

WEST DEPTFORD TOWNSHIP

RESOLUTION 2017- 88

RESOLUTION OF THE TOWNSHIP OF WEST DEPTFORD AUTHORIZING EXECUTION OF RECYCLING SERVICES AGREEMENT BETWEEN THE TOWNSHIP OF WEST DEPTFORD AND FCR CAMDEN LLC FOR A TERM OF FIVE (5) YEARS

WHEREAS, the Township of West Deptford requires the services of a recycling facility for disposal of its recyclable materials; and

WHEREAS, FCR Camden LLC (hereinafter referred to as "Processor") submitted an Agreement to accept said recyclable materials; and

WHEREAS, Processor shall receive, process and market all Recyclables delivered to the Facility by the Township of West Deptford (hereinafter referred to as "Supplier"); and

WHEREAS, Processor will provide Supplier with a monthly report which shall indicate the date, time and net weight for each load, a report of the total tons received for that calendar month and a billing summary; and

WHEREAS, the term of the Agreement shall commence on the Effective Date and shall continue for a five (5) year period (the "Term"); and

WHEREAS, the Term shall automatically extend on a month to month basis unless either party, no less than thirty (30) days prior to the end of the then existing Term, provides written notice to the other part of its intent to not so extend the Term; and

WHEREAS, Notwithstanding the foregoing, either party shall have the right to terminate for convenience with thirty (30) days prior written notice.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of West Deptford, County of Gloucester, and State of New Jersey as follows:

1. That the Township Committee does hereby authorize and approve the execution of the attached Recycling Services Agreement between the Township of West Deptford and FCR Camden LLC..

2. That the Mayor and/or Township Administrator be and is hereby authorized to execute said Agreement on behalf of the Township of West Deptford.

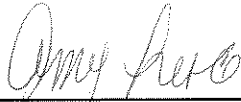
ADOPTED at the meeting of the Township Committee of the Township of West Deptford held on February 1, 2017.

TOWNSHIP OF WEST DEPTFORD



DENICE DICARLO, Mayor

ATTEST:



LEE ANN DEHART, Registered Municipal Clerk



CERTIFICATION

I, ^{Amy Lese} Lee Ann DeHart, Registered Municipal Clerk, of the Township of West Deptford, in the County of Gloucester, do hereby certify that the foregoing Resolution was presented and duly adopted by the Township Committee at a meeting of the Township of West Deptford held on February 1, 2017.



LEE ANN DEHART, Registered Municipal Clerk



RECYCLING SERVICES AGREEMENT

This Recycling Services Agreement (the "Agreement") is made as of February 1, 2017 (the "Effective Date") between WEST DEPTFORD TOWNSHIP ("Supplier") and FCR CAMDEN LLC ("Processor").

In consideration of the covenants and undertakings of the parties hereto and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Supplier and Processor hereby agree as follows:

1. DEFINITIONS

"Customer" or "Customers" means all residential, commercial, industrial and institutional recycling customers for whom Supplier collects Recyclables within West Deptford Township.

"Facility" means the supplier's material recovery facility located at 2201 Mt. Ephriam Ave., Camden, NJ 08104 (the "Facility").

"Single Stream Residential Mix" means those recyclable fibers and containers as defined in the Materials Acceptance Protocol set forth in Schedule B attached hereto collected in a single collection container or vehicle from each Customer for whom Supplier collects Single Stream Recyclables. Single Stream Recyclables does not include excluded materials described in the Materials Acceptance Protocol.

"OCC" means clean cardboard (loose or baled) which is Source Separated from all other recyclables and or residue.

"Recyclables" means all materials collected by Supplier listed on Schedule B including residential and commercial commingled containers, residential and commercial fiber collected from the Customer in Single Stream Residential and Source Separated formats.

"Source Separated" – means any material listed on Schedule B that is not mixed with another item on Schedule B and/or residue.

2. RESPONSIBILITIES OF SUPPLIER

2.1 Supplier shall deliver or cause to be delivered to the Facility all Recyclables received through or by collections made by or on behalf of Supplier from each Customer. Title to the Recyclables shall pass from Supplier to Processor upon acceptance at the Facility except as set forth in Section 2.3(b) below.

Hours of Operation at the Facility shall be:

Monday through Friday:

7 a.m. to 5:45 p.m.

Holiday Closings: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day

Should additional deliveries be required at the Facility at times other than what is listed in section 2.1, arrangements will be made through mutual agreement of the parties.

2.2

(a) The parties expect approximately 180 tons per month of Recyclables to be generated from Supplier. The Parties acknowledge that failure to achieve such approximate amount will not be a breach of this Agreement so long as Supplier is complying with the requirements of Section 2.1 above.

(b) Supplier represents and warrants to Processor that it has the legal right to deliver the Recyclables to Processor and for Processor to take title thereto.

2.3 Acceptable/Unacceptable Materials

(a) Supplier shall comply with the Materials Acceptance Protocol and shall deliver only Acceptable Materials to the Facility. Any material that is not "Acceptable Material" is "Unacceptable Material".

(b) Processor shall have the right to inspect all inbound loads from the Supplier. Processor shall have the right to reject (i) any delivery from the Supplier which contains or appears to contain by volume or weight more than eight percent (8%) Unacceptable Material, or which contains or appears to contain any amount of hazardous, toxic, radioactive or similarly dangerous Unacceptable Material (each such rejected load an "**Unacceptable Load**"); or (ii) any large or unsafe Unacceptable Material items such as TV's, air conditioning units, wood (including without limitation lumber, tree branches or shrubbery), or scrap metal ("**Rejectable Materials**"). The entire cost resulting from Supplier's delivery of any Unacceptable Load or Rejectable Materials (including without limitation transportation, re-loading, clean-up, alternate disposal and the like) which at a minimum shall include an Unacceptable Material Fee in the amount of \$200, shall be the sole responsibility of the Supplier, and Supplier shall reimburse Processor for any such costs incurred by Processor. Title to Unacceptable Material shall not pass from Supplier to Processor.

(c) Supplier shall indemnify, hold Processor harmless, and promptly reimburse Processor for all damages, losses and expenses, including reasonable attorney's fees and federal, state or local fines and penalties, resulting from the inclusion of any hazardous waste, hazardous materials or any other Unacceptable Material in any load delivered by the Supplier to the Facility, regardless of any

allegation that Processor should have discovered the inclusion of such materials prior to accepting delivery of such load.

2.4 Supplier will make reasonable efforts to eliminate the scavenging of Recyclables prior to delivery to the Facility.

2.5 Supplier will cause its loads to be delivered in conformance with the Facility's operating hours and the delivery routines and standards described in the Hauler's Rules attached hereto as **Schedule C**.

3. **RESPONSIBILITIES OF PROCESSOR**

3.1 Processor will receive, process, and market all Recyclables delivered to the Facility by the Supplier and Processor shall do so in accordance with all applicable federal, state and local laws and regulations applicable thereto. Processor will provide Supplier with a monthly report which shall indicate the date, time, and net weight for each load, a report of the total tons received for that calendar month, and a billing summary.

4. **TERM**

4.1 **Initial Term**. The term of this Agreement shall commence on the Effective Date and shall continue for a five (5) year period (the "**Term**").

4.2 **Extensions and Renewals**. The Term shall automatically extend on a month to month basis unless either party, no less than thirty (30) days prior to the end of the then-existing Term, provides written notice to the other party of its intent to not so extend the Term.

4.3 **Termination for Convenience**. Notwithstanding the foregoing, either party shall have the right to terminate for convenience with thirty (30) days prior written notice.

5. **PRICE**

5.1 Pricing for Recyclables delivered by Supplier to the Facility shall be as set forth in **Schedule A** attached hereto.

5.2 All invoices for Recyclables delivered by Supplier to the Facility shall be due and payable on a strict net thirty (30) days from date of invoice basis. Interest shall accrue on all past due invoices at the rate of one-half percent (0.5%) per month from the date due until the date paid, and the party owing such overdue amounts shall pay any and all costs incurred by the other party for collection of unpaid balances, including without limitation costs of investigation and attorneys' fees.

6. **STANDARD TERMS AND CONDITIONS.** Processor's Standard Terms and Conditions are attached hereto as Schedule D and are incorporated herein in their entirety as if contained herein.

7. **NOTICES.** All notices to be given under this Agreement shall be in writing and delivered personally or shall be sent by recognized overnight courier, in each case with signature required, as follows:

If to Processor:

Sean P Duffy, President & COO
FCR Camden LLC
809 West Hill Street
Charlotte, NC 28208

with a copy to:

Michael J. Brennan, General Counsel
Re Community Holdings II, Inc.
809 West Hill Street
Charlotte, NC 28208

if to Supplier:

West Deptford Township
400 Crown Point Road
West Deptford, NJ 08086
Attn: Barbara J. Lamplugh

with a copy to:

Notices shall be deemed received when actually received.

8. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument.

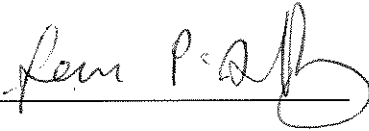
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[signature page to Recycling Services Agreement]

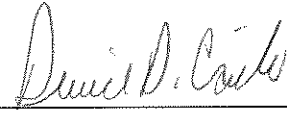
IN WITNESS HEREOF, the parties have executed this agreement as of the Effective Date.

FCR CAMDEN LLC

WEST DEPTFORD TOWNSHIP

By: 

Its President + C.O.O.

By: 

Its

DEFINITIONS

Average Commodity Revenue “(ACR)” - means for the Facility the current month projected Net Revenue for each Recyclable commodity (including without limitation glass and residue, whether positive or negative) used (unless the current month ACR has an excessive shift in value that would require a mid-month ACR adjustment to reflect the actual value for that month) in conjunction with the relative mix of commodities, established pursuant to a rolling average of the last 3 composition audits to determine the aggregate per ton value for each recyclable stream, the first of which shall occur within the first 90 days of the Term. Processor shall conduct at least one audit per year and may perform additional audits at its discretion. Supplier may request an additional audit and will bear the costs associated with any such Supplier requested audit.

CPI – means the Consumer Price Index – All Urban Consumers, All Items, Philadelphia PA-Wilmington-Atlantic City, PA-NJ-DE-MD, as reported by the Department of Labor.

Net Revenue – means gross revenue (or loss) earned minus any direct costs of Processor related to transportation, disposal or marketing of Recyclables.

Revenue Share – means the percentage of value equal to:

(a) sixty five percent (65%) for Single Stream Residential Mix paid to the Supplier when the Average Commodity Revenue is greater than the Threshold. When the revenue share is negative, Supplier shall pay to Processor the dollar-for-dollar difference.

(b) one hundred (100%) for OCC paid to the Supplier when the NY HS PPI OCC (11) Index is greater than the Threshold. When the revenue share is negative, Supplier shall pay to Processor the dollar-for-dollar difference. If this Index becomes unavailable Processor will select the replacement Index to be used.

Threshold – means a deemed base cost per ton to process Recyclables, and which is initially **\$75.00 for Single Stream Residential Mix; and \$35.00 for OCC**. The Threshold will be adjusted (but never downward) on each anniversary of the Effective Date the greater of (i) three percent (3%); (ii) the same proportion that the CPI changed from the previous year; or (iii) the percentage amount of wage increases for the year arising from a Change in Law, and shall remain at the adjusted figure unless and until further adjusted as set forth in this sentence in future years.

1. **PRICE FOR SINGLE STREAM RESIDENTIAL MIX DELIVERED INTO THE FACILITIES:**

Single Stream pricing formula: Processor has developed a revenue share on market value to reflect single stream value in today's commodity market environment.

Revenue Share: 65% in excess of a Threshold of \$75.00 per ton ACR into the Facility.

Example¹

Favorable commodity market example:

ACR of \$97.75

Actual Formula based on hypothetical Facilities ACR of \$97.75 per ton:

Threshold: \$75.00 per ton

Excess ACR: \$22.75 per ton (\$97.75 - \$75.00)

Revenue Share: 65% over Threshold (to Supplier)

Revenue Share to Supplier \$14.79 (\$22.75 x 65%)

Net Payment to Supplier would be **\$14.79 per ton.**

Unfavorable commodity market example:

ACR of \$63.14

Actual Formula based on hypothetical Facilities ACR of \$63.14 per ton:

Threshold: \$75.00 per ton

Excess ACR: (\$11.86) per ton (\$63.14 - \$75.00)

Revenue Share: 65% over Threshold (to Supplier) and dollar-for-dollar below the Threshold (to Processor)

Revenue Share to Supplier (\$11.86) (\$63.14 - \$75.00)

Net Payment by Supplier is **\$11.86 per ton .**

The Revenue Share **Threshold** for Single Stream Residential Mix will initially be set at **\$75.00** per ton for the Facilities.

The **Revenue Share** will be set at **65%** above the Threshold.

¹ This is an example for the first year, where there is no adjustment to the Threshold and no Surcharge.

2. **PRICE FOR OCC MIX DELIVERED INTO THE FACILITIES:**

OCC pricing formula: Processor has developed a revenue share on market value to reflect OCC value in today's commodity market environment.

Revenue Share: 100% in excess of a Threshold of \$35.00 per ton PPI DOMESTIC HS NY OCC (11) Index

Example²

Favorable commodity market example:

PPI DOMESTIC HS NY OCC (11) is \$105.00

$\$105.00 - \$35.00 = \$70.00$

$\$70.00 * 100\% = \70.00 payment to Supplier

Unfavorable commodity market example:

PPI DOMESTIC HS NY OCC (11) is \$25.00

$\$25.00 - \$35.00 = (\$10.00)$

\$10.00 payment to Processor

The Revenue Share **Threshold** for OCC will initially be set at **\$35.00** per ton for the Facilities.

The **Revenue Share** will be set at **100%** above the Threshold.

² This is an example for the first year, where there is no adjustment to the Threshold and no Surcharge.

Schedule B
Materials Acceptance Protocol

Acceptable Material Single Stream Residential:

Aluminum food and beverage containers

aluminum soda and beer cans, cat food cans, etc.

Glass food and beverage containers

Flint (clear)

Amber (brown)

Emerald (green)

Ferrous Cans

soup, coffee cans, etc.

P.E.T. plastic containers with the symbol #1

no microwave trays

H.D.P.E. natural plastic containers with the symbol #2

milk jugs and water jugs containers only (narrow neck containers)

H.D.P.E. pigmented plastic containers with the symbol #2

detergent, shampoo, bleach bottles without caps (narrow neck containers)

LDPE plastic food and beverage containers symbol #4

butter and margarine tubs

Polypropylene plastic food and beverage containers symbol #5

yogurt containers

Other plastic food and beverage containers symbol #7

mixed plastic containers

Old Newspaper (ONP)

Sunday inserts are acceptable paper.

Kraft Paper Bags

Old Corrugated Containers (OCC)

no wax coated.

Magazines (OMG)

Coated magazines, catalogues and similar printed materials, junk mail, and soft cover books.

Aseptic Cartons

Juice boxes, gable top milk and juice containers, soy milk and soup cartons.

Materials Not Acceptable:

NO PLASTIC BAGS or bagged material (newsprint may be placed in a Kraft bag)

Mirrors, window or auto glass, light bulbs, ceramics, any plastic containers with #3 or #6 on them or no # at all, oil or antifreeze containers, plastic bags, coat hangers, paint cans, or any household items (such as toasters, cooking pots or pans, etc.)

Hard cover books

Schedule C

Haulers' Rules

Insurance: Haulers must have certificate of insurance demonstrating that the company and the Driver are insured to the reasonable satisfaction of Processor against any damage, liability or loss caused by the vehicle.

Scale House:

1. Driver shall approach Scale SLOWLY.
2. Driver shall report to scale house operator and identify origin and material type such as Single Stream Residential Recyclables, Single Stream Commercial Recyclables or OCC.
3. Weigh inbound, weigh outbound and pick up scale ticket.

Tip Floor/Yard Rules:

1. Driver shall maintain safe speeds while traveling within the yard.
2. Follow all posted signs indicating traffic pattern directions.
3. Follow verbal directions issued by the facility's tip floor attendant or loader operator.
4. Queue vehicles only where directed by the Floor Attendant or Scale Operator.
5. Driver shall not allow litter to be discharged from the body or cab.
6. Wait for operator's OK to enter tip floor before dumping.
7. If it is necessary to exit the vehicle only one person, the driver or the helper, is allowed out of the vehicle at a time.
8. The following PPE must be worn whenever exiting the vehicle:
 - a. ANSI Class II high visibility vest
 - b. Hard Hat
 - c. Safety Glasses
9. When observing the off-loading of material drivers or helpers must stay within 6 feet of their vehicle at all times.
10. LOAD REJECTION: Unless otherwise restricted by Customer Contract, Processor may reject (A) any partial load with non-Recyclables that could harm employees or damage/shut down processing equipment, or (B) any entire load from Supplier which contains or appears to contain by volume or weight more than eight percent (8%) non-Recyclables, or which contains or appears to contain any amount of hazardous material.
11. If Driver is notified by Processor that part or all of the load is rejected, Driver shall provide truck number and sign a statement verifying the events.
12. Drivers cannot discharge any liquids from their drain valves.
13. Unless expressly approved by Processor, Drivers cannot clean out the back (behind blade) of their trucks in the yard.
14. Drivers shall not loiter in the yard.
15. Drivers are prohibited from smoking at all times, even when inside the cab of their vehicles.
16. Use only designated restrooms.
17. No cell phone calling or texting while driving.

Schedule D

Standard Terms and Conditions

Deposit Bill Legislation. If legislation is enacted on a State or national level that requires a redeemable deposit on any of the items listed as Recyclables, the parties agree that the Processor's economic position has been negatively impacted. Therefore, the Processor and Supplier will renegotiate the price of this Agreement in good faith to rectify the negative economic impact. If the parties cannot reach a mutually satisfactory agreement, either party may terminate this contract with sixty (60) days' notice to the other without further obligation.

Governing Law. This Agreement and any issues arising hereunder or relating hereto shall be governed by and construed in accordance with the laws of the State in which the Facility is located except for conflicts of laws provisions that would apply the substantive law of another state.

Venue. The Parties agree that all actions or proceedings arising in connection with this agreement shall be tried and litigated only in the state and federal courts having jurisdiction over the physical location of the Facility.

Limitation of Liability. Neither party shall be liable to the other for special, incidental, exemplary, punitive or consequential damages, including without limitation, loss of use, loss of profits or revenues, or cost of substitute or re-performed services, suffered, asserted or alleged by either party or any third party arising from or relating to this Agreement, regardless of whether those damages are claimed under contract, warranty, indemnity, tort or any other theory at law or in equity.

Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other party. Supplier and its employees and agents shall not be entitled to any Processor fringe benefits and hereby expressly waive any claim or right now or hereafter accruing against Processor arising out of the operation of any applicable workers' compensation law.

Force Majeure.

- (a) "Force Majeure" means shall mean any act, event or condition materially and adversely affecting the ability of a party to perform or comply with any material obligation, duty or agreement required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the party relying thereon, and the nonperforming party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation:

(i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (iii) a strike, work slowdown, or similar industrial or labor action; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a party's obligations as contemplated by this Agreement; or (v) adoption or change (including a change in interpretation, enforcement or permit requirement) of any federal, state or local law after the Effective Date of this Agreement, preventing performance of or compliance with the obligations hereunder.

(b) Neither party shall be liable to the other for damages without limitation (including liquidated damages) if such party's performance is delayed or prevented due to an event of Force Majeure. In such event, the affected party shall promptly notify the other of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure Event, the nonperforming party shall (i) exercise commercially reasonable efforts to mitigate or limit damages to the performing party; (ii) exercise commercially reasonable due diligence to overcome the Force Majeure event; (iii) to the extent it is able, continue to perform its obligations under this Agreement; and (iv) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires.

(c) In the event of a delay in either party's performance of its obligation hereunder for more than sixty (60) days due to a Force Majeure, the other party may, at any time thereafter, terminate this Agreement.

(d) In the event a Force Majeure event materially or adversely affects Processor's cost of operation Processor may increase the applicable threshold or surcharge under this Agreement to the extent necessary to help offset, directly or indirectly, the increase in such costs.

Representations and Warranties of Authority. Each party represents and warrants to the other that:

(a) it is duly qualified to do business and is in good standing in every jurisdiction in which this Agreement requires its performance;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action by such party; and

(d) the execution and delivery of this Agreement by such party and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws of such party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which either party is bound.

These warranties shall survive the expiration or termination of this Agreement.

Termination. This Agreement may be terminated:

- (a) at any time by both parties upon mutual written agreement; or
- (b) by either party in the event that any of the representations and warranties contained in this Agreement are shown to be untrue following written notice and a 30-day opportunity to cure such matter; or
- (c) by either party in the event of a failure by the other party to perform a material obligation hereunder as follows (a "Default"): if the Default has not been cured by the defaulting party within thirty (30) days from receipt of notice from the non-defaulting party, the non-defaulting party may (i) terminate this Agreement immediately upon notice following such failure to cure, or (ii) agree in writing that the defaulting party is diligently pursuing a cure, and extend the cure period at its sole discretion, subject to immediate termination upon notice following such failure to cure by the end of the extended period.

Entire Agreement. It is understood and agreed that all understandings and agreements heretofore had between and parties thereto are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon between the parties with respect to the subject matter of this Agreement, and that this Agreement is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other. All exhibits, schedules and other attachments are a part of this Agreement and the contents thereof are incorporated herein by reference.

Amendment. This Agreement may not be amended, modified or supplemented, except in writing and signed by the parties.

Non-Waiver. No waiver by any party to this Agreement of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No waiver by either Party of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by either Party with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Severability; Modification Required By Law. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions thereof or hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

Headings, Pronouns. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement. The pronouns "he", "she" or "it" are also used for convenience, and in the event that an improper pronoun has been used, it shall be deemed changed so as to render the sentence in which it is contained effective in accordance with its terms.

Successors and Assigns. This Agreement and all of the provisions thereof and hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

Assignment. Neither this Agreement nor any of the rights, interests, obligations, and remedies hereunder shall be assigned by either party, including by operation of law, without the prior written consent of the other, such consent to not be unreasonably withheld, conditioned or delayed, except (1) to its parents and subsidiaries or entities under common control with such party, (2) at its expense to a person, firm, or corporation acquiring all or substantially all of the business and assets of the assigning party, provided that the assignee assumes the obligations of the assigning party arising hereunder from and after the date of acquisition, and (3) as security to entities providing financing for the assigning party or for any of its affiliates or for construction, reconstruction, modification, replacement or operation of any of the Facility of the assigning party or its parents, subsidiaries or affiliates.

Construction. This Agreement and its exhibits and schedules are the result of negotiations between the parties and have been reviewed by all parties. Accordingly, this Agreement will be deemed to be the product of the parties thereto and no ambiguity will be construed in favor of or against any party.

No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

No Brokers. The parties agree that they have entered into this Agreement without the benefit or assistance of any brokers, and each party agrees to indemnify, defend and hold the other harmless from any and all costs, expenses, losses or liabilities arising out of any claim by any person or entity that such person or entity acted as or was retained by the indemnifying party as a finder or broker with respect to the transaction described in this Agreement.

Further Acts. Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument.

Disputes. If a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve it equitably through negotiation, or if that fails, through non-binding mediation under the rules of the American Arbitration Association, before having recourse to the courts. However, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitations.

Press Releases and Announcements. No party shall issue any press release or public announcement relating to the subject matter of this Agreement without the prior written approval of the other party; provided, however, that any party may make any public disclosure it believes in good faith is required by applicable law, regulation or stock market rule (in which case the disclosing party shall use reasonable efforts to advise the other party and provide them with a copy of the proposed disclosure prior to making the disclosure).

Mutual Indemnification.

(a) Each of the parties (each, an “**Indemnifying Party**”) shall indemnify and hold harmless the other party and any director, officer, affiliate, partner, member or elected or appointed official of the other party (each, an “**Indemnified Party**”) from and against any and all claims, actions, suits, judgments, proceedings, liabilities, obligations, losses, and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney’s fees), penalties (civil, criminal or administrative), court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) relating to or arising from personal injury, bodily harm or death, property damage or damage to the environment (“**Losses**”) incurred or suffered by any Indemnified Party to the extent that such Losses arise by reason of, or result from (i) the material breach or inaccuracy of any representation or warranty of the Indemnifying Party contained in this Agreement; (ii) the material breach by the Indemnifying Party of any of its covenants or agreements contained in this Agreement, or (iii) the gross negligence or willful misconduct of the Indemnifying Party or any of its agents, employees or subcontractors; to the extent not waived by the other party, in each case.

(b) The indemnification obligations of Indemnifying Party under this Section shall inure to the benefit of the directors, officers, affiliates, employees and elected or appointed officials of Indemnified Party; and shall survive expiration or earlier termination of this Agreement.

Insurance. At all times during the term of this Agreement, Supplier shall maintain, and shall require its subcontractors to maintain, workers’ compensation insurance and commercial general liability insurance in coverages and amounts satisfactory to Processor. Upon request Supplier

shall provide Processor with evidence reasonably satisfactory to Processor that the Supplier is insured against any damage, liability or loss caused by the vehicles which deliver Recyclables to the Facility for the Supplier or by the drivers thereof.

Waiver of Subrogation. Each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, each party each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise.