CITY OF COUNCIL BLUFFS AND METRO WASTE AUTHORITY RECYCLABLES PROCESSING AND MARKETING SERVICE AGREEMENT

THIS AGREEMENT ("Agreement") is made this __ day of _____, 2023 ("Effective Date") by and between City of Council Bluffs ("CITY") and Metro Waste Authority ("Contractor"). For the good and valuable consideration set forth herein, the CITY and Contractor agree as follows:

1. **Term of Agreement**. The initial term of this contract shall begin July 1, 2023, and end June 30, 2026 ("Term"), with a mutual option for three (3), three-year renewal options. The parties shall each send written notice to the other of its intent to exercise an option renewal no less than one-hundred (180) days prior to the end of the Term.

2. **General Description of Services**. The Contractor shall provide the labor, management, and all related services necessary to Accept, Process, store, transport and/or Market Recyclable Materials delivered to the MRF by or on behalf of the CITY. The services rendered by the Contractor shall be in accordance with this Agreement.

A. "**Accept**" or "**Accepting**" or "**Accepted**" means the receipt of Recyclable Materials by the Contractor at the MRF upon delivery thereto by or on behalf of the CITY, and that Contractor does not reject pursuant to the Section herein titled and Rejection of Load.

B. "**Process**" or "**Processing**" or "**Processed**" means the preparation by the Contractor of the Single-Stream Recyclable Materials for Marketing.

C. "**Market**" means the sale of Recyclable Materials for the purpose of recycling, reuse or other beneficial use other than disposal in a landfill or otherwise, which generally results in the generation of revenue.

3. **Recyclable Materials**. The following items are "Recyclable Materials" under this Agreement:

a. newspapers;
b. corrugated cardboard (OCC) and Kraft bags;
c. telephone books;
d. magazines;
e. catalogues;
f. junk mail;
g. office paper;
h. chipboard;
1. paper board;
j. bimetal, ferrous and aluminum food and beverage containers
k. plastic containers #1 and #2 (with screw tops) and margarine and yogurt containers (#5)
l. empty aerosol cans;
m. gable top and aseptic cartons; and

n. any other materials that may be added to this list in the future by agreement of the parties as provided in subsection "C" below.

A. **Single Stream**. Contractor shall accept the Recyclable Material which are (i) separated by participants, (ii) set out for collection, (iii) collected by CITY-approved haulers, and (iv) delivered to the Contractor all mixed together in a single truck compartment (collectively a "Single-Stream" or "Single-Stream Recycling"). This agreement does not include commercial, drop-off and/or anything other than single-stream recycling through the CITY's residential single stream collection program. CITY shall retain the right to remove mixed paper, glass and/or other materials from the single stream and sell and dispose of it in accordance with their own policies.

B. **Trash**. Materials which are not Recyclable Materials or Shrink, and which include all non-recoverable or non-recyclable materials.

C. **Shrink**. Shrink is the material consisting primarily of liquids, fine particulates, dirt and organics lost in the system after the initial weigh-in and which cannot be measured separately during an annual Audit. Shrink will be shown in Schedule l provided by the Contractor as a separate line item. It will not be calculated into the trash total.

4. **Processing Fee**. The CITY shall pay to Contractor a Processing Fee equal to $85 per ton of all material entering the Facility. For purposes of example only, if the amount of material received at the Facility hereunder is 100 tons, then the Processing Fee paid by the CITY to Contractor is $8,500. After two audits at the third and ninth months of the contract, the CITY shall have the right to select a revenue sharing option. Such option will be effective after the end of the first year of the contract. At such time the Processing Fee is set at $100 per ton of all material entering the facility. CITY shall make payment to the Contractor within 30 business days following the receipt by CITY of the Monthly Report for such month, as provided in the Section herein titled Contractor Submission of Periodic Reports to the CITY. If this Agreement is renewed as provided in the Section above titled Term of Agreement, then on the renewal date the Processing Fee shall be increased by the percentage increase in the "CPI," defined as the Consumer Price Index (Midwest Region) as published by the U.S. Department of Labor, Bureau of Labor Statistics.

5. **Transportation.** The Contractor agrees to provide transportation services for materials described herein. Transportation shall be on Contractor owned vehicles or a third-party motor carrier, duly registered with the Department of Transportation pursuant to 49 U.S.C. 13902 and 13905 with a Motor Carrier Safety Rating of "Satisfactory", and will provide lawful and responsible transportation service to CITY. The CITY agrees to live load trailers, Tuesday through Friday 8:00 am – 3:00 pm, excluding City observed holidays. The CITY will make reasonable effort to minimize loading times. Upon mutual agreement the CITY and Contractor may spot trailers for loading and shipping at separate times.

The CITY agrees to maintain a certified scale in accordance with 9. F. below for all loads shipped.

7. **Storage and Processing of Recyclable Materials**. The Contractor shall store and Process Recyclable Materials.

8. **Processing Equipment and Produced Material Quality**. The MRF shall contain Processing equipment necessary to prepare Single- Stream Recyclable Materials for Market in accordance with the specifications inherent in the Scrap Specifications Circular published by the Institute of Scrap Recycling Industries, Inc. (ISRI), as the same is amended from time to time. The MRF shall produce baled Single Stream Recyclable Materials for Market in accordance with the specifications inherent in the Scrap Specifications Circular published by ISRI.

9. **Operation of the MRF**. The Contractor shall be solely responsible for all aspects of management of the MRF. Management activities shall include:

A. **Maintenance of MRF**. The Contractor shall maintain the MRF at its sole expense, in good working order.

B. **Hours of Operation**. The MRF's hours of operation shall be (with a scale attendant): 7:00a.m. to 4:30p.m.; and (available for self-service truck use upon request) Monday through Friday plus any Saturdays following New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day. The CITY reserves the right to re-designate the recycling collection day to replace collections which occur on holidays and to designate additional holidays, upon no less than thirty (30) days prior written notice to Contractor.

C. **Ownership of Material**. The Contractor will inspect all inbound materials at the time of dumping to determine if the load contains any Hazardous Materials (as hereinafter defined) or other materials that are not accepted at the MRF. Once the Contractor has both (i) Accepted a load, and (ii) the delivering vehicle has dumped the load and left the facility; then the ownership and responsibility for the proper management of the materials transfers to the Contractor. Contractor's ownership and responsibility for materials shall cease upon delivery of the materials to the disposal site, the markets and/or processors. The CITY shall use reasonable efforts to cause only Recyclable Materials to be delivered to the MRF and to minimize the quantities of Trash or contaminated material.

E. **Rejection of Bales.** During its inspection of all inbound materials, the Contractor, its agents, employees, or personnel, may reject any bales (i) it reasonably deems to consist of excessive amounts of Trash; (ii) it reasonably deems to contain contaminated materials, including, without limitation medical waste or biohazardous waste; or (iii) it reasonably deems to contain any hazardous materials, consisting of hazardous substances, hazardous wastes, hazardous materials, or toxic substances under any federal, state or local laws, ordinances or regulations or petroleum products or by-product (collectively "**Hazardous Materials**"). Following the rejection of a bale, such bale shall be set aside, and CITY shall be notified of such rejection. CITY shall have eight (8) business hours following notification to inspect the rejected bale ("**Inspection Period**"), and consent to Contractor's rejection of the bale or object to Contractor's rejection of the bale in writing. If CITY fails to object during the Inspection Period, CITY is deemed to have accepted Contractor's

rejection of the bale. Following rejection of a bale, and CITY's acceptance of such rejection ("**Rejected Bale**"), Contractor shall dispose of the Rejected Bale by taking it to a landfill. In such instances, the CITY shall reimburse to Contractor: (i) Contractor's costs (whether internal or external) to haul the Rejected Bale to the landfill; (ii) any landfill disposal fee for such Rejected Bale; and (iii) a $100 per ton disposal and handling fee for such Rejected Bale. Ownership and responsibility of all Rejected Bales shall remain with CITY, until such time as the Rejected Bale is delivered to the landfill.

F. **Tickets**. The Contractor shall provide one (1) certified truck scale and a minimum of one (1) safe, accessible unloading area. The Acceptable Recyclable Materials shall be weighed as a whole on the truck to the nearest 20-pound increment and then unloaded on a tipping floor. Haulers shall be provided scale tickets which indicate the date, time, truck number, gross weight, tare weight and net weight of each truckload of Acceptable Recyclable Materials. Manually entered data shall be kept to a minimum and marked: "MANUAL" when a scale ticket is generated. Contractor shall provide CITY with a monthly report of all deliveries and total weights by each hauler. Contractor shall make provisions for receiving Acceptable Recyclable Materials from haulers during any planned or unanticipated shutdowns, maintenance, or renovations at the MRF.

G. **Trash Disposal**. The Contractor shall be responsible for paying the commercial tipping fees and related transportation costs, if the Trash Percentage is less than ten percent (10%). If the Trash Percentage equals or exceeds ten percent (10%), the Contractor and the CITY will share equally the commercial tipping fees and transportation costs as set forth on Schedule 1.

10. **Revenue Sharing**. The Contractor shall Process the Single-Stream Recyclable Materials. The Contractor will calculate a revenue share of the Processed Recyclable Materials identified in the attached Schedule 1 at the rates specified or referred to therein. The calculation under Schedule 1 shall be determined by taking the total material processed at the Facility in a given month and multiplying that amount by the Audit percentage of the given material multiplying the product of those two numbers by the product of the then market price per ton of the given material and the revenue share percentage set forth on Schedule 1. In the event the revenue share calculation is positive, said amount shall be deducted from the tip fee owed to the contractor. In the event the revenue share calculation is negative, the CITY shall pay to Contractor the negative revenue share amount.

A. **Payments**. Contractor or CITY shall make payment to the other party within 30 business days following the receipt by CITY of the Monthly Report for such month, as provided in the Section herein titled Contractor Submission of Periodic Reports to the CITY.

B. **Sales Transaction Audit**. The CITY may review all of Contractor's published indexes used to calculate the Schedule 1 Market price of a Recyclable Material. CITY shall conduct such reviews upon reasonable prior written notice, and during regular business hours of the Facility.

11. **Audits and Auditable Records & Reports**. The Contractor and the CITY shall conduct two audits of all materials processed at the Facility for purposes of determining the payments made hereunder for the following year. Audits shall be conducted in the third and ninth month of the first year of the contract. At the Audit, an entire semi-load of material shall be processed, sorted into eleven categories, as listed below, and measured, to determine the Audit percentages for each material until the next Audit is conducted.

A. **Audit Categories**. All of the materials in each load analyzed shall be separated into the following categories:

a. OCC (ISRI #11);
b. Mixed Paper (ISRI #54), including GableTop/Aseptic Containers and Newspaper;
c. UBC;
d. Steel, Tin and Bi-metal cans;
e. #1 PET Plastic Containers with Screw Tops;
f. #2 HDPE Natural Plastic Containers with Screw Tops;
g. #2 HDPE Color Plastic Containers with Screw Tops;
h. Other Mixed Plastic Containers, including Margarine and Yogurt Containers;
i. Trash; and
j. Shrink (this will be determined by subtracting the final weight of all materials weighed during the processing from the initial weight of the load).

B. **Additional Audits**. Either CITY or Contractor may request an additional audit if there is a reasonable concern by either party that the materials being delivered to the Facility has changed, or the Trash percentage is changing. Such additional audit shall occur following written notice from one party to the other of their intention to require an additional audit. Within thirty (30) days following such written request, the parties shall agree on a date and time for the new audit. Following the new audit, the new audit percentages for each category shall be used, in lieu of the previous audit numbers, and until the next scheduled audit (scheduled or additional). The Contractor and the CITY are each entitled to no more than one (1) additional audit request per year.

C. **Auditable Records & Reports**. Contractor shall maintain records of all incoming loads of Recyclable Materials, which shall list the date, time, weight, carrier name and vehicle number, and whether the load was accepted or rejected. For all rejected loads, whether rejected in part or in full, the Contractor shall note the reason for rejection.

12. **Contractor Submission of Periodic Reports to the CITY**.

A. Contractor shall submit monthly reports to the CITY within 20 days after the end of each month in a form acceptable to the CITY. The “Monthly Report” shall include:

1. The tonnage delivered by the CITY during the month;

2. The quantity of each Recyclable Commodity per Audit percentage;
3. Any Revenue Sharing or Service Fees owed to or by the CITY; and
4. The quantity of Trash received from the CITY's residential single stream collection program during the months as shown in Schedule 1.
5. The Contractor shall also submit copies of all mill reports, correspondence or charge backs received during the month related to the quality of materials delivered to the Contractor by the CITY, The CITY reserves the right to contact the mills and brokers directly to ascertain the quality of the material delivered by the Contractor.

13. **Periodic Meetings**. The Contractor and the CITY shall meet no less than annually to discuss the status of the delivery and processing of Recyclable Materials, confer on potential efforts to improve quantities and quality, troubleshoot problems, and evaluate the status of future recycling activity.

14. **Public Education**. Public education on recycling will be the responsibility of the CITY. Contractor shall provide for Facility tours for educational purposes during regularly scheduled business hours, for the following purposes:

- Tours for CITY Officials;
- Tours upon request from the media; and
- Others upon reasonable request.

15. **Compliance with Applicable Laws and Requirements**. The Contractor shall comply with all applicable laws and requirements pertinent to the processing of Recyclable Materials.

16. **Insurance and Safety Requirements**. The Contractor agrees that it will, at all times during the term of this Agreement, keep in force and effect insurance policies, at its own cost and expense, issued by a company or companies authorized to do business in the State of Iowa and satisfactory to the CITY.

A. Approval of the insurance by the CITY shall not in any way relieve or decrease the liability of the Contractor hereunder, and it is expressly understood that the CITY does not in any way represent that any insurance or limits of liability are sufficient or adequate to protect the Contractor's interest or liabilities. The CITY shall be named as an additional insured on all such policies.

B. The Contractor shall: (a) take reasonable precautions to prevent damage, injury or loss, by reason of or related to the operation and maintenance of the MRF, to any property on the MRF Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, equipment, structures and utilities; (b) establish and maintain safety procedures, signage, and alarms for the MRF for the protection of employees of the Contractor and all other persons at the MRF and MRF site, including visitors, at a level consistent with applicable law and with good industry standards and practices for materials recovery facilities; (c) comply with all applicable laws, ordinances, rules, regulations and lawful

orders of any public authority relating to the safety of persons or property at the MRF or their protection at the MRF from damage, injury or loss; and (d) promptly furnish the CITY with copies of any memorandums, notes, letters, or reports documenting loss control or safety inspections the Contractor performs at the MRF or has performed on its behalf.

17. **CITY Responsibilities**. The CITY has responsibility for the following activities or roles:

A. Prepare appropriate public education materials;
B. Designate additional materials to be collected and processed after conferring with the collection and processing contractors;
C. Designate different collection days for holidays;
D. Manage the quantity of the inbound materials and use reasonable efforts in conjunction with the CITY Haulers to minimize Trash collected and delivered to the Facility;
E. Review and approve reporting and recordkeeping procedures/forms;
F. Review records as appropriate;
G. Review monthly reports; and
H. Meet periodically to discuss status and address any issues.

18. **Loss of Markets for Recyclable Products.**

A. The intent of this recycling program is to ensure materials are in fact recycled and not landfilled or otherwise disposed, however, in the event that a severe, unanticipated Market depression exists such that Marketing of a specific Recyclable Material(s) or product is not possible, the Contractor shall notify the CITY and, after conferring with the CITY, attempt to identify and implement a solution to the problem. If, in the mutual judgment of the CITY and Contractor, it is determined that the material cannot be Marketed, the material shall be characterized as Unmarketable Material beginning with the month following such determination is made and continuing until CITY and Contractor agree otherwise.

B. In the event of determination of Unmarketable Material as described above the City has the "rights" to the material and for a 10-day period can solidify its own buyer. If the city waives its right to buyer, or is not successful in its efforts, the Contractor and the CITY will share equally the commercial tipping fees and transportation costs. The CITY may specify a commercial trucking contractor to transport the Unmarketable Material.

19. **Nondiscrimination**. The Contractor agrees that, during the term of this Agreement, the Contractor will not, within the State of Iowa or elsewhere, discriminate against any employee or applicant for employment because of any protected classification (e.g., age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, veteran's status or disability) defined by local, state and federal law, and will include a similar provision in all subcontracts entered into for the performance of the Contractor's obligations hereunder.

20. **Compliance with Laws**. Prior to commencement of performance of services hereunder, the Contractor shall make itself familiar with all statutes, ordinances, rules and regulations having application to the services it provides hereunder and, during the term of this Agreement, the Contractor shall at all times comply with all such statutes, ordinances, rules and regulations in the carrying out of its obligations hereunder. The Contractor shall be solely responsible for any fines, penalties or forfeitures occasioned by its failure to adhere to, or its violation of, any such statutes, ordinances, rules, or regulations.

21. **Governing Law**. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Iowa.

22. **Notice**. Except as otherwise herein provided, all notices required or permitted to be served by either party on the other shall be in writing and shall be deemed given when hand delivered or when mailed by certified mail to the principal office of the party to which notice is given, as follows:

If to CONTRACTOR:

Michael McCoy
Central Office
300 East Locust. St. Suite 100
Des Moines, IA 50309

If to CITY:

Tony Fiala
City of Council Bluffs
4441 Gifford Road
Council Bluffs, IA 51501

23. **Assignment**. Neither party shall assign this Agreement or any part of it to any other party without the prior written consent of the other party, which shall not be unreasonably withheld, conditioned, or delayed. The Contractor shall not pledge, hypothecate, or otherwise create any interest, whether for security or otherwise, in any other party to the payments due from Contractor under the terms of this Agreement.

24. **Termination of Agreement**. In addition to, and not in substitution or limitation of any other right of the CITY hereunder to terminate this Agreement, the CITY shall have the option to terminate this Agreement at any time for cause. Cause includes any breach by Contractor of any provision or provisions of this Agreement, subject to any right to cure, or the insolvency of the Contractor. The CITY shall exercise its option to terminate this Agreement under this provision as follows: (1) the CITY shall give written notice to the Contractor of its intent to terminate the Agreement and shall set forth therein the reason or reasons for such termination; (2) the Contractor shall have thirty (30) days following the receipt of such notification to remedy the cause for

termination set forth in such notice; and (3) if the Contractor shall fail, within such thirty (30) days, to remedy such cause, the CITY shall have the sole right to terminate the Agreement.

A. **No Further Obligations**. Upon the termination of this Agreement, under the provisions of this section or otherwise, the CITY shall have no further obligations to the Contractor, provided, however, that termination shall not abrogate, impair, release or extinguish any debt, obligation or liability of the Contractor to the CITY hereunder which may have accrued prior to such termination, including, but not limited to, any such debt, obligation or liability which was the cause of termination or arose out of such cause and the CITY shall have the right to withhold any amounts then due or to become due the Contractor hereunder for application against any such debt, obligation, or liability.

B. **Non-exclusive Remedies**. No right or remedy conferred upon the CITY under the terms of this Agreement, including, but not limited to, the right of termination or the right to resort to the Contractor's performance bond or other surety, shall be exclusive of any other right conferred upon the CITY under the terms of this Agreement or by law or equity. All rights and remedies conferred upon the CITY under the terms of this Agreement or by law or equity are cumulative and no single exercise of any such right or remedy shall preclude the exercise of any other such right or remedy with respect to the same or any other breach by the Contractor.

25. **Agreement Documents**. This Agreement contains the entire agreement of the parties, and no amendment or modification of this Agreement shall be effective unless in writing and signed by the parties hereto. If there is a conflict between the provisions of this Agreement and the above-referenced documents incorporated herein by reference, the provisions of this Agreement shall control.

26. **Indemnification**. The parties shall indemnify and save harmless each other, and their respective officers, employees and agents, from all claims, suits, demands or causes of action of any nature or description whatsoever made upon or brought against them or any one of them for or on account of any injuries or damages sustained by any person or entity as a result of the acts or omissions of themselves, their employees or agents or any person carrying out of their obligations under the terms of this Agreement.

27. **Uncontrolled Circumstances**. If either party is rendered unable, in whole or in part, by an occurrence not within the control of the affected party and which, by the exercise of due diligence, such party is unable to prevent or overcome, and shall include acts of God, acts of the public enemy, wars, blockades, insurrections, riots, enactment of statutes, laws or regulations, and acts of governmental bodies ("Force Majeure"), to carry out its obligations under this Agreement, it is agreed that upon such party's giving notice and reasonably full particulars of such Force Majeure in writing to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, shall, so far as they are affected by Force Majeure, be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, as far as possible, be remedied with all possible dispatch.

28. **Illegal Provisions and Severability**. All parts and provisions of this Agreement are severable. If any provisions of this Agreement shall be declared illegal, void, or unenforceable, the other provisions shall not be affected but shalt remain in full force and effect.

29. **Non-waiver**. No failure, forbearance, neglect or delay by either party to enforce this Agreement or any provision of this Agreement or to exercise any of such party's rights hereunder shall affect or limit such party's right to strictly enforce the same, and shall not constitute or be interpreted as a waiver of any right to enforce this Agreement or any provision thereof, in the future.

30. **Arbitration**. The parties to this Agreement agree that any disputes arising between them with regard to the interpretation or application of this Agreement shall be submitted to binding arbitration at the request of either party. Any request for arbitration must be in the form of a written notice requesting arbitration identifying each disputed matter to be submitted to arbitration. In the absence of agreement by the parties to the contrary, the question(s) to be arbitrated shall be limited to those specified in the written notice requesting arbitration. The parties may agree on an arbitrator; however, if they fail to mutually agree within thirty (30) days, then application shall be made to the President of the Polk County Bar Association by the party requesting arbitration to have an arbitrator appointed. Should either party refuse to cooperate with the arbitrator, the arbitrator shall be empowered to proceed ex parte. The arbitrator's written decision shall be final and binding on the parties. The arbitration award may include monetary damages, liquidated damages, and/or any legal or equitable remedy otherwise available to the parties, provided that the arbitrator may not make a finding of material breach and shall not have authority to terminate this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the ____ day of _____, 2023___

APPROVED this ___ day of _____, 202___

"CITY"
CITY OF COUNCIL BLUFFS

_____
By: _____
Its: _____

"Contractor"
Metro Waste Authority

_____
By: _____
Its: _____

Contract Example **CY** **Schedule 1**
Contract Example **2023**

1,600.00 **Total Material for Year (tons)**

	Materials (Audit Categories)	Audit %	Tons	Price	Revenue Share %	Gross Revenue Share
a)	OCC (ISRI #11)	28.00%	448	$ 35.00	50%	$ 7,840.00
b)	Mixed Paper (ISRI #54), including Gable Top/Aseptic Containers and Newspaper	45.00%	720	$ (3.00)	50%	$ (1,080.00)
c)	UBC	1.00%	16	$ 1,450.00	50%	$ 11,600.00
d)	Steel, Tin and Bi-metal cans	2.00%	32	$ 245.00	50%	$ 3,920.00
e)	#1 PET Plastic Containers with Screw Tops	3.00%	48	$ 297.60	50%	$ 7,142.40
f)	#2 HDPE Natural Plastic Containers with Screw Tops	1.00%	16	$ 1,455.00	50%	$ 11,640.00
g)	#3 HDPE Color Plastic Containers with Screw Tops	1.00%	16	$ 305.00	50%	$ 2,440.00
h)	Other Mixed Plastic Containers, including Margarine and Yogurt Containers	0.50%	8	$ 10.00	50%	$ 40.00
j)	Trash	18.00%	288	$ (37.00)	100%	$ (10,656.00)
k)	Shrink	0.50%	8	$ -	50%	$ -
Total		**100.00%**	**1600**			**$ 32,886.40**
Weighted Commodity Value per Ton				**$ 41.11**		**$ 20.55**

Metro Waste Authority Proposal		**Yearly Costs @ 1,600 tons**
Weighted Commodity Average Value (WCA)	$ 41.11	
January 2023 per ton Revenue Share (50% weighted average)	$ 20.55	
Revenue Share per ton Processing Fee	$ 100.00	$ 160,000.00
Net Processing Fee (Revenue Sharing)	$ 79.45	$ 127,113.60
Straight Processing Fee (No Revenue Share)	$ 85.00	$ 136,000.00
Yearly Difference (revenue share vs straight processing cost)		$ 8,886.40