream Recyclables delivered to the MRF during that month.
- D. The MRF Fee shall be adjusted as detailed in the Residential Single Stream Recyclables Processing RFP.

The AMV is intended to be used as a market index and does not necessarily reflect the commodity revenue received by the Contractor. Any and all costs associated with transporting to MRF, accepting, processing, marketing, and transporting Recyclables shall be the responsibility of the Contractor.

6. ADJUSTMENT OF CONTRACT PRICE DURING TERM OF CONTRACT FOR PROCESSING

The Proposal price(s) for Processing shall be adjusted annually pursuant to indices and the procedure set forth below.

Single Stream Recyclable Processing Fee Adjustment

After the initial Contract year, the Single Stream Recyclable Processing Fee (SSRPF) will be adjusted each year under the contract. This changes in the SSRPF will be based on common indexes of verifiable public information from the United States government. The annual price

change for the sum of the CPI adjustment is capped at two-and-one half percent (2.5%) for any given year of the Agreement.

The SSRPF will be adjusted October 1 each year, beginning October 1, 2020, and will be based on the published July indices described herein. The Contractor will calculate, and present, the SSRPF to SWDA for approval by August 31st each year and will become effective for each October billing cycle.

Consumer Price Index Adjustment

The SWDA and Contractor agree that the SSRPF is subject to an annual price modification based on the United States Bureau of Labor Statistics (BLS) Consumer Price Index (CPI). The controlling index shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Southeast Region, for the Item and Group of All Items Less Energy (CWURO300SA0LE).

If at any time during the term of the agreement between SWDA and the Contractor, the referenced indices are no longer posted or otherwise fails to be applicable market indices, then the parties shall mutually select an appropriate replacement index.

If Contractor is proposing a MRF located in excess of ten (10) miles of the Huntsville WTE facility, the Proposal price(s) for transporting Recyclables to the MRF, the Single Stream Recyclable Transfer Fee (SSRTF) shall be adjusted annually pursuant to indices and the procedure set forth below.

Single Stream Recyclable Transfer Fee Adjustment and Fuel Adjustment for Materials Recovery Facility In Excess of Ten Miles of the Huntsville Waste-to-Energy Facility

After the initial Contract year, the Single Stream Recyclable Transfer Fee (SSRTF) will be adjusted each year under the contract for: 1) general changes in costs attributed to everything in the Consumer Price Index (CPI) except energy and 2) the annual average price of diesel fuel. These changes in the SSRTF will be based on common indexes of verifiable public information from the United States government. The annual price change for the sum of the CPI adjustment and the Fuel adjustment is capped at two-and-one-half percent (2.5%) for any given year of the Agreement.

The SSRTF will be adjusted October 1 each year, beginning October 1, 2020, and will be based on the published July indices described herein. The Contractor will calculate, and present, the SSRTF to SWDA for approval by August 31st each year and will become effective for each October billing cycle.

The SSRTF is comprised of two (2) components, which are the Transportation Fee Cost Component and Fuel Adjustment Component, which are calculated as follows:

Transportation Fee Cost Component = 85% of the SSRTF

Fuel Adjustment Component = 15% of the SSRTF

Consumer Price Index Adjustment – Transportation Fee Cost Component

The SWDA and Contractor agree that the Transportation Fee Cost Component of the SSRTF is subject to an annual price modification based on the United States Bureau of Labor Statistics (BLS) Consumer Price Index (CPI). The controlling index shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Southeast Region, for the Item and Group of All Items Less Energy (CWURO300SA0LE). For purposes of this proposal, and as described above the Transportation Fee Cost Component is 85% of the SSRTF will be subject to the annual CPI adjustment.

Fuel Price Adjustment –Fuel Adjustment Component

The SWDA and Contractor further agree that the Fuel Adjustment Component (15%) of the SSRTF is subject to an annual price modification. The Contractor shall adjust charges based on fuel prices in accordance with the following procedure. The Fuel Adjustment Component adjustment will be tied directly to the national average price of diesel fuel as reported weekly by the Energy Information Administration of the U.S. Department of Energy (“EIA/DOE”) for U.S. On-Highway Diesel Fuel Prices for the Gulf Coast ((PADD3), (EMD_EPD2D_PTE_R30_DPG)). Changes to the Fuel Adjustment Component of the SSRTF will be based on changes to the national average price of diesel fuel as of the last full week in July for each year.

If at any time during the term of the agreement between SWDA and the Contractor, the referenced indices are no longer posted or otherwise fails to be applicable market indices, then the parties shall mutually select an appropriate replacement index.

In the event the Contractor has converted or intends to convert its fleet to a fuel other than diesel fuel (for example compressed natural gas), the SWDA and Contractor may develop an alternative Fuel Adjustment Component, and index that takes into account the cost relationship of the alternative fuel to diesel. The intent would be to provide for lower costs to the Contractor and SWDA by switching to lower cost and lower carbon footprint fuels. The SWDA will use its best efforts to assist the Contractor in pursuit of such option.

Sample Price Modification Adjustment for Processing

Below is an example calculation for illustration purposes only.

Sample SSRPF Adjustments

Single Stream Recyclable Processing Fee (SSRPF)	
Fee Adjustments	
None	
Maximum Allowable Annual Percent Change	2.50%
Single Stream Recyclable Processing Fee	\$10.00 Per Ton
Example CPI's	
Previous Period CPI July 2017	238.689 CPI-Urban Wage Earners and Clerical Workers (CWUR0300SA0LE)
Current Period CPI July 2018	243.782 CPI-Urban Wage Earners and Clerical Workers (CWUR0300SA0LE)
CPI Change Calculations:	
Percent change in CPI = Current Period CPI / Previous Period CPI - 1	
% Change in CPI	2.13% = 243.782 / 238.689 - 1
Single Stream Recyclable Processing Fee	
CPI adjustment = Current Rate X Calculated CPI Percent Change	
CPI Adjustment	\$ 0.21 = \$10.00 x 2.1%
Summary of Change	
CPI Adjustment =	\$ 0.21
Current Single Stream Recyclable Processing Fee	\$10.00 Per Ton
<u>Adjusted Single Stream Recyclable Processing Fee</u>	<u>\$10.21 Per Ton</u>
Actual Percent Change (Does not exceed Maximum Allowable Percent Change)	2.13%
SSRPF Billing Rate Calculation	
Current Single Stream Recyclable Processing Price	\$10.00 Per Ton
Total Allowed Percent Change	2.13% Note - In example Actual Percent Change, does not exceed Total Allowed Change, so Actual Percent Changes used.
New Single Stream Recyclable Processing Fee	\$10.21 SSRPF Per Ton

Sample SSRTF Adjustments

Single Stream Recyclable Transfer Fee (SSRTF)	
Fee Adjustments	
Transportation Fee Cost Component	85% of SSRTF
Fuel Adjustment Component	15% of SSRTF
Maximum Allowable Annual Percent Change	2.50%
SSRTF Adjustments - before CPI and Fuel	
Single Stream Recyclable Transfer Fee	\$10.00 Per Ton
Adjusted SSRTF Cost	\$ 8.50 Per Ton
Adjusted SSRTF Fuel Cost	\$ 1.50 Per Ton
Example CPI's	
Previous Period CPI July 2017	238.689 CPI-Urban Wage Earners and Clerical Workers (CWUR0300SAOLE)
Current Period CPI July 2018	243.782 CPI-Urban Wage Earners and Clerical Workers (CWUR0300SAOLE)
CPI Change Calculations:	
Percent change in CPI = Current Period / Previous Period CPI - 1	
% Change in CPI	2.13% = 243.782 / 238.689 - 1
Example Fuel Indices	
Energy Information Administration of the U.S. Department of Energy, Gulf Coast ((PADD 3)	EMD_EPD2D_PTE_R30_DPG
Gulf Coast (PADD 3) average price of diesel fuel, Week ended	Jul 31, 2017 2.359
Gulf Coast (PADD 3) average price of diesel fuel, Week ended	Jul 30, 2018 2.997
Fuel Adjustment Calculation	
Index Point Change = Current Period Fuel Price / Previous Period Fuel Price -1	
% Change in Fuel Indices	27% = 2.997 / 2.359 - 1
Single Stream Recyclable Transfer Fee Adjustments	
CPI adjustment = Adjusted SSRTF Cost X calculated CPI Percent Change	
CPI Adjustment	\$ 0.18 = \$ 8.50 x 2.13%
Fuel adjustment = Adjusted SSRTF Fuel Cost X calculated Fuel Percent Change	
Fuel Adjustment	\$ 0.41 = \$ 1.50 x 27%
Summary of Change	
CPI Adjustment =	\$ 0.18
Fuel Adjustment =	\$ 0.41
Net Increase/(Decrease)	\$ 0.59
Current Single Stream Recyclable Transfer Fee =	\$10.00 Per Ton
Adjusted Single Stream Recyclable Transfer Fee =	\$10.59 Per Ton
Actual Percent Change (exceeds Maximum Allowable Percent Change)	5.87%
SSRTF Billing Rate Calculation	
Current Single Stream Recyclable Transfer Fee	\$10.00 Per Ton
Total Allowed Percent Change	2.50% Note - In example Actual Percent Change, exceeds Total Allowed Change, so Total Allowed Percent used.
New Single Stream Recyclable Transfer Fee	\$10.25 SSRTF Per Ton

7. PERFORMANCE BOND

Contractor shall execute and deliver a Performance Bond to SWDA in an amount equal to one hundred percent (100%) of the annual Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Performance Bond amount for each succeeding Contract Year shall be the proposed amount for such Contract Year and shall be renewed by the Contractor and maintained throughout the Term of the Contract.

All Performance Bonds shall be in the forms prescribed by the Proposal Documents and be executed by such Sureties as are licensed to conduct business in the State of Alabama. Each Performance Bond signed by an agent must be accompanied by a certified copy of the authority to act. Said Performance Bond shall provide that a modification, omission, or addition to the terms and conditions of the Contract or specifications; a defect in the Contract; or a defect in the proceedings preliminary to the letting and awarding of the Contract does not discharge the Surety. If the Surety on any Performance Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in Alabama, Contractor shall within ten (10) days thereafter substitute another Performance Bond and Surety, both of which must be acceptable to SWDA.

Performance Bond shall be sent to the following address:

SWDA
Attn: Executive Director
P.O. Box 2619
Huntsville, AL 35804-2619

8. INDEMNIFICATION

The Contractor does hereby agree:

To the fullest extent permitted by law, shall indemnify and hold harmless the SWDA, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of this contract, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and (2) is caused by any negligent act or omission of the Contractor, or any of their Subcontractors, sub-consultants, or anyone directly or indirectly employed by any of them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph; and

To promptly repair any damage caused by Contractor, its employees, agents, or Subcontractors to yards, driveways, alleys, curbs, streets, garages, fences, etc., other than normal wear and tear caused by Contractor.

9. SUBCONTRACTORS

The Contractor will not be permitted to subcontract more than forty percent (40%) of the Contract. Contractor shall maximize prime responsibility for equipment and labor necessary to complete such Contract as may be entered into. SWDA requires same qualification, experience, bonding and insurance of Subcontractor(s) as the Contractor. SWDA reserves the right to approve or reject Subcontractor(s) and will hold the Contractor responsible for coordination of Subcontractor(s) performance of services hereunder. Contractor's covenants of indemnification

hereunder shall in all events extend to the acts and omissions of any Subcontractor in the performance of the work.

10. NONLIABILITY

SWDA shall not be liable for any injuries to the property of Contractor or any loss or damage sustained by Contractor caused by or resulting from any activity and/or incidents that are in any way connected with the performance or Work or any other matter pursuant to the Contract by Contractor or any activity and/or incidence that is incidental thereto unless such injuries or losses are caused solely by the gross negligence or willful misconduct of SWDA.

11. INSURANCE

The Contractor shall carry insurance of the following kinds and amounts (exceptions are noted) in addition to any other forms of insurance or bonds required under the terms of the proposal specifications. The Contractor shall procure and maintain for the duration of the Contract or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this agreement by the Contractor, his agents, representatives, employees or Subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability and Excess Commercial General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after SWDA approval.

Commercial General Liability
Products and Completed Operations
Contractual
Personal Injury
Explosion, Collapse and Underground
Broad Form Property Damage

2. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

3. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by an employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Subrogation shall be waived as respects Workers' Compensation.

4. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

5. Other Liability Insurance:

Products Liability Insurance

Completed Operations Liability Insurance

Umbrella Insurance

B. LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$2,000,000 General Aggregate Limit
\$2,000,000 Products - Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury
\$2,000,000 Each Occurrence

2. Automobile Liability:

\$2,000,000 Combined Single Limit per accident for bodily injury and property damage
\$50,000 Uninsured Motorist

3. Workers' Compensation:

As Required by the State of Alabama Statute. If statutory exemption to this coverage is asserted, an explanation shall be attached to the Contractor's Certificate of Liability Insurance.

4. Employers Liability:

\$500,000 Bodily Injury by Accident or Disease
\$500,000 Policy Limit by Disease

5. Other Liability Insurance:

Products Liability Insurance
\$1,000,000 Each Occurrence

Completed Operations Liability Insurance:
\$1,000,000 Each Occurrence

Umbrella Insurance
\$5,000,000 Each Occurrence

C. OTHER INSURANCE PROVISIONS:

The SWDA is hereby authorized to adjust the insurance requirements set forth in this document in the event it is determined that such adjustment is in the SWDA's best interest. If the insurance requirements are not adjusted by the SWDA prior to the SWDA's release of RFP specifications, then the limits stated herein shall apply.

1. General Liability and Automobile Liability Coverages Only:

a. The Contractor's insurance coverage shall be primary insurance as respect to the SWDA, its officers, employees, agents, and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the SWDA, its officers, officials, employees, agents or specified volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

b. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

a. The deductible affecting required insurance coverage shall be acceptable to the SWDA.

b. Contractors are responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the SWDA. Cancellation of coverage for non-payment of premium will require ten (10) days' written notice to the SWDA.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the SWDA, its officers, employees, agents or specified volunteers.

d. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and the retroactive date.

e. The SWDA shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or

exclusions except where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.

f. The certificate(s) of insurance must show the SWDA as an additional insured and a certificate holder, and include 30 days' advance notification to the SWDA of cancellation or non-renewal. All certificates of insurance shall be sent to the following address:

SWDA
MAILING: P.O. Box 2619, Huntsville AL 35804-2619

g. Failure on the part of the Contractor to comply with the insurance requirements shall not relieve him/her of the liability under such requirements. For purpose of this Contract, the Contractor shall cause the SWDA to become a named insured on any and all such policies of insurance referred to herein, as the SWDA's interest may appear. In addition, the insurance shall have an amendment to policy indicating that even though the SWDA is named as an additional insured, it shall not preclude recovery for damages to any SWDA property. The Contractor shall furnish to the SWDA, prior to thirty (30) days of the beginning of the Contract, certificates of insurance evidencing all the foregoing insurance requirements, as applicable. Failure to do so is cause for termination of the Contract.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than B+ V. The carrier for General Liability and Auto Liability needs to be at least A+ rating admitted carrier. SWDA would prefer the same carrier for both General Liability and Auto Liability.

E. VERIFICATION OF COVERAGE:

The SWDA shall be indicated as a Certificate Holder and the Contractor shall furnish the SWDA with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the SWDA before Award Notification is issued by the SWDA. The SWDA reserves the right to require complete, certified copies of all required insurance policies at any time.

F. SUBCONTRACTORS WORKING FOR THE CONTRACTOR:

The Contractor shall include all Subcontractors as insured under its policies or shall furnish separate certificates and/or endorsements for each Subcontractor. Subcontractors working for the Contractor shall be required to carry insurance

12. CONTRACTOR'S RESPONSIBILITY

SUPERVISION

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques and procedures of recycling processing. Contractor shall be responsible to see that the finished Work complies accurately with the intent of the Contract Documents.

EMPLOYEE CONTROL

All of the Contractor's employees shall be competent and able to perform the duties assigned to them for all Work covered by this Contract. The Contractor must employ only neat, orderly, courteous, sober, competent and efficient employees and shall remove any employee who refuses or neglects to obey or carry out his/her instructions.

COMPLIANCE WITH LAWS-PERMITS

The Contractor shall procure at its own expense, and keep current, all permits, licenses, and bonds necessary for the conduct and completion of the Work and/or required by municipal, state and federal/regulations and laws. The Contractor shall give all notices, pay all fees, and comply with all federal, state and municipal laws, ordinances, rules and regulations bearing on the conduct and completion of the Work. This Contract, as to all matters not particularly referred to and defined therein, shall notwithstanding, be subject to the provisions of all pertinent state statutes and ordinances of the SWDA Members, which ordinances are hereby made a part hereof with the same force and effect as if specifically set out herein. Compliance with all Commercial Driver's License (CDL) requirements shall be ensured. Contractor shall comply with all posted speed limits and lawfully safe driving practices.

SAFETY AND PROTECTION

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to, all employees on the Work and other persons who may be affected thereby, or other property.

CONTROL AND PENALTIES

In the event the Contractor has not satisfied the SWDA that it is able and willing to comply with all terms, conditions and provisions of this Contract, or upon any material breach of this Contract, at the option of the SWDA, this written Contract may be cancelled and terminated. The failure on the part of the SWDA to declare this Contract terminated or otherwise to enforce its rights hereunder, upon the default of the Contractor or the failure of the Contractor to perform any of the terms, provisions, or conditions hereof, shall not operate to bar, abridge or destroy the right of the SWDA to declare this Contract null and void or to exercise its other rights and privileges upon any subsequent default or failure by the Contractor to perform any of the terms, provisions or conditions hereof.

13. ASSIGNMENT OF CONTRACT

The Contractor shall not assign the Contract or any part thereof without the prior written consent of the SWDA Executive Director or SWDA designated representative.

14. NONDISCRIMINATION

In compliance with Title VII of the Civil Rights Act and Alabama Code Title 25. Industrial Relations and Labor 25-1-21, Contractor hereby agrees:

- That in the hiring of employees for the performance of Work under the Contract or any Subcontract hereunder, no Contractor or Subcontractor shall by reason of race, age, religion, color, sex, national origin, ancestry, or handicap, discriminate against any person who is qualified and available to perform the work to which the employment relates as defined by law except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary for the proper and efficient operation or as provided by law.
- That no Contractor, Subcontractor, or any person on the Contractor's behalf, shall, in any manner, with respect to tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, discriminate against or intimidate any employee hired for the performance of Work under the Contract on account of race, age, religion, color, sex, national origin, ancestry, or handicap.
- No person employing 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, including any agent of that person organization, shall discriminate in employment against a worker 40 years of age and over in hiring, job retention, compensation, or other terms or conditions of employment.
- That the Contract may be cancelled or terminated by the SWDA and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms and conditions of this section of the Contract.

15. SWDA ALCOHOL AND DRUG POLICY

Contractor shall maintain an Alcohol and Drug Policy consistent with the Alcohol and Drug Policies of the City of Huntsville and the County of Madison.

16. FORCE MAJEURE

Neither the Contractor nor SWDA shall be liable for the failure to perform their duties nor for any resultant damage, loss, etc., if such failure is caused by a catastrophe, riot, war, governmental order or regulation, act of God or other similar act beyond the reasonable control of the Contractor or SWDA. If such circumstances persist for more than fourteen (14) days or if after their cessation the Contractor is unable to render full or substantial performance for a period of fourteen (14) days, Contractor or SWDA may terminate this Contract upon written notice given in thirty (30) days advance notice to the other party.

17. DEFAULT

If the Contractor defaults in the performance of any of Contractor's obligations under the Contract and fails to cure such default within ten (10) days following written notice of default from SWDA, SWDA may at its option:(a) declare this Contract cancelled and terminated: or (b) provide Contractor with the opportunity to present to the SWDA Board (as determined by SWDA) either a written statement or an oral presentation which explains the reason(s) for the Contractor's default and failure to timely cure together with such additional information which the Contractor deems relevant to this issue. The time frame for the submission of such written statement or oral

presentation shall be determined by SWDA, taking into account the then current meeting schedules of the SWDA Board. Upon (a) receipt of the written statement from the Contractor or following Contractor's oral presentation, or (b) following the receipt of the SWDA Board recommended action with respect to the Contract, or (c) in the event Contractor is given the opportunity but elects not to submit a written statement or make an oral presentation to the SWDA Board, SWDA may (a) continue the Contract with Contractor or (b) cancel and terminate the Contract and proceed under the terms of the Performance Bond or Letter of Credit upon approval by the SWDA.

The failure by SWDA to declare a default hereunder or to terminate the Contract in the event of a default and to proceed in the exercise and enforcement of SWDA's rights hereunder upon the occurrence of a default by the Contractor shall not operate as a waiver , modification or impediment to SWDA's future right to declare a default hereunder, to cancel and terminate this Contract or to exercise SWDA's rights and privileges granted hereunder upon the occurrence of any subsequent default by Contractor hereunder.

18. CHANGE OF OWNERSHIP

No sale of the majority of equitable ownership or substantially all of assets of the Contractor shall occur without the prior written consent of SWDA, which consent shall be granted or withheld in the sole discretion of SWDA.

19. WAIVERS

A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of Contract modifications as provided for elsewhere in this section.

20. ILLEGAL AND INVALID PROVISIONS

Should any term, provision, or other part of this Contract be declared illegal and/or unenforceable, such term or portion shall be stricken and the remainder of the Contract shall remain in full force and effect.

21. JOINT AND SEVERAL LIABILITY

If the Contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the Contractor shall be jointly and severally liable.

22. BINDING EFFECT

The provisions, covenants, and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

23. AMENDMENT OF THE CONTRACT

No modification or amendment of the terms hereof shall be effective unless written and signed by the authorized representatives of all parties and approved by the SWDA Board of Directors.

24. MERGER CLAUSE

PREVIOUS AGREEMENTS SUPERSEDED – This Contract constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are to be without effect in the construction of any provision or term of this Contract if they alter, vary or contradict this Contract.

25. SCOPE OF WORK

The Recyclables Processing Contractor will process and market the Recyclable Materials. In the event the Recyclables Processing Contractor would like to add or remove items from the program, the Recyclables Processing Contractor must provide in writing the reason why the item should be added or removed. The SWDA will make a decision in writing within ninety (90) days of this request. Contractor will list other items that Contractor will accept from the SWDA. Recyclables Processing Contractor will be responsible for all costs associated with notifying residents of the changes to the program. The SWDA reserves the right to approve the notification process.

26. PROCESSING and MARKETING

The Contractor shall be responsible for the marketing of all recyclable materials collected. The Contractor shall ensure that only residuals from Recyclable Materials are deposited into a WTE Facility or landfill, or disposed of in any manner, which prevents reuse/recycling. The Contractor shall also ensure that the best available markets are obtained for each Recyclable Material and shall use local and regional markets whenever possible to maximize the percent recycled. Should a Recyclable Material not be marketable, Contractor shall provide SWDA a well-defined process for how to handle the Recyclables and shall only be handled per an SWDA approved process.

27. PAYMENT

Recyclables Processing Contractor shall invoice / make payment to the SWDA by the 10th of every month, in arrears. The SWDA shall have thirty (30) days after receipt of a properly prepared invoice to make payment if payment is due to Recyclables Processing Contractor. Invoicing shall include a spread sheet that contains the following: Scale Ticket Number, Date/Time In, the Truck Number, and Net Tons Charged, Revenues received from sales of Recyclable Materials accepted from SWDA's Processing Contractor, Net Revenue due the SWDA, and monthly payment due Recyclables Processing Contractor or SWDA after accounting for Net Revenue sharing. In addition, Recyclables Processing Contractor shall provide, upon request, copies of all scale tickets. Recyclables Processing Contractor must supply any additional information upon request by the SWDA. Recyclables Processing Contractor must supply any additional information upon request by the SWDA.

28. REPORTING

The Contractor shall be responsible for maintaining information and records adequate to determine information required by the SWDA necessary to meet the requirement of the Alabama Department of Environmental Management, and/or SWDA needs as detailed below. All Contractor records shall be kept up to date and in a form readily available for review upon request by the SWDA.

The Contractor shall furnish computerized and hard copy, if requested, annual reports to the SWDA. Monthly reports are due by the 10th of the following month. Annual reports are due on the 15th of May during each year of the contract. Monthly reports shall include the date, day of week, gross weight of all loads, tare weight for each vehicle, and calculated net weight by material collected and sold, unit prices received for materials sold, by material; summary of revenue received for each material by type (material invoices shall be supplied by the Contractor upon request by the SWDA), summary of tonnages of materials stored, by material, and materials rejected as residue by weight and category. A sample reporting form shall be submitted to SWDA prior to program start-up for approval.

In addition to a summary in graph and numerical form of the monthly data, as listed above, the annual report shall include a summary of all program costs and activity within the period, a graph of yearly tonnages by material for each year over the duration of the contract, comparison of yearly tonnage and revenue totals by material for the length of the contract, and a graph of percentage of material revenues received by material type.

THIS CONTRACT, made and entered into this _____ day of **May, 2019**, by and between SWDA and the Contractor.

WITNESSETH, THAT the Contractor and SWDA for the consideration stated herein agree as follows:

I. APPROVAL OF CONTRACT. This Contract, although accepted on behalf of SWDA, shall not be binding or obligatory upon SWDA unless and until it shall have first been approved by the SWDA, and should the SWDA Board fail to approve the same within forty-five (45) days after the date hereof, this Contract shall become void and of no effect and the rights and obligations of the parties thereupon extinguished.

IN WITNESS WHEREOF, SWDA and the Contractor, by their respective duly authorized agents, hereto affix their signatures and seals at Huntsville, Alabama, as of this _____ day of May, 2019.

SWDA Executive Director

BY: _____
John R. "Doc" Holladay

Name of contractor

Contractor

BY: _____

Name and Title:

ATTEST: _____

Name and Title

(Seal)