

**AMENDMENT NUMBER 8 TO THE SERVICE CONTRACT FOR MUNICIPAL  
RESOURCE RECOVERY SERVICES FOR THE CITY OF ANN ARBOR  
BETWEEN RECYCLE ANN ARBOR AND THE CITY OF ANN ARBOR**

The City of Ann Arbor, a Michigan municipal corporations, with offices and 301 E. Huron St. Ann Arbor, Michigan 481-7-8647 ("City") and Recycle Ann Arbor, a Michigan Corporation, with its address at PO Box 246 Dexter, MI 48130 ("Contractor"), together the "Parties," agree to amend the Service Contract for Municipal Resource Recovery Services for the City of Ann Abor executed by the Parties dated December 1, 2003, amended by Amendment #1 effective March 2, 2005, amended by Amendment #2 effective May 13, 2010, amended by Amendment #3 effective August 29, 2011, amended by Amendment #4 effective August 18, 2015, amended by Amendment #5 effective June 29, 2018, amended by Amendment #6 effective June 3, 2019, and amended by Amendment #7 effective July 28, 2020 ("Agreement") as follows:

- 1) Article II, DURATION, is amended to read as follows:

This AGREEMENT shall remain in effect through December 31, 2022, unless terminated for breach or as provided in this agreement. At the City and Contractor's mutual option the Contract may be extended for one additional one-year term through December 31, 2023. unless terminated for breach or as provided in this agreement.

- 2) ARTICLE V, INSURANCE/INDEMNIFICATION, A-4, GARAGE KEEPERS INSURANCE is deleted in its entirety.

**DELETE**

Garage Keepers Insurance: The Contractor, or if applicable its subcontractor, facility used for storage, repairs and/or maintenance of the City's vehicles leased to RAA, either under the terms of this contract or other lease contract duly executed by the parties, will have Garage Keepers insurance in an amount sufficient to cover all City owned property while at the applicable facility. This Garage Keepers Insurance requirement shall be waived if the City Attorney is satisfied that this requirement is met by the Contractor's Commercial General Liability coverage, December.

- 3) ARTICLE VIII -Termination of Contract: Rights on Termination: Liquidated Damages is amended to read as follows:
  - A. This Contract may be terminated by either party in the case of a material breach of this Contract by the other party, if the breaching party has not corrected the breach within twenty (20) business days after notice of termination is given in conformance with the terms of this Contract. A party shall be considered in

material breach of the terms of this contract if its failure to perform resulted or is anticipated to result in substantial harm to public health and safety or resulted in substantial damage to the City. Imperfections in the matters of detail which do not constitute a deviation from the general plan contemplated for the work are not considered material for purposes of this Article.

- B. Liquidated damages, as provided for in Article A-7, are intended to expeditiously compensate the City for actual damages that may be difficult to quantify Contractor's payment, by withholding or otherwise, of such liquidated damages shall not preclude the City from obtaining recovery for all of the actual damages it may suffer due to a covered incident; provided that Contractor receive full credit against any such recovery for the amount of the liquidated damages previously paid or withheld. Liquidated damages under this section are in addition to any liquidated damages due under the Contract Compliance requirements of the Contract.
  
- C. The City shall have the privilege to cancel and annul this Contract at any time on twenty (20) business days written notice to the Contractor in accordance with the notice provisions contained in this Contract upon the occurrence of any one of the following events.
  - 1. Contractor shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
  - 2. By order or decree of a Court, Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) business days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or
  - 3. By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of

Contractor, and such possession or control shall continue in effect for a period of sixty (60) business days; or

4. Contractor has defaulted, by failing or refusing to pay in a timely manner the liquidated damages charges or other monies due City and said default is not cured within thirty (30) business days of receipt of written notice by City to do so; or
5. Contractor has defaulted, by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) business days of receipt of written notice by City to do so; or
6. In the event that the monies due City under Section VIII.C.4 above or an unsatisfied final judgment under Section VIII.C.5 above is the subject of a judicial proceeding, Contractor shall not be in default if the sum of money is bonded. All bonds shall be in a form acceptable to the City Attorney; or
7. Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by City pursuant thereto or has wrongfully failed or refused to\_ comply with the instructions of the Contract Administrator relative thereto and said default is not cured within thirty (30) business days of receipt of written notice from City to do so or other time period as may be specified by rules, regulations or other applicable statute, or if by reason of the nature of such default, the same cannot be remedied within said specified time period following receipt by Contractor of written demand from City to do so, Contractor fails to commence the remedy of such default within said specified time period following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with Contractor having the burden of proof to demonstrate (a) that the default cannot be cured said specified time period, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time).

D. City Default. The following shall constitute an event of default by the City (a “City Default”):

1. The City fails to pay any undisputed amount when and as due and fails to pay such amount within five (5) days after receiving written notice from Contractor that payment is overdue. If City fails to cure a default under this section within five (5) days after receiving notice from Contractor, Contractor may suspend its performance hereunder.

E. Upon termination of Contract, by breach, default or expiration, all City property including collection trucks, fuel and recycling containers, shall be promptly returned to the City. Upon such termination, Contractor must also cease use of City-owned

radio and use of City-owned radio frequency provided for in Article IX, Section A. All City-owned radios shall be promptly returned to the City. The City reserves the right to enter Contractor's property or premises to reclaim all City property if said property is not promptly returned to the City by the Contractor.

F. If services are terminated for reasons other than the breach of the Contract by the Contractor, the Contractor shall be compensated for reasonable time spent and reasonable quantities of materials used prior to date of termination.

G. Termination does not relieve the terminating party of performing its obligations that accrued before termination.

4) ARTICLE IX – Obligations of the City is amended to read as follows:

REPLACE

A. The City agrees to give the Contractor full and prompt access to staff and City owned properties and equipment, including collection trucks, fuel and recycling containers, and to perform such services as it has reserved to itself in the contract documents.

B. The City shall notify the Contractor without delay of any defects in the services of which the City has actual notice.

WITH

A. The City agrees to give the Contractor full and prompt access to staff and City-owned radio and access to City-owned radio frequency in the three collection vehicles the Contractor is purchasing from the City for use in this contract as set forth in Article B-6, and recycling containers to perform such services as it has reserved to itself in the contract documents:

Asset #	Year	Make	Model	Body Serial #	Vin #
8644	2014	Mack	LEU613 Refuse Truck	EX13115VED	1M2AU04C3EM007985
8690	2014	Mack	LEU613 Refuse Truck	EX13115VGE	1M2AU04C8EM007979
8692	2014	Mack	LEU613 Refuse Truck	EX13115VEA	1M2AU04C5EM007986

B. The City shall notify the Contractor without delay of any defects in the services of which the City has actual notice.

5) ARTICLE XIV – NOTICE, is amended to read as follows:

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated below or such other person or address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally

delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Recycle Ann Arbor  
Bryan Ukena, CEO  
PO Box 246 Dexter, MI 48130  
[bryanukena@recycleannarbor.org](mailto:bryanukena@recycleannarbor.org)

With a copy to:

Recycle Ann Arbor  
Attn: Board Chair Margie Teall  
1208 Brooklyn  
Ann Arbor, MI 48104  
MargieTeall@hotmail.com

With a copy to:

Hooper Hathaway, P.C.  
Attn: William M. Beuche, Esq.  
126 S. Main St.  
Ann Arbor, MI 48104  
wbeuche@hooperhathaway.com

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
Public Services Area Administrator  
301 E. Huron St.  
Ann Arbor, Michigan 48104

With a copy to:

The City of Ann Arbor  
ATTN: Office of the City Attorney  
301 East Huron Street, 3<sup>rd</sup> Floor  
Ann Arbor, Michigan 48104

- 6) Attachment A, CITY OF ANN ARBOR MUNICIPAL RESOURCE RECOVERY SERVICES PERFORMANCE BASED COMPENSATION SCHEDULE, is amended to read as follows:

As of July 1, 2021, and annually each July 1 through December 31, 2023 if the Parties exercise their option for a one-year extension, the Contractor fee for the Fixed Cost Rate per Service Unit Scheduled Lift shall be adjusted according to the following schedule:

City FY 2022 (July 1, 2021 - June 30, 2022)	\$10.75
City FY 2023 (July 1, 2022 – June 30, 2023)	\$11.07
City FY 2024 (July 1, 2023 – June 30, 2024)	\$11.40

- 7) ATTACHMENT B, CITY OF ANN ARBOR MUNICIPAL RESOURCE RECOVERY SERVICES BASIC PERFORMANCE SPECIFICATIONS, AMENDMENT TO ARTICLE B-4, Curb Cart Recycling Collection Services is amended to read as follows:

Units Receiving Service: Curb Cart Service Unit Scheduled Lift Counts shall be designated by the City and shall include ~~residential units~~, commercial units, multifamily units of eleven (11) or greater units, and civic units (for example, municipal parks, automated pedestrian containers in the downtown, schools, non-profit agencies) where Curb Cart Collection is appropriate.

Contractor shall determine actual Curb Cart locations and frequency of Scheduled Lifts as needed to maximize recovery and contractor performance. ~~with the sole location requirement being that each residential unit dumpster location will have Curb Carts at that location.~~ Contract Administrator has the option of canceling service to a Service Unit or adjusting the number of Scheduled Lifts if determined to both be appropriate or needed.

- 8) ARTICLE II, AMENDMENT TO ARTICLE B-6 OF AGREEMENT, COLLECTION TRUCKS is amended to read as follows:

- A. Contractor shall provide all vehicles, materials, labor, water, tools, equipment, light, power, fuel, transportation, maintenance and other facilities necessary to perform Residential Customer Recyclables Collection services for the City’s 32-gallon, 64-gallon and 96-gallon Toter carts. The Contractor’s collection vehicle fleet shall be able to service all Residential Customer curb side carts including those on dead end streets, narrow streets, cul-de-sacs and dirt roads.
- B. City shall have the right to inspect the Contractor’s collection vehicles and their contents at any time while operating with the City or at City facilities,
- C. Without limiting any other requirements or obligations of the Contractor, the Contractor shall meet or exceed the following standards with respect to collection vehicles used to perform Residential Customer Recyclables Collection services in the City:
  - 1. Throughout the contract term, all vehicles will have a high standard of aesthetics so as to positively represent both the Contractor and the City.

2. Contractor shall provide the City with an annual Fleet schedule with make, model and year, and assigned identify number.
3. The Contractor shall maintain all collection vehicles in a clean and sanitary manner.
4. All collection vehicles shall have appropriate safety markings, including operable highway lighting, flashing and warning lights, clearance lights and warning flags, all in accordance with applicable law(s). All collection vehicles and all parts and systems of all collection vehicles shall operate properly and be maintained in a condition compliant with all applicable laws, good industry standards, and be in a condition satisfactory to the City. Any vehicles not meeting these standards shall not be used within the City until repairs are made. All collection vehicles will be equipped with variable tone or proximity-activated reverse movement back-up alarms.
5. The City agrees to sell to Contractor the three following collection vehicles for a purchase price of \$100,000.00:

Asset #	Year	Make	Model	Body Serial #	Vin #
8644	2014	Mack	LEU613 Refuse Truck	EX13115VED	1M2AU04C3EM007985
8690	2014	Mack	LEU613 Refuse Truck	EX13115VGE	1M2AU04C8EM007979
8692	2014	Mack	LEU613 Refuse Truck	EX13115VEA	1M2AU04C5EM007986

9) ARTICLE B, ARTICLE B-7, Collection Containers, is amended to read as follows:

Contractor shall at the end of each work day, submit through the work order management system (Cityworks) or equivalent, service requests for carts that are in need of repair, recycling or disposal. The City will repair, deliver and dispose of carts.

All terms, conditions, and provisions of the Agreement, unless specifically amended above, shall apply to this Amendment and are made a part of this Amendment as though expressly rewritten, incorporated, and included herein.

City and Contractor agree that for this Amendment and any documents related to the Agreement: 1) signatures may be delivered electronically in lieu of an original signature; 2) to treat electronic signatures as original signatures that bind them; and 3) signatures may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

This Amendment to the Agreement shall be binding on the Parties' heirs, successors, and assigns.

**[SIGNATURE PAGE FOLLOWS]**

**For Contractor**

By \_\_\_\_\_

Its:

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

**For City of Ann Arbor**

By \_\_\_\_\_  
Christopher Taylor, Mayor

By \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

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

**Approved as to substance**

\_\_\_\_\_  
Tom Crawford, City Administrator

\_\_\_\_\_  
Craig Hupy, Public Services Administrator

**Approved as to form and content**

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Stephen K. Postema, City Attorney