

EXHIBIT**"A"**

**AGREEMENT
FOR THE PROCESSING AND MARKETING OF RECYCLABLE MATERIALS BY
AND BETWEEN THE CITY OF ROUND ROCK AND
ROUNDTABLE RECYCLING, LLC d/b/a WILCO RECYCLING**

THE STATE OF TEXAS

§

CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

That this Agreement for the Processing and Marketing of Recyclable Materials, (referred to herein as the "Agreement") is made and entered into on this the ____ day of the month of December, 2013, by and between the City of Round Rock, Texas, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664 (referred to herein as "City"), and Roundtable Recycling, LLC dba Wilco Recycling, a Texas limited liability company whose address is 9801 Chandler Road, Taylor, Texas 76574 ("Contractor"). This Agreement supersedes and replaces any previous agreement between the named parties, whether oral or written, and whether or not established by custom and practice.

RECITALS:

WHEREAS, City entered into an Amended and Restated Refuse Collection Agreement with Round Rock Refuse, Inc. on October 22, 2010 for the collection of garbage, rubbish, refuse and the collection of Recyclable Material for residential customers within the City; and,

WHEREAS, Round Rock Refuse, Inc. currently transports the City's collected Recyclable Material to WILCO Recycling for processing of the Recyclable Material; and

WHEREAS, City wishes to contract with WILCO Recycling (referred to hereafter as the "Contractor"), a Recyclable Material Facility for the processing of its Recyclable Material; and

WHEREAS, Contractor agrees to process, package and market City's Recyclable Material for conversion into useful products on a contractual basis; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein, the parties

mutually agree as follows:

1.01 DEFINITIONS

A. **Agreement** shall mean this Agreement for Processing and Marketing Recyclable Materials.

B. **Aluminum and Steel Recyclable Material** shall mean any beverage container, food can, bi-metal container, or lid with or without paper labels, rings, and lids composed primarily of whole iron, aluminum, steel or other Recyclable Material of a similar nature.

C. **City** shall mean the City of Round Rock, located in Williamson and Travis Counties, Texas.

D. **Contractor** shall mean Roundtable Recycling LLC dba Wilco Recycling, a limited liability company authorized to do business in the State, and Contractor's assignees and Contractor's subcontractors.

E. **Effective Date** means January 1, 2014.

F. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

G. **Glass Recyclable Material** shall mean any glass food and beverage bottles, containers, or jars with or without paper labels, rings, and lids. Glass Recyclable Material shall not mean window glass, porcelain, or china.

H. **Paper Recyclable Material** shall mean any:

- (A) Kraft paper,
- (B) Corrugated containers that have liners of Kraft, jute, or test liner including dry food boxes, beer and soda carriers, shoe boxes,
- (C) Old newspaper including slick paper inserts,
- (D) Chipboard, and
- (E) Other mixed paper including but not limited to junk mail, junk mail inserts, residential mixed paper, bagged shredded paper, high-grade paper, white and color ledger, copier paper, office paper, laser printer paper, computer paper including continuous-formed perforated white bond or green bar paper, book paper, cotton fiber content paper, duplicator paper, form bond, manifold business forms, mimeo paper, note pad paper (no backing), loose leaf fillers, stationery, writing paper, paper envelopes

without plastic windows, carbonless (NCR) paper, tabulating cards, facsimile paper, manila folders, magazines, paperback books, small catalogs, telephone books and Yellow Pages.

I. ***Plastic Recyclable Material*** shall mean any #1 through #7 rigid plastic bottle, container, jug or jar.

J. ***Recyclable Material*** shall mean Paper Recyclable Material, Plastic Recyclable Material, Glass Recyclable Material, Aluminum and Steel Recyclable Material that has been diverted from the nonhazardous Solid Waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not Solid Waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be Solid Waste with respect only to the party actually abandoning or disposing of the material. Notwithstanding, neither Contractor nor the recyclables processor shall discard any portion of the collected single stream recyclables unless they make up a de minimus amount included within the nonrecyclable residual remaining after being sorted through recyclables sorting and packaging system.

K. ***Recyclable Material Facility*** shall mean the facility owned and operated by WILCO Recycling.

M. ***State*** shall mean the State of Texas.

2.01 EFFECTIVE DATE, DURATION, AND TERM

A. This Agreement shall be effective on January 1, 2014, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. The initial term of this Agreement shall commence on January 1, 2014 and shall continue in effect until December 31, 2018. Thereafter, this Agreement may be renewed only upon the express written agreement of both parties and only provided Contractor has performed each and every contractual obligation specified in this Agreement.

C. City reserves the right to terminate this Agreement as set forth in Section 13.01.

3.01 CONTRACTOR'S OBLIGATION TO PROVIDE SERVICES

As a continuing obligation, Contractor agrees to process, package and market the Recyclable Material for conversion into useful products and to remit to City agreed payment as set forth in Section 9.01.

4.01 CONTRACTOR'S RESPONSIBILITIES

A. Contractor hereby affirms that it is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the functions and operations as contemplated by this Contract.

B. Contractor hereby affirms that it has the necessary processing capacity and equipment to thoroughly process the quantity and type of Recyclable Material subject of this Agreement for the term of this Contract as set forth in Section 2.01.

D. Contractor agrees to be solely responsible for ensuring the Recyclable Material Facility is equipped with adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming vehicles transporting Recyclable Material subject of this Agreement. Contractor agrees to separately weigh, record and tabulated each load from City.

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

F. Contractor shall use best efforts to supervise and direct its agents or employees competently, efficiently, and safely. Contractor shall adhere and conform to all legal responsibilities related to such processing of Recyclable Material subject of this Agreement.

G. Contractor agrees to furnish and assume full responsibility for all services, facilities, equipment, materials and incidentals necessary for the proper recycling of the Recyclable Material subject of this Agreement.

H. Contractor agrees to obtain all permits and licenses, if any, and pay all fees necessary for the proper handling, processing, conversion and marketing of the designated Recyclable Material subject of this Agreement.

I. Contractor agrees to procure and maintain, during the life of this Contract the following insurance coverage:

- (i) Worker's Compensation Insurance – on behalf of itself, its partners, and all employees directly or indirectly employed by Contractor who are to provide a service under this Contract of limits no less than as required by law.
- (ii) Comprehensive/Commercial General Liability:
 - 1. Bodily Injury Liability \$1,000,000.00 per occurrence
 - 2. Property Damage Liability \$1,000,000.00 per occurrence
 - 3. Total Aggregate \$2,000,000.00

If Federal, State or local law requires a higher insurance limit, Contractor shall procure and maintain the policy limit as specified by the applicable law. The policies of insurance shall be

primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the State of Texas and meet a minimum financial A.M. Best & Company rating of no less than “Excellent”: VII.

Contractor shall file certificates of insurance meeting the requirements as set forth herein with City prior to execution of this Contract. In addition, Contractor shall be solely responsible to maintain that all certificates of insurance are up to date as filed at the City. Failure of Contractor to fully comply with the requirements set forth herein regarding insurance may be considered a material breach of this Contract and may be cause for termination of this Contract.

J. Contractor agrees that within ten (10) day after the execution of this Contract, Contractor shall make, execute and deliver to the City a good and sufficient Performance Bond in a form approved by the City, to secure the full, complete and faithful performance of the terms and conditions herein. Such Performance Bond shall be in the amount of fifty thousand dollars (\$50,000.00), and shall be renewed each year thereafter throughout the term of this Contract. The Performance Bond shall be signed by the President or General Officer of the Contractor, together with the signature of the corporate secretary and the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Texas; having an “A” or better rating by A.M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States of America; and acceptable to the City.

K. Contractor hereby affirms that to the best of Contractor’s knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against Contractor, wherein an unfavorable decision, ruling, or finding would materially adversely affect the performance by Contractor of its obligation hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other contract or instrument entered into by Contractor in connection with the transactions contemplated hereby.

5.01 RECORDKEEPING, REPORTING, AUDITED FINANCIAL STATEMENTS, AND REPORT FORMAT

A. Contractor shall create, maintain and make available records that are reasonably necessary to:

- (i) Document Recyclable Material deliveries by time delivered to the Recyclable Material Facility; the Recyclable Material Facility processing cost per ton; weight tickets showing tonnage of material delivered to the Recyclable Material Facility; unaccepted loads by date collected; net revenue received from the sale of Recyclable Material and other information as requested by the City’s Designated Representative in Section 10.01.

- (ii) Document and submit to the City a monthly summary of Recyclable Material processed and sold by the Recyclable Material Facility.
- (iii) Such other documents and reports as City may reasonably require to verify compliance with the Contract or to meet City's reporting requirements with the State of Texas.

B. Contractor shall submit all monthly reports, to the Contract Administrator within seven (7) calendar days following the end of each calendar month.

C. Contractor shall submit all annual reports to the Contract Administrator on or before February 1 of each contract year. In addition, Contractor shall provide the Contract Administrator with a copy of any annual financial audit performed for Contractor.

6.01 CITY INSPECTION RIGHTS

A. Upon twenty-four hours notification to Contractor, City or any of its duly authorized representatives shall have access to all books, records, data and documents of the Contractor that pertain to the contract for inspection, and audit, at City's expense.

B. The City or any of its duly authorized representatives shall have access to inspect the Recyclable Material Facility and equipment to perform such inspections as City deems reasonably necessary, to determine whether the services required to be provided by 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 the Recyclable Material Facility and assist to facilitate the performance of inspections by City's representatives.

7.01 COLLECTION AND DELIVERY OF RECYCLABLE MATERIALS

The City will contract with one or more refuse collection companies ("Refuse Collection Company") to collect and deliver the City's Recyclable Materials to the Recyclable Material Facility. The City shall designate in writing each approved Refuse Collection Company. Contractor agrees to accept and process all Recyclable Materials delivered to Contractor by the Refuse Collection Company. Contractor understands and agrees that it will bill all tipping fees to the Refuse Collection Company and that the City shall have no obligation whatsoever for payment of such tipping fees.

8.01 TIPPING FEE

During the term of this Agreement and any renewals, Contractor agrees that the tipping fee for all City's Recyclable Material delivered to the Recyclable Material Facility shall be **\$25.36** per ton, or the tipping fee charged by the Williamson County Landfill, whichever is less.

9.01 REVENUE SHARE PAYMENT

In the event Contractor recovers an average amount in excess of Ninety-Five Dollars (\$95.00) per ton from the sale of City's processed Recyclable Material during a calendar month, Contractor shall pay City fifty percent (50%) of the revenues so recovered in excess of Ninety-Five Dollars (\$95.00).

Contractor shall have the absolute obligation to pay City each month for any and all processed Recyclable Material, in accordance with this Section 9.01. All payments by Contractor to City shall be made payable to the City of Round Rock, Texas, shall be tendered to City's representative designated in Section 10.01, and shall accompany corresponding statements from City and/or City's representative.

10.01 CITY'S DESIGNATED REPRESENTATIVE

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Michael D. Thane, P.E.
City of Round Rock, Director of Utilities
2008 Enterprise Drive
Round Rock, Texas 78664
Telephone: (512) 218-3236
mthane@roundrocktexas.gov

11.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within thirty (30) days after such demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

12.01 DEFAULT

Contractor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or

D. Becomes insolvent or seeks relief under United States bankruptcy laws.

13.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement for cause, that being in the event of a material and substantial breach by Contractor, or by mutual agreement to terminate evidenced in writing by and between the parties.

B. Contractor has the right to terminate this Agreement for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

C. Should Contractor fail to make any payment in full when due, then, in addition to any other rights and remedies available to City, City may immediately and without notice suspend any further relationship with Contractor until the amount due has been paid in full.

14.01 INDEMNIFICATION

Contractor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Contractor, or Contractor's agents, employees or subcontractors, in the negligent performance of Contractor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Contractor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

15.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

Contractor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

16.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms hereof. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

17.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- A. When delivered personally to recipient's address as stated in this Agreement; or
- B. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Contractor:

WILCO Recycling
John Rabon 9801
Chandler Road
Taylor, TX 76574

Notice to City:

Steve Norwood, City Manager		Stephan L. Sheets, City Attorney
221 East Main Street	AND TO:	309 East Main Street
Round Rock, TX 78664		Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

18.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

19.01 EXCLUSIVE AGREEMENT

This document and all appended documents constitute the entire Agreement between City and Contractor. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

20.01 SUPPLEMENTAL AGREEMENTS

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or City Manager action, if City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be

performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Contractor shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Contractor shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and City shall not be responsible for actions by Contractor nor for any costs incurred by Contractor relating to additional work not directly authorized by Supplemental Agreement.

21.01 DISPUTE RESOLUTION

City and Contractor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

22.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

23.01 INDEPENDENT CONTRACTOR STATUS

Contractor is an independent contractor, not City's employee. Contractor's employees or subcontractors are not City's employees. This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts as agent for the other party. Contractor and City agree to the following rights consistent with an independent contractor relationship:

- A. Contractor has the right to perform services for others during the term of this Agreement;
- B. Contractor has the sole right to control and direct the means, manner and method by which services required by this Agreement will be performed;
- C. Contractor has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement;
- D. Contractor or its employees or subcontractors shall perform the services required

hereunder. City shall not hire, supervise, or pay any assistants to help Contractor;

- E. Neither Contractor nor its employees or subcontractors shall receive any training from City in the skills necessary to perform the services required by this Agreement;
- F. City shall not require Contractor or its employees or subcontractors to devote full time to performing the services required by this Agreement; and
- G. Neither Contractor nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of City.

24.01 MISCELLANEOUS PROVISIONS

Standard of Care. Contractor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices and with all applicable laws.

Time is of the Essence. Contractor understands and agrees that time is of the essence and that any failure of Contractor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Contractor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Contractor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Contractor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Waiver. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Confidentiality. The parties recognize and understand that City is subject to the Texas Public Information Act and its duties run in accordance therewith.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

CITY OF ROUND ROCK, TEXAS

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

FOR CITY, ATTEST:

By: _____

Sara L. White, City Clerk

FOR CITY, APPROVED AS TO FORM:

By: _____

Stephan L. Sheets, City Attorney

WILCO RECYCLING

By: _____

Printed Name: _____

Title: _____

Date Signed: _____