



Mayor of Providence

Angel Taveras

July 1, 2011

HAND-DELIVERED

Hon. Michael A. Solomon
President
Providence City Council
Providence City Hall
Providence, RI 02903


RE: RIRRC SOLID WASTE and RECYCLING AGREEMENT

Dear President Solomon,

Please find enclosed with this correspondence Providence's Solid Waste and Recycling Services Agreement between the Rhode Island Resource Recovery Corporation and the City of Providence for a time period from July 1, 2011 through June 30, 2014.

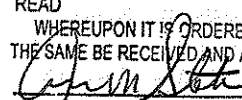
I hereby submit the enclosed agreement to the Providence City Council for ratification.

Sincerely,


Angel Taveras
Mayor

Enclosure

IN CITY COUNCIL
FEB 02 2012

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED AND APPROVED
 CLERK

SOLID WASTE AND RECYCLING SERVICES AGREEMENT

Between the

RHODE ISLAND RESOURCE RECOVERY THE CORPORATION

And

THE CITY OF PROVIDENCE

THIS SOLID WASTE AND RECYCLING SERVICES AGREEMENT (Agreement), made and entered into as of this _____ day of _____, 2011 by and jointly between RHODE ISLAND RESOURCE RECOVERY CORPORATION ("The Corporation" or "RIRRC"), a quasi-public Corporation organized under the laws of the State of Rhode Island, and THE CITY OF PROVIDENCE (hereinafter "Municipality" or "the City of Providence"), a municipal corporation organized and existing under the laws of the State of Rhode Island, with a business address at 25 Dorrance Street Providence, RI 02903. In consideration of the mutual covenants, promises and payments set forth herein, The Corporation and the City of Providence do hereby agree as follows:

1. **TERM.** The term of this Agreement is a three-year period from July 1, 2011 through June 30, 2014. **The effective date of this Agreement shall commence on the date first appearing above** and end on June 30, 2014, unless sooner terminated or extended as provided herein. Fiscal Year 2012 is the one-year period from July 1, 2011 through June 30, 2012, Fiscal Year 2013 is the one-year period from July 1, 2012 through June 30, 2013, and Fiscal Year 2014 is the one-year period from July 1, 2013 through June 30, 2014.
2. **DISPOSAL OF SOLID WASTE.** For the term of this agreement and pursuant to Rhode Island General Law Chapters 23-18.9-1 et seq. and 23-19-3, The City of Providence agrees to deliver for disposal to the Corporation's landfill in Johnston, R.I. (hereinafter "Landfill"), one hundred percent (100%) of its Municipal Solid Waste as defined in RIGL §23-19-5(5) for which The City of Providence has undertaken the collection, transfer or disposal (hereinafter "MSW"), and the Corporation agrees to accept and dispose of one hundred percent (100%) of The City of Providence's MSW.

The City of Providence shall be deemed to have undertaken the collection, transfer or disposal of that MSW for which it:

- a. provides any of these aforementioned services through a contract or license, or by municipal employees, or
- b. pays for any of these aforementioned services with municipal funds, enterprise funds or the like, or
- c. assigns, subject to the Corporation's approval, all or part of its municipal waste cap for disposal at the Landfill to a third party.

This Agreement shall not apply to the disposal of any other type of solid waste, including, but not limited to: 1) solid waste generated by residents of a the City of Providence in the course of their employment; 2) solid waste generated by any manufacturing or commercial enterprise except where The City of Providence has implemented a commercial recycling program for which it has assumed responsibility for collection, or, 3) solid waste for which The City of Providence has not undertaken the collection, transfer or disposal, as set forth above.

3. **COMPLIANCE WITH LAWS.** The City of Providence agrees to use its best efforts to ensure

that it, its agents and contractors, and all waste materials and Recyclables delivered to the Corporation's Facilities by The City of Providence, its agents and contractors will comply with all state and federal laws and R.I. Department of Environmental Management, U.S. Environmental Protection Agency, and the Corporation rules, regulations, and policies including any Facility site regulations and policies. The City of Providence, and its agents, contractors and employees, shall abide by all Corporation work rules, practices and procedures. While they are present on Corporation property, The City of Providence, and its agents, contractors and employees, shall act in a safe, efficient and workmanlike fashion. The failure or refusal of The City of Providence, or any agent, contractor or employee of The City of Providence to go, act, or follow instructions of a Corporation official, operating manager or other responsible person of the Corporation or its Agents are grounds for the ejection of such person from Corporation property, and the removal of The City of Providence's vehicle, whether or not it has been off-loaded.

4. **FEES FOR THE DISPOSAL OF MSW.** For Fiscal Year 2012, The City of Providence agrees to pay the Corporation \$32 per ton, as established by either Rhode Island General Law or by Rhode Island State Budget Article, for the disposal of all its non-segregated MSW up to its annual Cap Tonnage. Should the price per ton be changed during the course of this agreement by the Rhode Island General Assembly or via the Rhode Island State budget process, The City of Providence agrees to pay the newly established municipal rate.

During the term of this Agreement, The City of Providence agrees to pay the Corporation the lower of either \$75.00/ton OR the 1000-ton commercial solid waste contract fee, which is currently \$54/ton, for disposal of all MSW in excess of its annual Cap Tonnage.

"Cap Tonnage" means the MSW tonnage established by the Corporation for each municipality. The MSW Cap is calculated in accordance with procedures set forth in Appendix B of the RI Solid Waste Management Plan (Plan) adopted by the RI Department of Administration Statewide Planning Program (Attachment I). The target waste diversion rate used in the cap calculation procedure is thirty-five percent (35%). Adjusted cap calculations shall be included as an addendum to this contract, and mailed and emailed to THE CITY OF PROVIDENCE by April 1 of the current fiscal year for the subsequent fiscal year. **The FY2012 municipal solid waste cap for the THE CITY OF PROVIDENCE is 51,621 tons.**

5. **BILLING AND PAYMENT.** The Corporation shall bill The City of Providence monthly for the disposal of MSW at the Landfill and The City of Providence agrees to pay all sums due within thirty (30) days of invoice date.
6. **EARLY PAYMENT DISCOUNT.** Upon receipt of full payment of an invoice within 20 days of the invoice date which brings the The City of Providence's outstanding balance to zero, The City of Providence shall receive a one-and-one-half percent (1.5%) discount from the invoice's amount. The City of Providence's eligibility expires monthly and is renewed monthly as stated in Section 5 with the issuance of each month's invoice.
7. **AGREEMENT EXECUTION DEADLINE.** THE CITY OF PROVIDENCE shall return a fully executed Agreement to the Corporation by close of business on August 1, 2011. The 1000-ton commercial contract solid waste disposal fee as referenced above shall be charged to THE CITY OF PROVIDENCE for each ton disposed beyond August 1, 2011 and up to the date the Agreement is fully executed, after which the MSW rate as set in Section 4 shall be applied. There shall be no retroactive adjustments made to any contract commercial solid waste disposal fees charged to THE CITY OF PROVIDENCE during the time THE CITY OF PROVIDENCE was

disposing MSW without a fully executed Agreement past the Agreement Execution Deadline.

8. **DELIVERY OF RECYCLABLES FOR PROCESSING.** THE CITY OF PROVIDENCE agrees to deliver to the Corporation's Materials Recycling Facility (hereinafter "MRF") at 33 Shun Pike in Johnston one hundred percent (100%) of the Recyclables which are collected within its borders under its municipal recycling program. The Corporation agrees to process and market one hundred percent (100%) of said Recyclables. For purposes of this Agreement, "Recyclables" generally include but are not limited to materials generated by a household during the normal course of the day and which are then placed in recycling containers set out for collection or delivery to a recycling drop off, such as: aluminum and steel tin-lined cans; aluminum foil and aluminum scrap such as pie plates; metal lids; empty steel aerosol and latex paint cans; scrap metal small enough to fit inside a 22-gallon blue recycling bin; glass bottles and jars; polyethelene teraphthalate plastic bottles and jugs; high density polyethelene plastic bottles and jugs; paper milk cartons and juice boxes; mail; magazines and catalogs; writing paper; corrugated cardboard; paperboard (e.g. cereal boxes); newspaper and newspaper inserts; brown (Kraft) paper bags; and telephone directories. THE CITY OF PROVIDENCE agrees to deliver these Recyclables regardless of whether these Recyclables are collected in a curbside program or through a drop-off program. Additional materials may be allowed in the program and subject to the terms of this Agreement pursuant to revisions of the RI Department of Environmental Management Municipal Recycling Regulations.
9. **TRANSFER OF RECYCLABLES.** THE CITY OF PROVIDENCE must apply to the Corporation in writing for permission to use a transfer station to transfer Recyclables from a curbside collection vehicle to a trailer truck for transport to the MRF. Recyclables can be transferred only if the Corporation grants, in writing, permission to do so under the following conditions:
 - a. The transfer station to be used by the City of Providence must be initially inspected and certified by the Corporation before the transfer of Recyclables can begin.
 - b. The City of Providence must fully comply with all terms and conditions of the Corporation's Recyclables Transfer Policy.
 - c. The City of Providence must demonstrate to the Corporation's satisfaction that the transfer of Recyclables according to the aforementioned Recyclables Transfer Policy will result in a significant cost saving.
 - d. The Corporation shall retain the right to additionally inspect the transfer station with respect to the transfer of Recyclables. If the transfer station is privately-owned, the Corporation's inspection rights must be granted before permission to transfer Recyclables is granted.
 - e. The Corporation also reserves the right to audit any weight transaction reports pertaining to the transfer of The City of Providence's Recyclables.
 - f. If the Recyclables Transfer Policy or any part of this Section 9 is violated in any way by The City of Providence or The City of Providence's hauler for any reason, the Corporation may terminate this Agreement.
10. **MUNICIPAL RECYCLABLES TIP FEE FREE.** Municipal Recyclables, as delineated in Section 8 of this Agreement, shall be delivered to the MRF at 33 Shun Pike, Johnston by The City of Providence and accepted for processing by the Corporation tip fee free, pursuant to 23-19-31.

11. **DISPOSAL FEES FOR OTHER MATERIALS.** PROPOSED FEES EFFECTIVE FISCAL YEAR 2012 (pending Board of Commissioners approval):

a. **White Goods.** THE CITY OF PROVIDENCE agrees to pay the Corporation a fee of \$0.00 per ton for white goods, and when applicable, a \$12.00 per unit Freon Removal Fee.

b. **Leaf & Yard Waste.** For the term of this agreement and pursuant to Rhode Island General Law Chapter 23-19-3, THE CITY OF PROVIDENCE agrees to pay the Corporation a fee of \$0.00 per ton for leaf and yard waste up to its annual leaf and yard waste Cap. "Cap" shall mean the leaf and yard waste tonnage established by the Corporation for each municipality. **The FY 2012 Leaf & Yard Waste Cap for the THE CITY OF PROVIDENCE is 4,451 tons.** The leaf and yard waste Cap is calculated by multiplying the municipal population (as determined by the State of Rhode Island Statewide Planning Population Projections) by .025 tons as established by state law. Leaf and yard waste caps shall be adjusted annually. THE CITY OF PROVIDENCE agrees to pay the Corporation \$25.00 per ton for the disposal of all leaf and yard waste in excess of its annual leaf and yard waste cap.

Municipalities shall have the opportunity to request leaf and yard waste cap from each other to hedge against overages. The Leaf and Yard Waste Cap Sharing Policy is attached to this agreement as Appendix A.

c. **Tires.** The City of Providence agrees to pay the Corporation:

- 1) A fee of \$25.00 per ton for segregated loads of waste tires, or
- 2) A fee of \$7.00 per segregated waste tire, or
- 3) A fee of \$15.00 per waste tire landfilled.

d. **Mattresses and Box Springs.** The City of Providence agrees to pay the Corporation:

- 1) A fee of \$250.00 per ton for segregated loads of mattresses and/or box springs, or
- 2) A fee of \$10.00 per unit for segregated mattresses and/or box springs, or
- 3) A fee of \$50.00 per unit for landfilled mattresses and box springs.

e. **Construction and Demolition Debris (C&DD).** Material delivered by a the City of Providence from the the City of Providence's transfer station that meets the Corporation's minimum specifications for landfill daily cover material and is accepted by the Corporation to be processed for use as daily cover material shall be termed Municipal C&DD and shall be charged a Municipal C&DD rate of \$32.00 per ton. Acceptable Municipal C&DD is only that material as defined by RI Department of Environmental Management Solid Waste Regulation 1.3.47 that is delivered by a the City of Providence. Municipal C&DD is not considered MSW and therefore the Municipal C&DD tonnage will not be applied against the City of Providence's annual Cap Tonnage as defined in Section 4.

f. **Rejected Loads.** There will be a \$100 equipment use fee assessed for any load of municipal recyclables that are rejected by the MRF and that must be reloaded into a vehicle. The tonnage associated with the rejected load will be charged to either the the City of Providence's hauler or to the the City of Providence at its MSW rate.

MRF Load Inspection and Rejection Procedure

Inbound loads of recyclable material are inspected by the MRF staff to ensure that the

minimum quality standards are met. The minimum quality standard is defined as a load having no more than 10% of non-recyclable material by either weight or volume. (See Attachment II for recyclable material specifications). Loads may also be rejected upon discovery of items that would cause damage to MRF equipment or personnel, such as, but not limited to, garden hoses, chains, cables, bricks, dead animals, propane tanks, or metal pipes. The rejection of a load by the MRF inspector is binding on all parties. Rejected loads are subject to a \$100 processing fee, due to required clean up of the tipping floor. Continued failure of a customer to meet the minimum quality standards could result in the termination of the agreement. THE CITY OF PROVIDENCE shall have the right to appeal the termination of the Agreement, and the appeal shall be heard by the Corporation's Board of Commissioners. The Corporation will notify the the City of Providence verbally and electronically (e-mail) regarding any rejected loads. This notification will occur no later than the close of business on the day of the rejected load.

12. **COMPOST FOR CONTRACT MUNICIPALITIES.** The Corporation will, from time to time, make finished compost available free of charge to those municipalities with Solid Waste and Recycling Services Agreements who have **also** delivered leaf and yard waste to the Corporation. When finished compost is available for free distribution to the aforementioned municipalities, the Corporation will provide notice and the municipalities will be allowed to pick up free compost for their use.
13. **RECYCLING INCENTIVES.** As recommended by the RI Solid Waste Management Plan adopted by the RI Department of Administration Statewide Planning Program, the Corporation will continue its municipal recycling funding program to assist Rhode Island municipalities with the cost of improving waste reduction and recycling programs in order to achieve increased waste diversion rates. To be eligible to participate in the recycling incentive program, municipalities must have a current, fully executed Agreement with the Corporation. The incentive program shall include:
 - a. When Corporation finances allow, the Materials Recycling Facility (MRF) profit share that will be based on a consistent measure of profit from the MRF operation and shared 50-50 between RIRRC and the municipalities as a group. The municipal share shall be distributed to those municipalities with executed Agreements based on the per ton pro rata share of municipal recyclables delivered to the MRF. The MRF profit will be calculated as the revenue derived from the sale of all MRF Commodities less: all direct operating expenses from the MRF facility, capital depreciation associated with the MRF, disposal of process residue from the MRF, program grants and funding provided to municipalities, and a share of RIRRC administrative overhead. In the event that RIRRC contracts with a third party to operate the MRF, the municipal profit share will be 50 percent (50%) of the revenues received by the Corporation from the operating contract less program grant funding and other subsidies provided to municipalities. THE CITY OF PROVIDENCE must use the recycling profit shares to further enhance and expand the municipal recycling and diversion program.
 - b. When Corporation finances allow, a competitive waste reduction and recycling program enhancement grant program will provide funding for RIRRC approved municipal proposals for enhanced recycling programs or procedures which support the Corporation's objectives of increasing waste diversion. Grant awards must be used solely for the purpose and program for which the the City of Providence's grant application has been approved. Grants are not transferable, either year to year or entity to entity.

- c. A twenty five percent (25%) discount shall be applied to the Corporation's wholesale price for standard curbside recycling bins (excludes toters/carts, deskside, apartment sized, and other specialty recycling containers).

Condition - The Corporation will offset any and all profit share funds from the City of Providence with a receivable greater than 60 days on the Corporation's monthly Account Receivable Aged Balance Report.

- 14. **INFORMATION.** If The City of Providence engages the services of a private company or contractor to collect and/or transport MSW, including Segregated Solid Waste and Recyclable materials, then a copy of this Agreement shall be included in any request for bids and incorporated as a part of any agreement between The City of Providence and the private party/contractor and the agreement between The City of Providence and the private party/contractor shall expressly require the private party/contractor to abide by the terms of this Agreement.

15. **TERMINATIONS AND REMEDIES.**

TERMINATIONS. This Agreement may be terminated due to:

- a. Breach of any duty and/or obligation under this Agreement which is not cured within thirty days of notice by either party.
- b. Change of circumstances which prohibit or significantly impair either party's ability to perform its duties and/or obligations under this Agreement.
- c. The Corporation has the absolute right in its sole discretion to terminate this Agreement and prohibit any deliveries if the Corporation determines that The City of Providence is not abiding by the terms of this Agreement or is otherwise not acting in conformance with Rhode Island laws and/or State regulations. Termination of disposal rights shall take effect five (5) business days after notification of termination. THE CITY OF PROVIDENCE shall have the right to appeal any termination of the Agreement, and the appeal shall be heard by the Corporation's Board of Commissioners.

REMEDIES. Failure of The City of Providence or the Corporation to perform the obligations hereunder shall constitute a breach of contract. Ten business days after providing the other party with notice of a breach of contract, a party may take any or all of the following steps:

- a. commence an action for damages and for injunctive relief;
- b. pursue any other remedies available to it by law; and/or
- c. The Corporation may refuse to provide The City of Providence with any Solid Waste Disposal or Recycling services or The City of Providence may refuse to bring all Solid Waste and Recyclables to The Corporation's facilities.

Any delay or failure in the performance by either party hereunder shall be excused to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, and other like events that are beyond the reasonable anticipation and control of the party affected thereby, despite such party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to the party's

failure to perform its obligations under this Agreement.

16. **UNACCEPTABLE MATERIALS.** Neither Solid Waste nor Recyclables delivered pursuant to this Agreement may contain any waste generated or collected outside the State of Rhode Island, hazardous waste, as defined in Subsection 23-19.1-4 (4) (i) of the Rhode Island General Laws or any other waste which U.S. Environmental Protection Agency, R.I. Department of Environmental Management or Corporation statutes or regulations prohibit for disposal at the Landfill.
17. **LICENSE RESTRICTIONS AND REQUIREMENTS.** The Corporation is currently utilizing the Phase V landfill cell to dispose of MSW and may begin to use Phase VI during the course of this agreement. The City of Providence agrees to be bound by any additional requirements and/or restrictions, which may be imposed by the RI Department of Environmental Management as a requirement of the Phase V and Phase VI operating license or by a change in the regulations.
18. **HOURS OF OPERATION.** The normal hours for receiving Solid Waste at the Landfill are Monday through Friday from 6:00 a.m. to 3:45 p.m., and Saturday 6:00 a.m. to 12:00 p.m., (except following a holiday, whereby the Landfill will remain open until 2:00 p.m. on Saturday). Normal hours for receiving recyclables at the MRF are 6:00 a.m. to 3:30 p.m. Monday through Friday, and Saturday 6:00 a.m. to noon. The Corporation may change these hours upon reasonable notice to The City of Providence. Municipalities may request an extension of the normal hours of operation due to extreme or unforeseen events, such as natural disasters. The Corporation has sole discretion to grant such requests.
19. **ASSIGNMENTS** The City of Providence may not assign, transfer, broker or otherwise vest in any other municipality, entity or person, any of its rights or obligations under this Agreement without first obtaining the prior written consent of Corporation. Corporation may sell or assign any of its rights or obligations under this Agreement to any other entity, provided that Corporation shall provide written notice of same to The City of Providence, which shall have the option to terminate this Agreement within fifteen (15) days of receiving the notice provided, however, that The City of Providence shall have no termination option if the sale or assignment is to an entity or agency of the State of Rhode Island.
20. **INDEMNIFICATION.**
 - a. Corporation agrees to indemnify, save harmless, and defend The City of Providence from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, caused, in whole or in part, by any negligent or willful act or omission of Corporation's employees, agents, or contractors in the performance of this Agreement; or any violation by Corporation of any applicable law, rule, or regulation.
 - b. The City of Providence agrees to indemnify, save harmless, and defend Corporation from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and the expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which Corporation may incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on Corporation's property or the environment, caused, in whole or in part by any negligent

or willful act or omission of The City of Providence's employees, agents, or contractors in the performance of this contract; or any violation by The City of Providence of any applicable law, rule, or regulation.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.
22. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island.
23. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding reached between the parties hereto with respect to The City of Providence's use of the Corporation's Facilities, and shall supersede or replace any prior understandings or agreements, whether or not in writing.
24. **SEVERABILITY.** If any provision of this Agreement is declared invalid by any tribunal, the remaining provisions of the Agreement shall not be affected thereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

FOR THE RHODE ISLAND RESOURCE RECOVERY CORPORATION:

BY: _____
Michael J. OConnell, Executive Director

Dated: _____

BY: _____
Sarah Kite, Director of Recycling Services

Dated: _____

FOR THE THE CITY OF PROVIDENCE:

BY: Angel Taveras
(SIGNATURE)

Dated: 6/25/11

Angel Taveras
(NAME/PRINTED OR TYPED)

Title: MAYOR

The execution of this Agreement has been properly authorized by the governing body of The City of Providence and is executed by the properly authorized official.

Jeffrey M. Padwa
City Solicitor

Dated: 5/24/11