

# EXHIBIT

## "A"

### AMENDMENT NO. 2 TO AMENDED AND RESTATED REFUSE COLLECTION CONTRACT BETWEEN CITY OF ROUND ROCK, TEXAS AND ROUND ROCK REFUSE, INC.

This Amendment No. 2 to the Amended and Restated Refuse Collection Contract between the City of Round Rock, Texas and Round Rock Refuse, Inc., hereinafter called "Amendment No. 2" is made by and between the City of Round Rock, a Texas home-rule municipal corporation (the "City"), and Round Rock Refuse, Inc. (the "Contractor").

**WHEREAS**, on October 14, 2010, the City and Contractor entered into an Amended and Restated Refuse Collection Contract (the "Amended and Restated Contract") clarifying the Contractor's services, which expressly included the collection, processing, marketing and diversion from landfill disposal of Recyclable Material; and,

**WHEREAS**, the City wishes to enter into a separate Contract with a Recyclable Material Facility for the processing of the City's Recyclable Material collected and delivered by the Contractor; and

**WHEREAS**, it has become necessary to amend the Amended and Restated Contract to provide for the removal of processing Recyclable Material from the Contractor's current services; and,

**NOW THEREFORE**, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the City and Contractor agree that said Amended and Restated Contract is amended as follows:

#### AGREEMENT

1. In **SECTION 2: DEFINITIONS**, the definition of "Disposal Cost Component" shall be amended to read:

*Disposal Cost Component* — Disposal Cost Component shall mean a component of the Residential Services Rate based upon the disposal cost per ton to dispose of Municipal Solid Waste at the Solid Waste Facility and to deliver Recyclable Material to the Recyclable Material Facility.

2. In **SECTION 2: DEFINITIONS**, the definition of "Recyclable Material Facility" shall be amended to read:

*Recyclable Material Facility* — Any facility the City designates for the delivery and processing of the City's Recyclable Material.

3. In **SECTION 2: DEFINITIONS**, the definition of “Recycling Services” shall be amended to read:

*Recycling Services* — Recycling Services shall mean the separate collection of Recyclable Material and the delivery to Recyclable Material Facility.

4. **SECTION 3: REPRESENTATIONS, Section 3.2 Representations by Contractor**, (iii), shall be deleted in its entirety.

5. **SECTION 3: REPRESENTATIONS, Section 3.2 Representations by Contractor**, (v), shall be amended to read:

(v) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection and disposal of Bulk Waste and collection and delivery of Recyclable Material.

6. **SECTION 7: COLLECTION, DISPOSAL, AND PROCESSING LOCATION, Section 7.3 Recyclable Material Processing Location and Tipping Fee**, shall be amended to read:

Contractor shall deliver all Recyclable Material collected to a Recyclable Material Facility and shall pay the tipping fee to the Recyclable Material Facility in the amount set forth in a separate contract between the City and the Recyclable Material Facility. Contractor acknowledges that the City intends to enter into a separate contract with a Recyclable Material Facility for the processing and marketing of the City’s Recyclable Material and any tipping fee paid by Contractor to the Recyclable Material Facility shall be negotiated between the City and the Recyclable Material Facility and set forth in a separate contract between the City and the Recyclable Material Facility.

7. **SECTION 8: COMMINGLING OF RESIDENTIAL SERVICES MATERIALS AND DISPOSAL OF RECYCLABLE MATERIAL PROHIBITED, Section 8.2 Disposal of Recyclable Material Prohibited**, shall be amended to read:

The Contractor shall not deliver any Recyclable Material to any facility other than a Recyclable Material Facility designated by the City.

8. **SECTION 10: COLLECTION AND PROCESSING EQUIPMENT, Section 10.2 Disposal Facility and Recyclable Material Facility Equipment**, shall be amended to read:

#### **10.2.1 Scales**

The Contractor shall be solely responsible for ensuring the Disposal Facility is equipped with adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming vehicles transporting Solid Waste Materials. Contractor shall separately weigh, record and tabulate each load from the City.

Contractor shall document that each scale has been annually certified with the State and no later than December 1 of each Contract Year shall provide proof of certification to the City.

#### **10.2.2 Capacity and Other Facility Equipment**

The Contractor shall be solely responsible for ensuring that the Disposal Facility has the capacity and equipment to dispose of and/or thoroughly process the quantity and type of materials collected by the Contractor in connection with this Contract in accordance with industry standards for managing such materials.

9. **SECTION 18: RECORDKEEPING, REPORTING, AUDITED FINANCIAL STATEMENTS, AND REPORTING FORMAT, 18.1 Recordkeeping**, (i), shall be amended to read:

- (i) Document Recyclable Material and Residential Solid Waste deliveries by time delivered to facility, the Municipal Solid Waste disposal fee per ton and other information as requested by the Contract Administrator.

10. **SECTION 19: CITY INSPECTION RIGHTS, 19.2 City's Rights to Inspect Facilities and Equipment**, shall be amended to read:

The City or any of its duly authorized representatives shall have access to inspect Contractor's facilities and facilities which receive the City's Municipal Solid Waste, including the Disposal Facility, and equipment and perform such inspections, as City deems reasonably necessary, to determine whether the services required to be provided to the Contractor under this Contract conform to the terms hereof. City shall conduct the inspection of facilities and equipment during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections by City's representatives.

11. **SECTION 20: RESIDENTIAL SERVICES RATE, 20.2 Fuel Component of the Residential Services Rate**, shall be amended to read:

The Cost of Fuel is based on the Department of Energy ("DOE") Diesel Fuel price index, less a 5% discount for volume purchases. The Fuel Component of the Residential Services Rate is calculated by multiplying the total monthly average fuel consumption for the previous twelve month period times the Cost of Fuel per gallon, divided by the total number of Residential Service Units. The following is an example calculation of the Fuel Component of the Residential Services Rate:

- (i) The previous twelve month average fuel consumption equals 8,800 gallons;
- (ii) The Cost of Fuel per gallon equals \$3.00;

- (iii) The total number of Residential Service Units is 28,500.

*Formula: (8,800 gallons) X (\$3.00 per gallon) / (28,500) equals \$0.93.*

*Therefore, the Fuel Component of the Residential Services Rate in the example calculation above is \$0.93. The numbers in the example above are used for illustrative purposes only.*

12. **SECTION 20: RESIDENTIAL SERVICES RATE, 20.3 Disposal Component of the Residential Services Rate**, shall be amended to read:

The Disposal Cost Component will be based upon the actual disposal cost per ton to dispose of the Municipal Solid Waste at the Solid Waste Facility and dispose/deliver Recyclable Material at the Recyclable Material Facility. The Disposal Cost Component of the Residential Services Rate is calculated by multiplying the monthly average of the number of tons of Municipal Solid Waste delivered to the Solid Waste Facility in the previous twelve months, times the actual disposal cost per ton, plus the monthly average of the number of tons of Recyclable Material delivered to the Recyclable Material Facility in the previous twelve months, multiplied by the actual disposal/delivery cost per ton, divided by the total number of Residential Service Units. The following is an example calculation of the Disposal Component of the Residential Service Rate:

- (i) The monthly average of the number of tons of Municipal Solid Waste delivered to the Solid Waste Facility in the previous twelve months equals 3,000;
- (ii) The actual disposal cost per ton of Municipal Solid Waste equals \$28.00/ton;
- (iii) The monthly average of the number of tons of Recyclable Material delivered to the Recyclable Material Facility over the previous twelve months equals 490;
- (iv) The actual disposal/delivery cost per ton of Recyclable Material equals \$25.00/ton;
- (v) The total number of Residential Service Units is 28,500.

*Formula: (3,000 tons) X (\$28.00/ton) + (490 tons) X (\$25.00/ton) / (28,500 units) equals \$3.38.*

*Therefore, the Disposal Component of the Residential Services Rate in the example calculation above is \$3.38. The numbers in the example above are used for illustrative purposes only.*

13. **SECTION 20: RESIDENTIAL SERVICES RATE, 20.4 Operations, Overhead and Profit Component**, shall be amended to read:

The Operations, Overhead and Profit Component is intended to cover all other direct and indirect costs to Contractor of providing Residential Services, as well as a reasonable profit. For the purposes of establishing the Residential Services Rate, the Contractor and City hereby agree that the Operations, Overhead and Profit Component shall be \$9.88. The Operations, Overhead and Profit Component may be modified from time to time by mutual agreement of the parties as set forth in a Residential Services Rate Amendment.

14. **SECTION 20: RESIDENTIAL SERVICES RATE, 20.5 Residential Services Rate**, shall be amended to read:

The Residential Services Rate is the sum of the Fuel Component, the Disposal Component, and the Operations, Overhead and Profit Component. The following is an example calculation of the Residential Service Rate using the rates from the example calculations in Sections 20.2, 20.3, and the actual amount of the Operations, Overhead and Profit Component set forth in Section 20.4:

(i)	Fuel Component	\$0.93
(ii)	Disposal Cost Component	\$3.38
(iii)	Operations, Overhead and Profit Component	<u>\$9.88</u>

EXAMPLE TOTAL RESIDENTIAL SERVICES RATE	\$14.19
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*The numbers in the example above are used for illustrative purposes only.*

15. **SECTION 22: CUSTOMER LIST, BILLING PAYMENT, 22.3 Payment to City**, Section 22.3.1 shall be deleted.
16. **SECTION 31: FORCE MAJEURE, (iii)**, shall be deleted.
17. Except as amended hereby, the Amended and Restated Contract as originally written and Amendment No. 1 to the Amended and Restated Contract remain in full force and effect.
18. This Amendment No. 2 may be executed in multiple counterparts, which, when combined together, shall constitute an original of this Amendment No. 2.
19. This Amendment No. 2, together with the Amended and Restated Contract and Amendment No. 1 to the Amended and Restated Contract, embodies the entire agreement of the parties hereto, and is binding upon and inures to the benefit of the parties to this Amendment No. 2 and their respective heirs, executors, administrators, personal representatives, legal representatives, successors and assigns and incorporates all previous correspondence or communication, whether written or oral. The Amended and

Restated Contract, as amended hereby, can only be further modified or varied by written instrument subscribed to by the parties hereto.

**IN WITNESS WHEREOF**, the City and the Contractor have executed this Amendment No. 2 to the Amended and Restated Contract on the dates indicated.

**CITY:**  
City of Round Rock

**ROUND ROCK REFUSE, INC.:**

\_\_\_\_\_  
ALAN MCGRAW, Mayor

Date:\_\_\_\_\_

ATTEST:

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SARA WHITE, City Clerk

Approved as to form:

\_\_\_\_\_  
STEPHAN L. SHEETS, City Attorney

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:\_\_\_\_\_