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COUNTY OF WEBB §
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**AMENDING THE
OPERATING AND MARKETING SERVICES AGREEMENT
CITY OF LAREDO AND FIRST RECYCLING, L.L.C.
DATED FEBRUARY 27, 2012**

This contract amendment is entered into and executed between the City of Laredo (the “City”), First Recycling, L.L.C. (“Operator”), amending that contract dated February 27, 2012, a copy of which is attached hereto as Exhibit “A,” between the City and Operator for the operation and management of the City's Materials Recovery Facility (MRF) and the sales and marketing of recycling materials collected by the City.

WITNESSETH

WHEREAS, the City of Laredo (City), is a municipal corporation chartered under the laws of the State of Texas, with its principal place of business being located at 1110 Houston St., Laredo, Texas; and,

WHEREAS, First Recycling, L.L.C. (Operator), is a limited liability corporation, incorporated in the State of Texas, whose local place of business is located at 6425 Polaris Drive, Suite 10, Laredo, Texas 78045; and,

WHEREAS, the Operator was found to provide the best value to the City to operate and manage the City's MRF and sell and market recycling materials collected by the City.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the City and the Operator do mutually agree as follows.

ARTICLE I -CONTRACT PERIOD

This Contract shall be for an initial term of Fifteen (15) years beginning on the date this Amended Contract is signed with Two (2) additional Five (5) year revocable offers to renew. The terms of the renewal periods to be negotiated before the expiration the initial term and first renewal period as applicable and are to be mutually agreed upon by the parties. OPERATOR must the CITY of its desire to accept the offer to renew the Contract, in writing, at least sixty (60) days before the expiration of the prior term.

ARTICLE II-SCOPE OF WORK

The CITY will provide collected materials commingled (as collected). The CITY collects recycling materials every week through a curbside recycling blue bin program. The recyclable materials collected include newspaper, plastic, aluminum cans, office waste paper, corrugated cardboard, steel and tin cans. All recycling materials collected by the CITY will be delivered to the MRF by CITY and resulting waste from the recycling material processing will be transported from the site to the City Landfill by the CITY, once a day, Monday through Friday with the exception of official City Holidays when City Employees are not available to transport waste generated. The OPERATOR will manage and operate the MRF, processing, classifying, and baling the incoming recycling materials, Monday through Friday. The operator shall process all materials received within five (5) working days of receipt of the material. The OPERATOR shall be responsible for all sales and marketing of the classified and baled recycling materials.

ARTICLE III -MANAGEMENT

All operations of the plant, hiring and firing of employees, hours of operation and similar operating decisions will be made by the OPERATOR. The OPERATOR shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

The OPERATOR shall provide a sufficient number of employees to operate the facility, one of whom will be the manager. The salaries and other expenses related to the employees shall be the responsibility of the OPERATOR (**See Exhibit "B"**).

The OPERATOR shall be responsible for all operating expenses to include supplies, fuel, utilities, insurance, telephone, fax, electronic mail, and repairs

The OPERATOR shall be responsible for insuring that the facility meets all city, state and federal guidelines, rules and regulations governing the facility and its operations. All operations shall be conducted in compliance with all applicable ordinances and laws. All recycled material inventoried shall be kept in such a way that it protects the health and safety of all who enter the premises. Nothing in this Agreement shall be construed in any manner to abridge the right of the CITY to pass or enforce necessary police, health, or safety regulations for the protection of its inhabitants.

The CITY will obtain all licenses and permits necessary for the operation of the facility. The OPERATOR agrees to indemnify the CITY in the event the CITY is required to pay any penalties or fines to any state or federal regulatory agency, due to acts or omissions of negligence by The OPERATOR, its officers, agents, servants, employees or assigns.

The OPERATOR will be responsible for all business and maintenance within the building and for the care and maintenance of all CITY owned machinery or equipment used by the OPERATOR for MRF operations. The CITY shall maintain the grounds, parking lot and fences outside the building.

ARTICLE IV -EQUIPMENT AND FACILITIES MAINTENANCE

The OPERATOR shall maintain and perform regularly scheduled preventative maintenance including, but not limited to, lubrication, adjustments, replacement of wear parts, and inspections on all sorting, baling and material handling equipment and machinery, and maintain all other process

and waste handling equipment in good order to render efficient production subject to the terms of this contract. All repair and maintenance expenses shall be the responsibility of the OPERATOR.

The OPERATOR shall not allow litter to escape the premises at any time. The Materials Recovery Facility, including all vehicles, and containers, offices, and rest room facilities shall be kept in a clean and sanitary condition.

No equipment shall be removed from the premises without the written approval of the CITY.

The OPERATOR will notify the CITY in writing of any substantial modifications to equipment, processes or facilities. No substantial modifications shall be made without the written approval of the CITY.

ARTICLE V -SALE OF RECYCLED MATERIALS

The OPERATOR shall be responsible for the sales, marketing and advertising of all recycling bins as well as all expenses, including the promoting and marketing of the recycling bins for third-party advertising on the recycling bins. All revenues from sales in excess of operating expenses shall be shared equally (50/50) between the CITY and the OPERATOR. All revenue payments due to the CITY shall be paid at the end of each quarter, after the first year of this contract.

The OPERATOR shall be responsible for the sales and marketing of all recycled materials as well as all sales and marketing expenses. All revenues from sales of the recycled materials exceeding operating expenses shall be shared (70/30) the second year, (50/50) thereafter between the CITY and the OPERATOR. All revenue payments due to the CITY shall be paid at the end of each quarter, after the first year of this contract.

ARTICLE VI -RECORDS AND REPORTING

The OPERATOR shall provide to the CITY monthly reports showing operating expenses, production, inventory, and sales. Expense reports shall include a detailed accounting of operating expenses sufficient to determine actual operating expenses for the purpose of calculating the sharing of revenues defined in Article V of this contract. Production reports shall, at a minimum, include tons of each material processed and tons of each material baled. Inventory reports, at a minimum, shall show a bale and weight count of each material in stock and available for sale. Sales reports, at a minimum, shall include tons of each material sold, names and addresses of the buyers of the material and sales price of the each material.

ARTICLE VII -INSPECTION AND ACCESS TO FACILITY

The CITY and any of its authorized representatives shall have the right at all times to enter and inspect the MRF. The CITY, with prior notice to the OPERATOR, shall have the right to schedule tours of the facility to groups or individuals during operating hours.

ARTICLE VIII -INSURANCE & INDEMNITY

A. Insurance

1. The OPERATOR shall furnish the City with original copies of valid insurance policies herein required upon execution of the contract and shall maintain said policies in full force and effect at all times during the term of this contract.
2. Commercial General Liability in the name of the OPERATOR in minimum amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage which coverage shall include products/completed operation (\$1,000,000 products completed/operations aggregate) written on an occurrence form. Contractual liability must be maintained covering the OPERATORS obligation contained in the contract.
3. Workers' Compensation Insurance, at statutory requirements limits, including Employers' Liability coverage in a minimum limits of \$1,000,000 each occurrence each accident and \$1,000,000 disease each-occurrence and \$1,000,000 each disease aggregate.
4. Commercial Auto Liability insurance at minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage, including owned, non-owned and hired car coverage.
5. The City of Laredo shall be named as an additional insured with respect to General and Auto Liability. A waiver of subrogation in favor of the City of Laredo shall be contained in the workers' compensation and all liability policies. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Laredo of any material change in the insurance coverage. All insurance policies shall be endorsed to the effect that the City of Laredo will receive at least sixty (60) days notice prior to cancellation or non-renewal of insurance. All insurance policies, which name the City of Laredo as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance. Insurer must be rated A or greater by AM Best Rating with an admitted carrier licensed by the Texas Department of Insurance. All liability policies shall contain no cross liability exclusion or insured versus insured restrictions.

B. Indemnity

The OPERATOR shall at all times defend, indemnify, save and hold harmless the CITY and each of its officers, agents, servants and employees from any and all suits, actions, claims, losses or damages of any character and from all expenses incidental to the defense of such suits action or claims based upon or arising out of any injury, disease, sickness or death of any person or persons, or any damages to any property including environmental damage caused by any act of omission of the OPERATOR or its officers, agents, servants, employees, or anyone else under the OPERATOR'S direction and control and arising out of, occurring in connection with, resulting from or caused by the performance or failure of performance or the nonperformance of said work, service or business. Upon notice given to

the OPERATOR by CITY, The OPERATOR must defend, at its own expense, any said action or suit brought against the CITY and legal counsel chosen by the OPERATOR to defend CITY must be satisfactory to CITY.

ARTICLE IX -EXCLUSIVITY

The OPERATOR shall have the sole right and exclusive license to operate the MRF in conjunction with the CITY OF LAREDO or to provide such services to the CITY OF LAREDO.

ARTICLE X –ASSIGNMENT

No assignment of the Agreement or any right accruing under the Agreement shall be made in whole or in part by the OPERATOR.

ARTICLE XI –DEFAULT & TERMINATION

A. DEFAULT

In the event that the CITY deems that The OPERATOR is in default of this Agreement in any term, manner or requirement, the CITY shall notify The OPERATOR, by Certified Mail, Return Receipt Requested, of such default and The OPERATOR shall have thirty (30) days after receipt of such notice in which to cure such default. If The OPERATOR is unable to cure the default within thirty (30) days, The OPERATOR will notify CITY and CITY may extend the period to cure, but it must do so in writing. If The OPERATOR has not cured the default within such thirty (30) day period or within the extended period of time granted by CITY to cure such default CITY may, at its option, either extend the time to cure or terminate this Agreement. If the CITY is in default of the Agreement in any term, manner or requirement, The OPERATOR shall notify CITY by Certified Mail, Return Receipt Requested, of such default. If CITY has not cured or commenced to cure any default within such thirty (30) day period, The OPERATOR may, at its option, terminate this Agreement or extend the time to cure.

In the event of a termination caused by The OPERATOR'S default, the CITY shall have the right to take over the work or portion thereof and prosecute the same, by contract, or otherwise, for the account and at the expense of The OPERATOR. The OPERATOR shall be liable to the CITY for any excess costs, expenses, and revenues occasioned by CITY in taking over the service, and in such event the CITY may take possession and utilize in prosecuting the work, such appliances, equipment and sites as may have been used by The OPERATOR and are necessary therefore. After issuance by CITY of its notice of intention to terminate the contract, The OPERATOR shall not remove from the CITY any of its equipment normally used in the prosecution of the work until arrangements to continue the work, by contract or otherwise, have been completed by the CITY.

B. TERMINATION

This contract may be terminated before the stated termination date by any of the following conditions:

1. By mutual agreement and consent, in writing of both parties.
2. In writing, by the CITY as a consequence of OPERATOR's failure to perform the services set forth herein. Upon thirty (30) days written notice to the OPERATOR.
3. By either party, upon failure of the other party to fulfill its obligations as set forth herein with proper notice given.

ARTICLE XII -NOTICES

All notices, payments, reports, statements or demands, which are given or made to either The OPERATOR or CITY, as provided for in this contract, or incident to its terms, or in the exercise of the police power of the CITY, may be effected by personal delivery in writing or by certified mail, postage prepaid. Mailed notices shall be addressed to the Parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section.

BY CERTIFIED MAIL OR HAND DELIVERY

CITY: City of Laredo
C/o City Manager
P.O. Box 579 Laredo, Texas 78042-0579

OPERATOR: First Recycling, LLC.
C/o Saul Villarreal
14203 Business St. InterAmerica Industrial Park
Laredo Texas 78041

ARTICLE XIII -STRICT COMPLIANCE/ENTIRE AGREEMENT

All provisions of the Agreement shall be strictly complied with and conformed to by the parties hereto and no amendment to this Agreement will be made except upon written consent of the parties. This Agreement contains the entire agreement between the parties and no previous proposal, writing or correspondence shall be binding after the execution of this Amendment to the Agreement. This Agreement may be amended, in writing only, from time to time by mutual consent of the parties as conditions may dictate.

ARTICLE XIV –SEVERABILITY

If any, provision, section, subsection, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstance, is for any reason held to be unconstitutional, void, invalid or for any reason unenforceable, the validity of the remaining portion of this Agreement or its application to other person or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Laredo in adopting this Agreement that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity, and all provisions are declared severable for that purpose.

ARTICLE XV -FORCE MAJEURE

Neither party to this agreement shall be required to perform any term, condition, or covenant in this agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by a governmental authority, civil riots, floods or any other cause not reasonably in control of either party to this agreement and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome. If by force majeure either party is prevented from full performance of its obligations under this agreement, written notice shall be provided by the other party within three days.

ARTICLE XVI -APPLICABLE LAW

This agreement shall be construed under, and in accordance with, the laws of the State of Texas as amended from time to time, and all obligations of the parties created by this agreement are performable and enforceable in Webb County, Texas.

IN WITNESS WHEREOF, the City of Laredo acting by and through its City Manager, and First Recycling, LLC., have executed this agreement in duplicate originals, each of equal dignity.

EXECUTED this the ___ day of October, 2014.

CITY OF LAREDO:

FIRST RECYCLING, L.L.C.:

Carlos R. Villarreal
City Manager
Date:

Saul Villarreal
Managing Partner
Date:

ATTEST:

CITY OF LAREDO:

Gustavo Guevara Jr.
City Secretary
Date:

APPROVED AS TO FORM:

Raul Casso
City Attorney