

SERVICE AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into effective as of July 1, 2012, by and between the City of Durham, a North Carolina municipal corporation (hereafter "City") , and Otto Container Management, LLC a Delaware limited liability company with its principle place of business at 12700 General Drive, Charlotte, North Carolina 28273 ("Contractor"). This Agreement supersedes all previous agreements to provide roll-out cart services between the parties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Provision of Services.

- (a) Services. Contractor shall provide any and all required labor, materials, equipment, insurance, supervision, etc. necessary for and incidental to execution of the services provided herein with are set forth with specificity in **Exhibit B – Scope of Services for Maintenance, Repair, Replacement, and Distribution of Roll-Out Carts** attached hereto.
- (b) Compensation. The compensation associated with the Services performed under this Agreement are set forth in **Exhibit C – Compensation** attached hereto.
- (c) Term. The term ("Term") of this Agreement shall commence on the date hereof and shall run for a period of thirty-six (36) months.
- (d) Contingency. The adoption and execution of this Agreement is contingent upon the execution of the Cart Buy-Out Agreement. See **Exhibit A** attached hereto which sets forth the product summary and pricing of the Cart Buy-Out Agreement.
- (e) Invoicing and Billing. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this Agreement. Each invoice shall be accompanied by a progress report, which shall provide such information as is reasonably required by the City. Within thirty (30) business days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.
- (d) Independent Contractor. Contractors acknowledges and agrees that it is an independent contractor, that neither it nor any of its employees are employees of the City, and that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and shall be responsible for their acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants.

2. Insurance. Supplier agrees at all times during this Agreement to maintain in full-force and effect at least the following insurance coverages:

Commercial General Liability Insurance :

- Premises/Operations
- Products/Completed Operations
- Broad form Property Damage
- Explosion, Collapse, and Underground hazards if the hazards exist in the performance of this Agreement;

- Contract Liability
- Independent Contractors, if any are used in the performance of this Agreement
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by Blanket Endorsement, then agent may so indicate I te GL section of the certificate, in lieu of an original endorsement);
- Combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.

Automobile Liability Insurance:

- Owned, hired or borrowed vehicles
- Employee vehicles, if used in the performance of this Agreement
- Combined Single Limit not less than \$1,000.000 per occurrence; aggregate limit not less than \$2,000,000 per year;

Workers' Compensation Insurance:

- Statutory benefits;
- Covering employees; covering owner partners; officers, and relatives (who work on this Agreement);
- Employers' Liability

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina
- Companies with a Best rating of A or better

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage. Certificates shall be addressed to:
City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701
 - Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.
3. Indemnity. Contractor agrees to indemnify, defend and hold harmless City, its officers, employees, agents, from and against any and all claims, losses, liabilities, damages, costs or expenses (including attorneys' fees, expert witness fees, litigation expenses, and court or other costs incurred in any proceeding) of any nature whatsoever by third parties, arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible.
 4. Termination. If Contractor fails to perform its duties and discharged its obligations in accordance with the terms, provisions and conditions of the Agreement, the city shall be entitled to declare the Contractor in default of this Agreement. In the event that the City declares Contractor to be in default of the Agreement, the City shall notify the Contractor in writing of the precise nature of the default.

Thereafter, Contractor shall have ten (10) calendar days from receipt of said notice to cure any default, failing in which the City will be entitled to terminate this Agreement and take such action or pursue remedies as allowed by law or this Agreement. If this Agreement is terminated early for reasons other than default by the Contractor, the discount offered in connection with the Cart Buy-Out Agreement in the amount of \$818,957.00 will be forfeited.

5. Assignment, Successors and Assigns. Contractor shall not subcontract or assign this Agreement or its rights under it without City's prior written consent. The City Manager may consent to an assignment without action by City Council. Unless the City otherwise agrees in writing, the Contractors and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of the Agreement and all of the City's claims that arise out of this Agreement. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.
6. Entire Agreement. This Agreement is the final, complete and exclusive statement of the agreement between the parties with relation to the subject matter of this Agreement, it being understood that there are no oral representations, understandings or agreements covering the same subject matter as this Agreement. This Agreement supersedes, and cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous discussions, correspondence, or oral or written agreements of any kind.
7. Notices. All notices or other communications required or permitted hereunder shall be in writing and may be given by depositing the same in United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, by overnight courier or by delivering the same in person to such party.

If to the City:
Director of Solid Waste Management
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Fax: (919) 560-1132

If to Contractor:
Otto Container Management, LLC
Attn: Steve Stradtman, President
12700 General Drive
Charlotte, North Carolina 28273
Fax: (704) 588-5250

Notice shall be deemed given and effective the day personally delivered, the day after being sent by overnight courier, subject to signature verification, and three business days after the deposit in the U.S. mail of a writing addressed as above and sent first class mail, registered or certified, return receipt requested. Any party may change the address for notice by notifying the other parties of such change in accordance with this Section.

8. Choice of Law and Forum. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of the Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered into entered in actions pursuant to this section.
9. Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement under seal themselves or their duly authorized agents or officers..

Otto Container Management, LLC

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Diana Thomas
Title: Chief Financial Officer
Date: _____