

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

CONTRACT BETWEEN THE CITY OF DURHAM
AND SONOCO RECYCLING, LLC FOR
PROCESSING AND MARKETING RECYCLABLE MATERIALS

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham (“City”) and SONOCO RECYCLING, LLC (“Contractor”), a limited liability company organized and existing under the laws of State of North Carolina.

Sec. 1. Background, Purpose and Definitions. The City of Durham collects Recyclable Materials. The Contractor shall receive process and market for reuse all Program Recyclables and Recyclable OCC delivered to the Designated Facilities by, or on behalf of the City.

- A. Definitions. As used herein, the following terms shall have the meanings set forth below:
- 1) **Applicable Law:** Any law, statute, order, decree, injunction, license, permit, consent, approval, agreement or regulation of any Governmental Authority having jurisdiction over the matter in question, or other legislative or administrative action of a Governmental Authority, or final decree, judgment or order of a court which relates to the performance of Work hereunder or the interpretation or application of this Contract.
 - 2) **Average Market Value (AMV):** A market index used to determine the revenue paid by the Contractor to the City for Program Recyclables delivered to the Designated Facilities. AMV is 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 Exhibit C.
 - 3) **City:** The City of Durham, North Carolina, including its departments, divisions, personnel and agents.
 - 4) **Commencement Date:** The date on which the Contractor commences to accept, process, and market Recyclable Materials in accordance with this Contract.
 - 5) **Consumer Price Index (CPI):** The index published by the Bureau of Labor Statistics for All Urban Consumers, US City Average, Base period 1982-84=100 (Series ID# CUUR0000SA0L1E) used to escalate prices either up or down, subject to limits provided in herein.
 - 6) **Contract:** This agreement between the City and the Contractor, including the attachments, exhibits, and any written amendments to either.
 - 7) **Contract Manager:** The person authorized by the City to oversee the Contract and Contractor’s compliance with the terms and conditions of the Contract.
 - 8) **Contract Year:** Twelve (12) consecutive months beginning on the Commencement Date and every consecutive twelve (12) months thereafter for the term of the Contract.
 - 9) **Contractor’s MRF:** The Contractor's materials recovery facility (MRF) located at 111 Rogers Lane, Raleigh, NC 27610.
 - 10) **Contractor’s TS:** The Contractor’s transfer station (TS) located at 4619 Industry Lane, Durham, NC 27713.
 - 11) **Day:** Calendar day unless otherwise specifically designated.
 - 12) **Designated Facilities:** The Contractor’s MRF and the Contractor’s TS designated by this Contract to accept, process, and market Recyclable Materials on behalf of the City.
 - 13) **Director:** Director of the City of Durham’s Solid Waste Management Department.
 - 14) **Governmental Authority:** Any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the project or its operations, or the health, safety or environmental conditions of the project or the site, or otherwise over the parties hereto.

- 15) **Hazardous Substances:** Any hazardous or toxic substances, materials or wastes, including those substances, materials, and wastes listed by the Environmental Protection Agency as hazardous substances under 40 CFR part 302 and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law or the equivalent under applicable foreign laws including, without limitation, any materials, waste or substance which include petroleum, asbestos, polychlorinated biphenyls, defined as a "hazardous substance" or "hazardous waste" under applicable local, state or federal law or the equivalent under applicable foreign laws, designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, defined as "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, or defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act. Under this Contract, "Hazardous Substances" shall include what are commonly termed "Household Hazardous Wastes," including "Universal Wastes," as defined under the Resource Conservation and Recovery Act, including but not limited to lead-acid or other batteries, fluorescent light tubes, compact fluorescent bulbs, pesticide containers, thermostats, thermometers, paint containers, and household chemicals.
- 16) **Holidays:** The days on which City facilities will be closed, including New Year's Day, Martin Luther King Day, Good Friday, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day, and any other days designated by the City.
- 17) **Materials Recovery Facility (MRF):** A facility at which Recyclable Materials are processed to recover marketable commodities or Recovered Materials.
- 18) **Non-Program Recyclables:** Recyclable Materials that are collected by an entity other than the City or the City's agents.
- 19) **Program Recyclables:** Single Stream Recyclable Materials collected by the City or the City's agents. These materials include all types of paper, including but not limited to junk mail, newspapers, magazines, telephone books, white and colored paper, paperback books, cardboard, paperboard, and chipboard; aluminum cans and foil, steel and tin cans, including empty aerosol cans; all plastics #1-#7, including rigid plastics, such as plastic buckets, toys (without wire), and lawn furniture; glass containers; aseptic and gable-top containers; and other Recyclables as agreed upon by the City and the Contractor.
- 20) **Recovered Materials:** Materials that have known potential to be feasibly used, reused, or recycled, and have been diverted or removed from the solid waste stream for sale, use, or reuse, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. In order to qualify as a recovered material, a material must meet the requirements of N.C. G.S. §130A-309.05(c).
- 21) **Recyclable OCC:** Recyclable old corrugated cardboard that is delivered separate from other Recyclable Materials.
- 22) **Recyclables or Recyclable Materials:** Materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.
- 23) **Rejects:** Items in the Recyclable Materials stream that do not consist of accepted Recyclable Materials.
- 24) **Residue:** That portion of the Recyclable Materials stream that is not converted to Recovered Materials due to breakage and/or transportation or processing inefficiencies.
- 25) **Request for Proposals (RFP):** The competitive procurement for solid waste services released by the City on October 17, 2012 to which the Contractor responded and was selected for service by the City.
- 26) **Single Stream:** A recycling process that allows for Recyclable Materials to be collected commingled with no sorting required by residents, businesses or haulers.
- 27) **Solid Waste:** As defined under N.C. G.S. §130A-290 (a)(35) and referring to any nonhazardous, unrecyclable waste material including Residue that must be disposed of as waste.
- 28) **Subcontractor:** An individual, firm, or corporation having a direct contract with Contractor for the performance of a part the services contracted for by the City in the Service Agreements.
- 29) **Ton:** A unit of weight equal to 2,000 pounds also referred to as a short Ton.
- 30) **Work:** The services that the Contractor is required to perform pursuant to this Contract and all of the Contractor's duties to the City that arise out of this Contract. Unless the context requires

otherwise, if this Contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall receive, process, and market for reuse all Program Recyclables and Recyclable OCC that are delivered to the Contractor's Designated Facilities. In this Contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Terms. Initial Term. The initial term of this Contract shall commence on July 1, 2013 (Commencement Date) and shall expire after five (5) years, on June 30, 2018 at 11:59 p.m. (the "Initial Term"). Prior to the expiration of this five (5) year agreement, the City and the Contractor may proceed to negotiate in good faith to renew the contract for three (3) additional terms of five (5) years each.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Costs and Compensation. Unless otherwise specified, all services under this Contract are at no cost to the City. In the monthly report required in Section 6 the Contractor shall include the report, total revenue due resulting from the Program Recyclables and Recyclable OCC delivered to the Designated Facilities during the previous month as described in Exhibit B and Exhibit C, including the AMV value, Contractor's fee deduction, net revenue per ton of Program Recyclables, transportation subsidies and/or fees, and market index for PS11. Payment of said revenue shall be submitted within thirty (30) calendar days from the end of the month for which the payment is due.

Sec. 6. Reporting and Records

(a) Reporting. No later than fifteen (15) calendar days following the Commencement Date of this contract, the Contractor shall submit to the Contract Manager, for approval, the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of this Contract. The Contractor shall create, maintain, and make available records as defined in and required by all applicable local, state, and federal laws, rules and regulations, and any reports as are reasonably necessary to document and track information described herein. All records provided to the City shall be in an Excel spreadsheet or other format as approved by the Contract Manager and shall contain the following information:

- (1) Program Recyclables received and processed, including location received, delivery date and time, vehicle number, and quantity.
- (2) Recyclable OCC received and processed pursuant to this Contract, including delivery date, time, and quantity.

The Contractor shall provide to the City the following reports:

- (1) Monthly reports: By the fifteenth (15th) of each month, the Contractor shall submit to the Contract Manager an electronic report summarizing deliveries of Program Recyclables and Recyclable OCC during the previous calendar month and payments due to the City. The report should include the information specified in Section 5.
- (2) Annual Reports: Within thirty (30) days of the end of each contract year, the Contractor shall provide the Contract Manager with a report summarizing all information described in Section 5 and herein, as well as net tonnage diverted from disposal (total tonnage delivered less estimated Rejects and Residue).
- (3) Other: Contractor shall provide other such documents and reports as the City may reasonably require verifying compliance with this Contract.

(b) Records. The City or any of its duly authorized representatives shall have access, within seven (7) calendar days of notification, to all of Contractor's books, records, data and documents related to this Contract for inspection and audit at the Contractor's expense. The Contractor will maintain and allow access to books, records, data, documents, and reports relating to this Contract for three (3) years following

the conclusion or termination of this Contract. These records should document, but is not limited to, the following information:

- (1) Program Recyclables received and processed, including location received, delivery date and time, vehicle number, and quantity.
- (2) Recyclable OCC received and processed pursuant to this Contract, including delivery date, time, and quantity.

Sec. 7. Prompt Payment to Subcontractors.

(a) Within seven (7) days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than seven (7) days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the eighth (8th) day, at the rate of one (1) percent per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, title "Prompt Payment to Subcontractors," he or she will be referred to as the "Contract Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Contract Manager to be:

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding five (5) percent of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (title "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed ten (10) percent.

(d) The Contract Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Contract Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Contract Manager reasonably requires, including notarization if so specified.

Sec. 8. Insurance. Insurance provided pursuant to this contact shall be provided by companies authorized to do business in the State of North Carolina, and that maintain a Best rating of A-VIII or better.

(a) Professional Liability, covering:

- Covering claims arising out of professional advisement / consultation services performed in connection with this contract
- Combined single limit not less than \$5,000,000 per occurrence; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director

(b) Commercial Liability. The Contractor shall maintain commercial general liability insurance covering premises and operations, products and completed operations, broad form property damage, explosion, collapse, and underground hazards if the hazards exist in the performance of this Contract, contractual liability, and independent contractors, if any are used in the performance of this Contract. City of Durham must be named additional insured. An original of the endorsements to effect the coverage must be attached to the certificate (if blanket endorsements, then agent may so indicate in the GL section, in lieu of an original endorsement). Coverage must include a combined single limit not less than two million dollars (\$2,000,000.00) per occurrence and aggregate limit not less than two million dollars (\$2,000,000.00) per year.

(c) Automobile Liability Insurance. The Contractor shall maintain automobile liability insurance covering owned, hired, and non-owned vehicles employee-non-ownership, MCS-90 endorsement for

transportation of hazardous materials and, where applicable combined single limit not less than one million dollars (\$1,000,000.00) per accident. City of Durham must be named additional insured. An original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement).

(d) Worker’s Compensation Insurance. The Contractor shall maintain worker’s compensation insurance covering statutory benefits, employees, owners, partners, officers, and relatives (who work on this Contract, and who must be specifically provided as covered by the policy), employers' liability, with a limit of not less than one million dollars (\$1,000,000.00). Waiver of subrogation must be in favor of the City of Durham.

(e) Umbrella Liability. The Contractor shall maintain excess or umbrella liability insurance covering commercial general liability, pollution legal liability, and automobile liability.

Sec. 9. Performance of Work by Contractor

(a) Upon execution of this Contract, the Contractor shall deliver to the City a Performance and Payment Bond in the amount of one hundred thousand dollars (\$100,000.00). The bond shall be limited to one and only one surety which shall be issued by a Surety Company authorized to do business in the State of North Carolina and have an A.M. Best rating of "A" or better and the "T" Underwriting limitation is not exceeded by this bond.

(b) If the Contractor fails to perform the Work in accordance with this Contract after thirty (30) days' notice from the City, the City may, at its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

(c) Liquidated Damages. The City and Contractor acknowledge and agree that it is impossible to precisely determine the amount of damages that would be incurred by the City due to those failures or circumstances described in this section and for which the Contractor would otherwise be liable. Accordingly, the parties agree the liquidated damages set forth herein are reasonable under the circumstances. Therefore, the following constitute liquidated damages, not penalties, for the Contractor’s failure to perform in accordance with the provisions of this Contract.

- (1) The City shall notify the Contractor in writing of its decision to assess liquidated damages. If the Contractor desires to challenge the decision, it must do so in writing within seven (7) calendar days after receipt of notice from the City. The request shall specify the grounds upon which the Contractor objects to the assessment of liquidated damages by the City. The matter shall be referred to the City Manager who shall rule on the Contractor's challenge. The City Manager's ruling shall constitute a final determination of the matter.
- (2) The Contractor shall add any assessed liquidated damages to the following month’s payment.
- (3) The City may assess liquidated damages in the amounts listed below.

Violation	Liquidated Damages
(a) Failure to accept Recyclables during scheduled receiving hours (Exhibit A (B))	\$500.00 per unaccepted load
(b) Disposing of Recyclables or Recovered Materials without prior approval of the Director or designee (Exhibit A (F))	\$1000.00 per occurrence
(c) Failure to provide E-Waste and/or Paper Shredding Event requirements (Exhibit A (H))	\$2,000.00 per missed event

- Sec. 10. Exhibits. The following exhibits are made a part of this contract
Exhibit A Scope of Service containing 3 pages.
Exhibit B Payments to the City
Exhibit C Calculation of Recycling Revenue containing 2 pages.
Exhibit D Fee and Subsidy Adjustment Formula containing 1 page.
Exhibit E List of Accepted E-Waste Items containing 1 page

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 11. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:
Solid Waste Management Department
Att: Director
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919) 560-1197
Email: donald.long@durhamnc.gov

To the Contractor:
Sonoco Recycling, LLC
Att: Gregory Brown
111 South Rogers Lane
Raleigh, NC 27610
Office: (919) 833-9783
The fax number is (919) 833-9784
Email: gregory.brown@sonoco.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 12. Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are

- (1) interest and reasonable attorneys' fees assessed as part of any such item, and
- (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a

contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 13. Miscellaneous.

(a) Choice of Law and Forum; Service of Process.

- (1) This contract shall be deemed made in Durham County, North Carolina. This contract 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 this contract 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 subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection.
- (2) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (2) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (2) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor 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 this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to

employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have fourteen (14) days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions.

(1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation.

(2) References to a "Section" or "section" shall mean a section of this contract.

(3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument.

(4) "Duties" includes obligations.

(5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities.

(6) The word "shall" is mandatory.

(7) The word "day" means calendar day.

(8) The word "Work" is defined in Section 1 and Section 2.

(9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 14. Termination for Convenience ("TFC").

(a) Procedure. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.

(b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate.

(c) *Payment.* The Contractor shall pay the City for all Program Recyclables and Recyclable OCC delivered to the Designated Facilities. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 15. Termination for Cause. If the Contractor fails to satisfactorily perform the Work for a period of thirty (30) days after written notice by the City to the Contractor, the City for cause, and at its sole discretion, may terminate this Contract for failure to cure by giving the Contractor written notice.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CONTRACTOR

By: _____

CITY OF DURHAM

By: _____

City's Financial Officer

EXHIBIT A. SCOPE OF SERVICE

(A) Materials Acceptance

- (1) Beginning on the Commencement Date, the Contractor shall accept and process Program Recyclables and Recyclable OCC delivered by or on behalf of the City to the Designated Facilities during the receiving hours specified herein. Program Recyclables will be delivered to either the Contractor's MRF or Contractor's TS. Recyclable OCC will be delivered to the Contractor's TS.
- (2) The Contractor shall, except as otherwise specifically stated in this Contract, obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform services and duties as required by this Contract, without additional cost to the City. It is the Contractor's responsibility to ensure sufficient capacity is available to accept all Program Recyclables and Recyclable OCC delivered by or on behalf of the City.
- (3) The City reserves the right to designate or remove other Recyclable Materials as Program Recyclables if the contracting parties agree it is technically feasible.
- (4) With the exception of Hazardous Substances as described in Section (D)3 of Exhibit A, title and ownership of all materials passes to Contractor upon delivery.
- (5) The Designated Facilities shall be capable of accepting delivery of Recyclable Materials from all types of delivery vehicles including, but not limited to, packer trucks, roll-off trucks, and tractor-trailer transfer vehicles. Doors on delivery bays shall be of sufficient height to allow the exit of roll-off trucks and collection vehicles with bodies or containers in the dump (up) position.
- (6) Designated Facilities shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming and outgoing delivery vehicles. Contractor shall have the scales calibrated and inspected on a yearly basis, at a minimum, or more frequently as requested by the Contract Manager.
- (7) The Contractor shall weigh all trucks that enter the Designated Facilities, perform recordkeeping, and generate reports of incoming materials as required herein or requested by the City. The Contractor may use tare weights. If the Contractor chooses to do so, all tare weights must be recalibrated at least every sixty (60) calendar days. Inbound loads of Program Recyclables and Recyclables OCC delivered by or on behalf of the City shall be weighed, recorded and tabulated separately.

(B) Hours

Contractor shall operate the Facility as follows:

- (1) October 1 – May 31, Monday – Friday 7:00 am – 5:00 pm
- (2) June 1 – September 30, Monday – Friday 6:00 am – 5:00 pm

No reductions in scheduled receiving hours shall be made without the prior written approval of the Contract Manager.

(C) Right to Inspect

Contractor shall have the right to inspect all loads of Recyclables delivered to the Designated Facilities by or on behalf of the City.

EXHIBIT A. SCOPE OF SERVICE CONTINUED

(D) Materials Rejection

- (1) The Contractor shall not reject any load of Program Recyclables or Recyclable OCC delivered to the Designated Facilities by or on behalf of the City, except as described herein.
- (2) If the Contractor determines a load of Program Recyclables or Recyclable OCC contains an excessive amount of Rejects, the Contractor shall inform the Contract Manager of the delivery location, vehicle number, date, time, and estimated quantity and type of Rejects of such load and the Contract Manager will work to reduce the quantity of Rejects in the future.
- (3) If any Hazardous Waste is detected within a load of Program Recyclables or Recyclable OCC delivered to the Designated Facilities by or on behalf of the City, the Contractor will notify the Contract Manager immediately. The Contractor shall properly isolate and containerize the materials in accordance with all Applicable Laws. After notification is provided by the Contractor to the Contract Manager concerning the presence of Hazardous Substances, it is the responsibility of the City to remove the Hazardous Substances from the Contractor's Facility within twenty-four (24) hours and properly dispose of Hazardous Substances as required by Applicable Laws.

(E) Processing, Transporting and Marketing

- (1) The Contractor shall bear all costs associated with processing, transporting and marketing of Recovered Materials.
- (2) The Contractor must maintain complete and accurate records of material inflows and outflows. These records are subject to review by the City during normal business hours.

(F) Disposal

- (1) Unless the Contractor has prior permission from the Director or the Director's designee, the Contractor shall not dispose of and/or landfill any Recyclable Materials or Recovered Materials under this Contract. The Contractor shall not knowingly, or without reasonable assumption, sell Recyclable Materials or Recovered Materials to another agent that landfills or disposes of material other than through recycling. This does not apply to Rejects and Residue.
- (2) The Contractor is responsible for all costs of transporting and disposing of non-Recyclable Materials, including Rejects and Residue, generated at the Designated Facilities.

(G) Educational Materials

During the initial two (2) months of this Contract, and by the same date of each subsequent year, the Contractor shall develop, produce, and deliver to the City for distribution a recycling flyer for the Durham Solid Waste Department. This flyer shall be specific to the City's program and shall consist of one sheet printed on both sides, with information provided in both English and Spanish. The flyer is subject to approval by the Contract Manager, in writing, prior to production and distribution.

(H) E-Waste Collection and Paper Shredding Events

- (1) E-Waste Collection Events. The Contractor shall provide, at no cost to the City, three (3) public e-waste collection events per calendar year. Events must take place within City limits at a location approved by the City. Materials accepted at the events shall include but are not limited to discarded, obsolete, and broken electrical or electronic devices such as computers, entertainment device electronics and mobile phones. A list of items to be

EXHIBIT A. SCOPE OF SERVICE CONTINUED

accepted is provided in Exhibit E. Title and ownership to all materials collected at these events passes to the Contractor upon delivery.

- (2) Paper Shredding Events. The Contractor will provide, at no cost to the City, three (3) public paper shredding events to provide citizens the opportunity to have their documents destroyed on site. Events must take place within City limits at a location approved by the City. Title and ownership to all materials collected at these events passes to the Contractor upon delivery.
- (3) E-Waste collection and paper shredding events shall be held concurrently.
- (4) The Contractor shall be responsible for all advertisements associated with these events, subject to approval by the Contract Manager.

(I) Designated Facilities

(1) Changes to Designated Facilities

The Designated Facilities and their locations may be changed only with prior written approval by the Contract Manager.

(2) Communication

The Contractor shall maintain telephone communication capability at all Designated Facilities and shall provide such contact information to the Contract Manager and keep such information up-to-date.

(3) Sole Responsibility

The Contractor shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Facilities.

(4) Compliance with Applicable Laws

In the operation of the Designated Facilities, the Contractor shall comply at all times with all Applicable Laws, regulations, permits and similar requirements, including all applicable requirements concerning noise, odors, effluent and emissions. The Contractor shall warrant that any work performed on property partially or entirely under the Contractor's control will be performed in accordance with OSHA requirements, and all applicable labor laws, regulations, and standards.

(J) Composition Study

- (1) Within sixty (60) days following the Commencement Date, and prior to the commencement of each additional term, the City will conduct a Program Recyclables composition study ("Composition Study") to obtain a current measurement of the composition of Program Recyclables collected by the City. The study will be based on the hand-sorting of representative samples of inbound Program Recyclables and will be in accordance with a methodology approved by the City.
- (2) The City or Contractor may request additional Composition Studies if both parties agree that substantial contamination is found in the Program Recyclables or if the City makes substantive changes to its recycling program that would alter the composition of the Program Recyclables.
- (3) The results of each Composition Study will be used to adjust the composition percentages utilized to calculate the AMV starting on the month following issuance of the study findings and continuing until another study is conducted.
- (4) Contractor shall pay fifty percent (50%) of the cost of each Composition Study.

EXHIBIT B. PAYMENTS TO THE CITY

(A) Revenue for Program Recyclables

The Contractor shall pay the City monthly for each Ton of inbound Program Recyclables delivered to the Designated Facilities. The payment per Ton shall be calculated as described below. A sample calculation is provided in Exhibit C.

- (1) Each month, Contractor shall calculate the Average Market Value (AMV) of the City’s Program 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 table provided in Exhibit C. If at any time during the term of the Contract RecyclingMarkets.net no longer posts or otherwise provides 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 Recovered Material pricing information.
- (2) A Contractor’s fee of fifty dollars (\$50.00) per Ton shall be deducted from the AMV. This fee shall remain fixed for the first Contract Year, after which Contractor may request an adjustment to the Contractor’s fee, to be calculated as described in Section C below.
- (3) Contractor shall pay the City the sixty percent (60%) of the remaining amount, for each Ton of inbound Program Recyclables delivered during that month, as described in Exhibit C.
- (4) The Contractor shall pay the City a transportation subsidy for each Ton of Program Recyclables delivered to the Contractor’s MRF. The transportation subsidy shall be based on the AMV of the City’s Program Recyclables as described in (1) above and determined as follows:

AMV of Program Recyclables (1 Ton)	Transportation Subsidy paid to City per Ton of Program Recyclables
AMV ≥ \$90.01	\$10.00/Ton
\$70.01 ≤ AMV < \$90.00	\$8.00/Ton
AMV < \$70.01	\$6.00/Ton

In no event shall the transportation subsidy decrease below six dollars (\$6.00) per Ton.

- (5) Should the City deliver Program Recyclables to the Contractor’s TS, the Contractor shall deduct from the monthly payment to the City, a transportation fee of fifteen dollars (\$15.00) for each Ton of Program Recyclables delivered to the Contractor’s TS.
- (6) If the net amount due by the Contractor to the City, inclusive of the transportation subsidy and/or transportation fee is less than zero dollars, the Contractor shall make no payment to the City and the City shall make no payment to the Contractor. At no time shall the City make payment to the Contractor for accepting, processing, or marketing Program Recyclables.

(B) Revenue for Recyclable OCC

The Contractor shall pay the City monthly for each Ton of inbound Recyclable OCC delivered by the City to the Contractor’s TS. The payment per Ton of Recyclable OCC shall be calculated as 75 percent of the Southeast USA regional average price (U.S. Dollars per Ton) for Corrugated Containers (PS11) first posted

EXHIBIT B. PAYMENTS TO THE CITY CONTINUED

in the month for which payment is being made in RecyclingMarkets.net. An example of this calculation is provided in Exhibit C.

(C) Fee and Subsidy Adjustments

The Contractor's fee and transportation subsidy shall remain the same through the first Contract Year. Beginning the second Contract Year and each Contract Year for the remaining term of the Contract, the Contractor's fee and transportation subsidy may be adjusted based on the change in the Consumer Price Index (CPI-U) South Urban Consumers-All Items Category, as published by the U.S. Bureau of Labor Statistics between the month of January in the previous year and the month of January in the current year. The total adjustment in any given year shall not exceed two percent (2%) of the previous year's fee or subsidy. If the CPI Index is discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices. Exhibit D provides an example processing fee and subsidy adjustment.

(D) Acknowledgement of Formulas

The Contractor hereby acknowledges and accepts that the formulas outlined herein for calculating revenue for Program Recyclables and Recyclable OCC shall be used throughout the term of the Contract. The Contractor agrees further that the formulas are intended to reflect the current value of the City's Recyclables, but might not be an exact calculation of that value or the Contractor's processing costs. Any and all costs associated with accepting, processing, and marketing Program Recyclables and Recyclable OCC shall be the responsibility of the Contractor.

EXHIBIT C. CALCULATION OF RECYCLING REVENUE

1. Program Recyclables. Contractor shall pay the City for each Ton of inbound Program Recyclables delivered to the Designated Facilities. Revenue shall be calculated as described below. An example of this calculation, based on the March 2013 index, is provided.

- (a) Calculate the Average Market Value (AMV) of the City’s Program 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 material percentages provided below.

EXAMPLE AVERAGE MARKET VALUE (AMV) OF THE CITY’S PROGRAM RECYCLABLES

Material	Index Description	Material %	Index Value (March 2013)	Market Value (\$/Ton)	AMV (\$/Ton)
Mixed paper	PS 1 baled, F.O.B. seller’s dock	9.5%	70	\$70.00	\$6.65
Newspaper	PS 8 baled, F.O.B. seller’s dock	30.1%	77.5	\$77.50	\$23.33
OCC	PS 11 baled, F.O.B. seller’s dock	16.3%	112.5	\$112.50	\$18.34
Aluminum cans	Cents/lb., sorted, baled & delivered	1.5%	79.5	\$1,590.00	\$23.85
Steel cans	\$/Ton, sorted, baled & delivered	2.5%	115	\$115.00	\$2.88
PET	Cents/lb., baled & picked up	5.7%	20.8	\$416.00	\$23.71
Natural HDPE	Cents/lb., baled & picked up	1.2%	32.5	\$650.00	\$7.80
Colored HDPE	Cents/lb., baled & picked up	2.4%	25.8	\$516.00	\$12.38
Plastics #3-#7	#1-#7, Cents/lb., baled & picked up	2.0%	0.3	\$6.00	\$0.12
Glass (3 Mix)	\$/Ton, delivered	23.8%	-	\$0	\$0
Contamination	N/A	5.0%	-	\$0	\$0
		100%			\$119.06

- (b) Deduct a Contractor’s fee of fifty dollars (\$50.00) from the AMV, with the Contractor’s fee adjusted for each Contract Year after the first pursuant to Exhibit B (C).
- (c) Contractor will pay the City 60% of the remaining amount (AMV less adjusted Contractor’s fee) for each inbound Ton of Program Recyclables.
- (d) Add a transportation subsidy to the amount to be paid to the City, as calculated below and adjusted pursuant to Exhibit B(C) for each Ton of Program Recyclables delivered to the Contractor’s MRF based on the AMV of the City’s Program Recyclables.

AMV of Program Recyclables (1 Ton)	Transportation Subsidy paid to City per Ton of Program Recyclables
AMV ≥ \$90.01	\$10.00/Ton
\$70.01 ≤ AMV < \$90.00	\$8.00/Ton
AMV < \$70.01	\$6.00/Ton

- (e) Should the City divert Program Recyclables to the Contractor’s TS, deduct a transportation fee of \$15.00 for each Ton of Program Recyclables delivered to the Contractor’s TS.
- (f) If the net amount due from the Contractor to the City, inclusive of the transportation subsidy and/or transportation fee, is less than zero dollars, the Contractor shall make no payment to the City and the City shall make no payment to the Contractor. At no time shall the City make payment to the Contractor for accepting, processing, or marketing Program Recyclables.

EXHIBIT C. CALCULATION OF RECYCLING REVENUE (CONTINUED)

PROGRAM RECYCLABLES REVENUE CALCULATION:

[(AMV	-	\$50.00*)	x	60 %]	+	\$Transport Subsidy/Fee	=	\$ TBD
AMV of one Ton of Program Recyclables		Contractor's fee		Share to the City		Transport Subsidy/Fee for one Ton		Per Ton of inbound Program Recyclables to be paid by the Contractor to the City.

*\$50.00 Contractor's fee in first year is subject to adjustment in subsequent years.

EXAMPLE CALCULATION FOR ILLUSTRATIVE PURPOSES:

[(\$119.06	-	\$50.00)	x	60 %]	+	\$ 10.00	=	\$ 51.44
AMV of one Ton of Program Recyclables		Contractor's fee		Share to the City		Transport Subsidy for one Ton		Per Ton of inbound Program Recyclables to be paid by the Contractor to the City.

2. **Recyclable OCC.** Contractor shall pay the City monthly for each Ton of inbound Recyclable OCC delivered to the Contractor's TS. The payment per Ton of Recyclable OCC shall be 75% of the Southeast USA regional average price (U.S. Dollars per Ton) for Corrugated Containers (PS11) first posted in the month for which payment is being made in RecyclingMarkets.net. An example of this calculation, based on the March 2013 index, is provided:

RECYCLABLE OCC REVENUE CALCULATION:

(PS 11 Index		x	75 %)	=	\$ TBD	Per Ton of inbound Recyclable OCC to be paid by the Contractor to the City.
Index for Recyclable OCC			Share to be paid to the City			

EXAMPLE CALCULATION FOR ILLUSTRATIVE PURPOSES:

(\$112.50		x	75%)	=	\$ 84.38	Per Ton of inbound Recyclable OCC to be paid by the Contractor to the City.
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EXHIBIT D. FEE AND SUBSIDY ADJUSTMENT FORMULA

The Contractor's fee, and transportation subsidy, as defined in Exhibit B, shall remain the same through the first Contract Year. Beginning the second Contract Year and each Contract Year for the remaining term of the Contract, the fee and subsidy may be adjusted as defined in Exhibit B. Such adjustment shall be based on the change in the monthly average Consumer Price Index (CPI) between the month of January in the previous year and the month of January in the current year. The total adjustment to a fee in any given year shall not exceed two percent (2%) of the previous year's fee.

In case of ambiguity or conflict between this exhibit and other portions of the contract, the language and formulas of this exhibit shall control.

Provided below is the formula for this adjustment and a sample calculation of a rate adjustments.

CONTRACTOR'S FEE ADJUSTMENT FORMULA:

New Rate = Current Rate (CR) + CPI Adjustment

CPI Adjustment = [Round (CR x ((CPI2-CPI1)/CPI1)),2]
= (CR x (CPI 2 minus CPI 1, divided by CPI 1)), rounded 2 places

"CPI" = Consumer Price Index

"CPI1" = published CPI average for the month of February of the prior year

"CPI2" = published CPI average for the month of February of the current year

SAMPLE CALCULATION

Assumptions: CR = \$50.00
CPI1 = 227.663
CPI2 = 232.116

CPI Adjustment = [Round (\$50.00 x ((232.116 - 227.663) / 227.663)), 2] = \$0.98

Maximum Increase Allowed = [CR] * 2% = \$1.00

New Rate = \$50.00 + [\$0.98] = \$50.98

TRANSPORTATION SUBSIDY ADJUSTMENT FORMULA:

New Subsidy = Current Subsidy (CS) + CPI Adjustment

CPI Adjustment = [Round (CS x ((CPI2-CPI1)/CPI1)),2]
= (CS x (CPI 2 minus CPI 1, divided by CPI 1)), rounded 2 places

"CPI" = Consumer Price Index

"CPI1" = published CPI average for the month of February of the prior year

"CPI2" = published CPI average for the month of February of the current year

SAMPLE CALCULATION

Assumptions: CR = \$10.00
CPI1 = 227.663
CPI2 = 232.116

CPI Adjustment = [Round (\$10.00 x ((232.116 - 227.663) / 227.663)), 2] = \$0.20

Maximum Increase Allowed = [CS] * 2% = \$0.20

New Subsidy = \$10.00 + [\$0.20] = \$10.20

EXHIBIT E. LIST OF ACCEPTED E-WASTE ITEMS

Electronic devices may have a cord, including:

- Computers, laptops, keyboards, mice, printers, monitors, speakers, copiers, scanners, circuit boards, hard drives, computer parts, etc.
- Televisions, stereo equipment, tape players, receivers, amplifiers, record players, etc.
- Kitchen electronics, such as microwaves, mixers, blenders, choppers, etc.
- Telephones, cell phones, and fax machines.
- Hair dryers, curling irons, alarm clocks and vacuum cleaner.
- Power tools, cordless tools, etc.
- Electronic toys, such as keyboards and video game systems.