

RESOLUTION NO. R-2014-111

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO TERMINATE THE AGREEMENT FOR RECYCLABLES PROCESSING SERVICES BETWEEN ECOLOGICAL PAPER RECYCLING, INC. AND THE CITY OF HOLLYWOOD, AND AUTHORIZE THE APPROPRIATE CITY OFFICIALS TO NEGOTIATE AND EXECUTE THE ATTACHED AGREEMENT FOR RECYCLABLES PROCESSING SERVICES BETWEEN PROGRESSIVE WASTE SOLUTIONS OF FL., INC. F/K/A WASTE SERVICES OF FLORIDA, INC. AND THE CITY OF HOLLYWOOD AND FOR AN ESTIMATED ANNUAL REVENUE IN THE AMOUNT OF \$226,560.00.

WHEREAS, the Department of Public Works requested that Procurement Services issue a bid to include Solid Waste Disposal Services, Commingled Waste Disposal Services, Drop-Off Household Hazardous Waste Services, Drop-Off Commingled Waste Services and Recyclables Processing Services; and

WHEREAS, Bid F-4365-13-IS was issued on March 8, 2013 and opened on April 18, 2013, and resulted in four (4) responses for Recyclables Processing Services as follows:

Recyclables Processing Services
(% of Average market Value minus Contractor's fee)

| | | |
|----------------------------------|-------|-------|
| Ecological Paper Recycling, Inc. | 80.0% | |
| Sun Bergeron | 40.0% | |
| Waste Management Inc. of Florida | 13.0% | |
| Waste Services of Florida, Inc. | 35.5% | ; and |

WHEREAS, on June 19, 2013, the City Commission passed and adopted Resolution Number R-2013-168, authorizing the negotiation and execution, by the appropriate City Officials, of an Agreement embodying the terms and conditions as set forth in Bid F-4365-13-IS and as approved by the City Commission between Ecological Paper Recycling Inc. and the City of Hollywood for Recyclable Processing Services; and

WHEREAS, on July 2, 2013, the City entered into an agreement with Ecological Paper Recycling, Inc. of OpaLocka, Florida for Recyclables Processing Services

for an initial five (5) year term with the option to renew for two (2) additional five (5) year periods under the same terms and conditions of the initial term; and

WHEREAS, the Public Works Department has requested that the agreement with Ecological Paper Recycling, Inc. be terminated without cause; and

WHEREAS, the Bid F-4365-13-IS document which is incorporated into the agreement states that the City of Hollywood reserves the right to cancel any contract resulting from this IFB with or without cause; and

WHEREAS, City staff contacted Sun Bergeron, the bidder who submitted the 2nd highest bid percentage and they notified the City that they could not honor their bid submitted under the same terms, conditions and bid percentage; and

WHEREAS, City staff contacted Waste Services of Florida, Inc. who legally changed their name to Progressive Waste Solutions of FL, Inc., the bidder who submitted the 3rd highest bid percentage and they notified the City that they will honor their bid submitted under the same terms, conditions and bid percentage; and

WHEREAS, the Director of Public Works and the Director of Procurement Services recommend that the City Commission authorize the termination of the agreement for Recyclables Processing Services with Ecological Paper Recycling, Inc. effective immediately; and

WHEREAS, the Director of Public Works and the Director of Procurement Services recommend that the City Commission authorize the appropriate City Officials to negotiate and execute an agreement for Recyclables Processing Services between Progressive Waste Solutions of FL., Inc and the City of Hollywood; and

WHEREAS, the initial term of this agreement is five (5) years , beginning on the agreement commencement date, with the right to renew for two (2) additional five (5) year periods under the same terms and conditions as the initial term, including amendments; and

WHEREAS, award is subject to the City receiving all performance bonds, insurance required and approved by the City's Risk Manager, along with signed statements of Hold Harmless and Indemnity to the City;


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That it hereby authorizes the appropriate City Officials to terminate the agreement between Ecological Paper Recycling Inc. and the City of Hollywood for Recyclable Processing Services effective immediately.

Section 2: That it hereby approves and authorizes the negotiation and execution, by the appropriate City Officials, of the attached Agreement embodying the terms and conditions as set forth in Bid F-4365-13-IS and as approved by the City Commission this date between Progressive Waste Solutions of FL., Inc. and the City of Hollywood for Recyclable Processing Services, in a form acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 3: That this resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 7 day of May, 2014.



PETER BOBER, MAYOR

ATTEST:


PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Hollywood, Florida, only.

 DN
JEFFREY P. SHEFFEL, CITY ATTORNEY

**AGREEMENT
BETWEEN
CITY OF HOLLYWOOD, FLORIDA
AND
PROGRESSIVE WASTE SOLUTIONS OF FL, INC. F/K/A WASTE
SERVICES OF FLORIDA, INC.
FOR
RECYCLABLES PROCESSING SERVICES**

This Agreement made and entered into this _____ day of _____, 2014, by and between the CITY OF HOLLYWOOD, FLORIDA, a municipal corporation of the State of Florida (hereinafter "City") and Progressive Waste Solutions of FL., Inc. f/k/a Waste Services of Florida, Inc., a Delaware corporation authorized to do business in the State of Florida (hereinafter "Vendor").

WHEREAS, City issued Invitation for Bid No.4365-13-IS (hereinafter the "IFB") for Solid Waste Disposal Services, including Recyclable Processing Services; and

WHEREAS, Vendor submitted a proposal in response to the IFB for Recyclable Processing Services;

WHEREAS, Ecological Paper Recycling, Inc. was originally selected to provide the Recyclable Processing Services, but Vendor has subsequently been requested to do so based on representations made by the City;

NOW, THEREFORE, in consideration of the mutual promises and understandings set forth herein, the parties hereto agree as follows:

**ARTICLE I
INCORPORATION OF DOCUMENTS**

The IFB, including any addenda thereto, the proposal submitted by Vendor, and the Purchase Order, if applicable, (hereinafter, collectively, the "IFB Documents") are attached hereto and incorporated herein in their entirety. Except as otherwise provided in this Agreement, the parties shall comply with the terms and conditions set forth in the IFB Documents. In the event of conflict, the terms of the IFB shall prevail.

**ARTICLE II
TERM**

The Effective Date of this Agreement shall commence upon execution of the Agreement by the parties. The term of this Agreement shall commence on May 8, 2014 and expires on July 2, 2018. This Agreement may be renewed at the option of the City with the concurrence of the Vendor, for two (2) additional terms of five (5) years under the same terms and conditions as the initial term, including amendments. Any and all renewals are subject to City Commission approval.

ARTICLE III SCOPE OF WORK

In accordance with the IFB Documents, Vendor shall perform any and all Recyclables Processing Services as set forth in the IFB Documents and as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE IV REVENUE

In accordance with the IFB Documents, Vendor shall remit City Program Recyclables Revenue in an annual estimated amount of \$226,560.00 payable in monthly installments. Said revenue payments shall be based upon the requirements, calculations and formulas set forth in the IFB Documents.

ARTICLE V REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Broward County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise hereof.

ARTICLE VI SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE VII ENTIRETY OF CONTRACTUAL AGREEMENT

This Agreement, together with the attachments hereto, sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE VIII NOTICE

All notices required shall be sent by certified mail, return receipt requested. If sent to City, such notices shall be mailed to:

Sylvia Glazer
Director of Public Works
1600 South Park Road
Hollywood, Florida 33021

with a copy to:

Jeffrey P. Sheffel, City Attorney
City of Hollywood
2600 Hollywood Boulevard, Room 407
Hollywood, Florida 33020

and if sent to Vendor, such notices shall be mailed to:

Damian Ribar, Area Manager
Progressive Waste Solutions of FL, Inc.
3840 NW 37th Court
Miami, Florida 33142

with a copy to:

IESI Corporation
2301 Eagle Pkwy., Ste. 200
Fort Worth, TX 76177
Attn: Legal Dept.

ARTICLE IX THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Vendor.

ARTICLE X CITY'S REPRESENTATION

City acknowledges that Vendor is only entering into this Agreement based on the City's representation that its contract for the Recyclable Processing Services with Ecological Paper Recycling, Inc. will terminate on May 7, 2014 and that Vendor shall not be liable for any revenues or liabilities owed to City prior to the Effective Date for the Recyclable Processing Services. City agrees, to the extent allowed by law, to indemnify, defend, and hold harmless Vendor from any and all causes of action, liabilities or damages arising out of City's award of this Agreement and the Recyclable Processing Services to Vendor.

ARTICLE XI
ACCEPTANCE

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

CITY OF HOLLYWOOD, FLORIDA, a
municipal corporation of the State of Florida

ATTEST:

By: _____
Peter Bober, Mayor

Patricia A. Cerny, MMC
City Clerk

DEPARTMENT OF FINANCIAL SERVICES

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the City of
Hollywood, Florida only.

Matt Lalla, Director of Financial Services

Jeffrey P. Sheffel, City Attorney

Progressive Waste Solutions of FL, Inc.

ATTEST:

By: _____
Signature

Corporate Secretary

Print or Type Name

EXHIBIT “A”
SCOPE OF WORK
TECHNICAL SPECIFICATIONS / SCOPE OF SERVICES FOR
RECYCLABLES PROCESSING

6.1 CONTRACTOR’S RECYCLABLES PROCESSING RESPONSIBILITIES

6.1.1. Designated Facilities

- (i) Contractor shall utilize the Designated Recycling Facility and Designated Processing Facility as specified on its Bidder Response Form for Recyclables Processing.
- (ii) The Designated Recycling Facility and Designated Processing Facility may be changed only with prior written approval by the Contract Administrator.
- (iii) The Contractor shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Recycling Facility and Designated Processing Facility.
- (iv) The Contractor shall ensure that the Designated Recycling Facility and Designated Processing Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.
- (v) The City shall have the right, during the Contractor’s hours of operation, to inspect both the operating and maintenance practices of the Designated Recycling Facility and Designated Processing Facility. Operating practices shall include, but not be limited to, the receipt, separation, processing, loading, storage, and transport of Recyclable Materials and Recovered Materials. The Contractor shall reasonably accommodate the City’s inspection rights described herein, provided it does not create a safety hazard.

6.1.2. Materials Acceptance

- (i) Beginning on the Commencement Date, the City shall direct the City’s Contract Hauler to deliver all Program Recyclables to the Designated Recycling Facility during the scheduled receiving hours specified herein. Program Recyclables will be delivered Single Stream. The City makes no assurances or guarantees regarding the quantity of Program Recyclables that will be delivered to the Designated Recycling Facility.
- (ii) Beginning on the Commencement Date, the Contractor shall accept deliveries of Program Recyclables at the Designated Recycling Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Recycling Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (iii) Program Recyclables are as defined in Section 1.17. The City reserves the right to designate or remove other Recyclable Materials as Program Recyclables if the contracting parties agree it is technically feasible.

- (iv) The Designated Recycling Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the Contractor or other fault of the delivery vehicle shall not be included in the turn-around time computation. The Contractor will provide the City with access to its records to verify vehicle turnaround time within twenty-four (24) hours' notice.
- (v) The Designated Recycling Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Program Recyclables delivery vehicles. Such scales shall be permitted and in compliance with Section 531.60, Florida Statutes. Contractor shall calibrate and certify scales no less frequently than annually.
- (vi) The Contractor shall weigh all trucks transporting Program Recyclables that enter the Designated Recycling Facility, record such weights separate from all other materials, and generate reports of incoming Program Recyclables 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.
- (vii) If Hazardous Waste is found within a load of Program Recyclables delivered by the City or its agents to the Designated Receiving Facility, the Contractor shall immediately notify the Contract Administrator and note the incident by taking a photograph of the Hazardous Waste and the truck, including the truck number, that delivered the waste. The Contractor is responsible for properly isolating, containerizing, and disposing of such Hazardous Waste in accordance with all applicable laws. The cost of managing and disposing of such Hazardous Waste shall be borne by the City, provided that the Contractor has adequately documented that such waste was delivered by or on behalf of the City.
- (viii) In the event the Contractor fails, refuses, or is unable to accept Program Recyclables on the Commencement Date or thereafter during the term of the Contract, the Contractor will be liable for all hauling, processing, transportation, disposal charges and any other related costs that may be incurred by the City with respect to recycling and marketing such materials.

6.1.3. Transport, Processing, Marketing, and Disposal

- (i) Upon acceptance of Program Recyclables at the Designated Recycling Facility, the Contractor shall bear all costs associated with processing or transporting Program Recyclables and marketing and transporting Recovered Materials. The Contractor is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue, resulting from the processing of Program Recyclables.
- (ii) Unless the Contractor has prior permission from the City, the Contractor shall not dispose of and/or landfill any Program Recyclables or Recovered Materials resulting from the processing of Program Recyclables. The Contractor shall not knowingly, or without reasonable assumption, sell Program Recyclables or Recovered Materials resulting from processing of Program Recyclables to another agent that landfills or

disposes of material other than through recycling. This does not apply to Rejects and Residue.

6.1.4. Record Keeping

- (i) The Contractor shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- (ii) The Contractor shall maintain records of the amounts of Program Recyclables received at the Designated Recycling Facility. Such records shall be kept separate and apart from all other records maintained by the Contractor.
- (iii) The Contractor shall maintain such records in accordance with generally accepted management principles and practices. The City shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and Contractor acknowledges that such laws have possible application and agrees to comply with all such laws.
- (iv) The Contractor will maintain and allow access to books, records, data, documents, and reports relating to this Contract for five (5) years following the conclusion or termination of this Contract.

6.1.5. Reporting

- (i) Prior to the fifteenth (15th) calendar day of each month during the term of this Contract, the Contractor shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of Program Recyclables received at the Designated Recycling Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity.
- (ii) Within thirty (30) days of the end of each Contract Year, the Contractor shall provide the Contract Administrator with a report summarizing the total Tons of Program Recyclable delivered to the Designated Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the Contractor shall submit a copy of the annual report submitted to FDEP summarizing Recyclable Materials deliveries by type, quantity, and source.
- (iii) At least thirty (30) days prior to the end of each Contract Year during the term of this Contract, the Contractor shall ensure and certify to the City that all required documents are current and on file with the City. Such documents include, but are not limited to, certificates of insurance and performance bond.

6.1.6. Public Education and Information

- (i) The Contractor shall, at no cost to the City, provide an educational presentation and educational materials for distribution at up to two (2) events per Contract Year as requested by the City.
- (ii) The Contractor shall, at no cost to the City, provide tours of the Designated Recycling Facility upon at least seven (7) calendar days' notice by the City. The Contractor shall provide personnel (trilingual upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the City and the Contractor prior to conducting any tours.

6.1.7. Program Recyclables Revenue

- (i) The Contractor shall pay the City monthly for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's scales. The payment per Ton shall be calculated as follows and as in the Bidder Response Form for Recyclables Processing:
 - (1) Each month, the Contractor shall calculate the Average Market Value (AMV) of the 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 Bidder Response Form for Recyclables Processing. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide 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. The Contractor's Fee of fifty dollars (\$50) shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price Index (CPI) between the month of April in the previous year and the month of April in the current year. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics. The total adjustment to the Contractor's Fee in any given year shall not exceed two percent (2%) of the previous year's Contractor's Fee. 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. The fee(s) in any subsequent term(s) shall be calculated in the same manner as in the initial term.

- (3) The Contractor shall pay the City a percentage, as provided in Bidder Response Form for Recyclables Processing, of the remaining amount, for each Ton of inbound Program Recyclables delivered to the Designated MRF during that month.
- (4) If the AMV is less than the Contractor's Fee of fifty dollars (\$50.00), 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, regardless of the AMV.
- (ii) The City or Contractor may conduct a composition study of Program Recyclables delivered to the Designated Recycling Facility. The party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology and selection of a qualified entity to conduct the study must be approved by the City. The City reserves the right to have a representative onsite throughout the recycling composition study. Study results are subject to final approval by the City, which shall not be unreasonably withheld. If approved by the City, adjustments to the composition percentages provided in Bidder Response Form for Recyclables Processing shall be made and shall become effective for the following month and the remainder of the Contract, or until further adjusted in a future composition study.
- (iii) The Contractor acknowledges and accepts that the formula outlined in Section 6.1.7 shall be used for calculating revenue throughout the term of the Contract. It is intended to reflect the current value of Program Recyclables, but might not be an exact calculation of that value. If the commodity revenue received by the Contractor differs from the market index or the Contractor's Fee does not accurately reflect the Contractor's cost for accepting, processing, and marketing Program Recyclables, the Contractor shall have taken such items into consideration when bidding the percentage of the AMV less the Contractor's Fee that it will pay to the City. Any and all costs associated with accepting, processing, marketing, and transporting Program Recyclables shall be the responsibility of the Contractor.

6.1.8. Invoicing and Payment

- (i) No later than the fifteenth (15th) day of each month, the Contractor shall submit a monthly report, in a form acceptable to the City, detailing the total revenue due to the City for the Program Recyclables delivered to the Designated Recycling Facility during the previous month.
- (ii) The Contractor shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days from the end of the month for which the payment is due.

6.2 PERFORMANCE BOND

Prior to commencing services, the Contractor shall furnish to the City, and keep current for the full duration of the Contract and any renewal, a Performance Bond for the faithful performance of this Contract and all obligations arising hereunder in an amount equal to six (6) months of Recyclables Revenue as estimated in the Bidder's Response Form for Recyclables Processing.

6.3 LIQUIDATED DAMAGES

The City may assess liquidated damages against the Contractor for failing to provide recyclables processing services in compliance with requirements of this IFB. It is hereby agreed that the City may deduct from any monies due, or which may become due to the Contractor, liquidated damages, and not as a penalty, in the following amounts:

- | | | |
|----|---|-----------------------------|
| 1. | Failure to accept Recyclable Materials during scheduled receiving hours (Section 6.1.2.(ii)) | \$500 per unaccepted load |
| 2. | Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 6.1.2.(iv).) | \$300 per day |
| 3. | Disposing of Recyclable Materials or Recovered Materials without prior approval of the Executive Director (Section 6.1.3.(ii).) | \$1,000 per occurrence |
| 4. | Failure to submit timely records and reports (Section 6.1.5.) | \$200 per calendar day late |
| 5. | Failure to make timely payment to the City (Section 6.1.8.) | \$200 per calendar day late |