

**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: 10/14/2013  
Item No.: 13.b

Department Approval



City Manager Approval



Item Description: Approve Contract with Eureka Recycling for Recycling Services

**BACKGROUND**

Roseville has contracted for curbside recycling service since 1992 and multi-family recycling service since 2003. The current contract expires at the end of 2013. The Council directed staff to issue a Request For Proposals (RFP) for recycling services in July 2013. Three companies submitted proposals for recycling services: Allied Waste, Eureka Recycling, and Waste Management. At the August 26<sup>th</sup> council meeting the City Council authorized staff to negotiate a three year contract with Eureka Recycling with vendor owned carts. Staff was notified shortly thereafter of a pending motion to reconsider at the September 9, 2013 council meeting. The motion failed for a lack of a second at that meeting. Staff began negotiating the contract shortly thereafter with Eureka Recycling.

The original schedule called for final approval of a contract at the September 9<sup>th</sup> meeting to meet a January 1<sup>st</sup> rollout completion. Eureka requested certain changes to the roll out date in the negotiation discussions and a change to the termination language from the current contract. After considerable communication with Eureka over the rollout date and termination language we are at a point where they have offered three alternatives to the cart roll out schedule, two with additional cost to the city. Staff represented the request for proposal requirement that roll out be completed by December 27<sup>th</sup>.

*Option 1*

Delay the rollout to February 17<sup>th</sup> to allow for a survey of residents to ensure the correct cart size to meet the residents needs is delivered. The proposed pricing would be effective January 1<sup>st</sup> with the current bin service continuing until February 17<sup>th</sup>. There would be no additional cost impact from the proposed pricing with this option. The roll out plan submitted with the Eureka proposal identified the need to survey residents first prior to ordering the carts to minimize change out risk.

*Option 2*

Continue with a roll out of carts by January 1st without a survey of residents. Eureka is requesting the city purchase additional carts for exchange due to anticipated higher exchange of carts due to the lack of the survey. Eureka anticipates many residents to need larger than the 65 gallon cart due to increased set out rates and the 65 gallon cart with a bi weekly program having less capacity than two 18 gallon bins that currently may be filled weekly. They also would bill the city for excessive overflow servicing of carts until the carts can be exchanged for the appropriate size. The additional cost impact for this option is estimated to be \$42,600 plus cart swapping costs.

34

35 *Option 3*

36 Meet the January 1 roll out requirement without a survey of residents but order all 96 gallon carts  
37 due to anticipated higher set out rates. The carts costs will be higher than the RFP specified 65  
38 gallon cart costs due to the larger size. The additional costs to the city is proposed at \$34,000.  
39 Eureka would incur the additional costs for change out and inventory carts as required in the  
40 RFP.

41 All of these options are less cost than the next bidder for these services, Allied Waste. We have  
42 not contacted Allied at this time but anticipate they may be unable to meet a January 1 roll out at  
43 this time as we would need to negotiate a contract for approval by the City Council and they  
44 would need to place a cart order which we understand to be a 2 month turn around until delivery.  
45 This may leave the city without a recycling provider unless an agreement could be reached with  
46 Eureka Recycling to continue current service until a new provider can be ready to begin service.  
47 Considering a contract with the next bidder would also require a significant increase in the  
48 current recycling fee.

49 *Contract*

50 Attached is the proposed contract (Attachment A). Eureka requested changes to the termination  
51 clause. (Section 9) The additional language would reimburse Eureka for unamatorized  
52 equipment purchased to service this contract should the city terminate the contract without cause.  
53 An amatorization table is attached to the contract to detail the cost at various stages of the  
54 contract term.

55 We have also included the proposed language for all thre roll out options for the Council to  
56 consider. The final contract will be edited to reflect the final approved language.

57 The City Attorney has reviewed the proposed contract and termination clause and finds the  
58 proposed language reasonable. Staff recommends the Council consider option one as it  
59 preserves the pricing as proposed beginning January 1, 2013 and resident continue with the  
60 current bin service until the cart roll out in February. This results in the lowest cost option to the  
61 city and will enable the greatest reduction in recycling fees to residents. Roseville residents  
62 would receive one of the lowest cost recycling fees in Ramsey County.

63 **POLICY OBJECTIVE**

64 Meet the Imagine Roseville 2025 goal that Roseville is an environmentally healthy community  
65 by providing recycling service for residents. As a result we competitively bid for these  
66 contracted services to ensure an effective program at reasonable pricing.

67 **BUDGET IMPLICATIONS**

68 The Recycling Program is operated as an enterprise fund. Income to the fund comes from three  
69 sources: resident fees, revenue share from the sale of material and an annual SCORE grant of  
70 approximately \$65,000. Any additional costs associated with the program would need to come  
71 from increased resident fees. The rates are typically set by the Council in November.

72 The proposed three year contract is expected to decrease the residential recycling fee to  
73 residents approximately 20%. Currently the resident recycling fee is \$6.00 per quarter and the  
74 Finance Director estimates the new fee will be less than \$5.00 per quarter based on preliminary  
75 fee analysis. He will do a more detailed analysis on the rate later this year prior to the Council  
76 setting 2014 fees.

77 A summary of the costs for the various options is as follows:

78

<b>Eureka Recycling</b>	<b>Estimated Quarterly Recycling Fee</b>
Option 1	\$5.00
Option 2	\$5.75
Option 3	\$5.50
<b>Allied Waste</b>	<b>\$7.00</b>
<b>Current Quarterly Fee</b>	<b>\$6.00</b>
<b>3 Year Difference Eureka Option 1 (Versus Allied Waste Proposal)</b>	<b>\$370,000 less</b>
<b>3 Year Difference Eureka Option 2</b>	<b>\$335,000 less</b>
<b>3 Year Difference Eureka Option 3</b>	<b>\$320,000 less</b>

79

80 **STAFF RECOMMENDATION**

81 Staff recommends the Council approve the attached contract with Eureka Recycling with a cart  
82 roll out in February 2013 and pricing effective January 1, 2013.

83 **REQUESTED COUNCIL ACTION**

84 Motion to approve a three year contract with Eureka Recycling.

85

Prepared by: Duane Schwartz, Public Works Director  
Attachments: A: Contract

# Agreement for Comprehensive Recycling Services

This Agreement (“Agreement”) is made on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, between the City of Roseville, a municipal corporation (hereinafter “City”), and The Neighborhood Recycling Corporation d.b.a. Eureka Recycling, a Minnesota Corporation, with its principal place of business at 2828 Kennedy Street Northeast, Minneapolis, Minnesota 55413 (hereinafter “Contractor”).

## Preliminary Statement

The City has adopted a policy regarding the selection and hiring of contractors to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the performance of professional services by the Contractor.

The City and Contractor agree as follows:

1. **Scope of Work Proposal.** The Contractor agrees to provide the comprehensive recycling services shown in Section 5 (General Requirements for All Collections), Section 6 (Annual Reporting and Promotional Activities) and Section 7 (Materials Processing and Marketing) of the City’s Request for Proposals (“Work”) in consideration for the compensation set forth in Provision 3 below. The Work shall be performed using Single-Stream Collection illustrated in the Project Capability Plan, the Community Values Plan and the Value Added Plan of the Contractor’s Proposal in the designated zones detail in the Recycling Zones Map. The performance of the Work shall be subject to the provisions contained in Section 8.05 (Liquidated Damages) of the Request for Proposals which provisions are incorporated into and made an integral and binding part of this Agreement. Section 5, 6, 7, 8.05 and the Project Capability Plan, the Community Values Plan and the Value Added Plan of the Contractor’s Proposal and the Recycling Zones Map are attached hereto as Exhibit A.

(Option 1)

Contractor shall survey residents as to their preferred cart size. That survey shall include (at a minimum) bin dropped material, a phone hotline, online ordering and a city-wide mailing. Contractor shall deliver carts beginning Monday, February 3, 2014 with collection of recyclables using the carts to commence on Monday, February 17, 2014.

The Contractor shall pay all costs associated with the initial cart order and rollout. The Contractor shall pay all costs for swapping out the carts.

44 The Contractor will maintain a sufficient new and replacement cart inventory that will be  
45 purchased by the Contractor. The Contractor shall, at its own expense, service and repair  
46 carts to meet supply and demand needs for the entire term of the contract.  
47

48 For plastics that residents set out for recycling for which there are no viable markets  
49 (specifically post-consumer #3 PVC plastic packaging or #6 Polystyrene plastic, low or  
50 high densities) if the Contractor can determine an item is #3 or #6 plastic prior to  
51 dumping the cart they will leave it behind with a tag. Some plastics for which there are no  
52 viable markets will arrive at the processing facility. The Contractor will do its best to  
53 separate these unrecyclable plastics out from the rest of the recyclable plastics at the  
54 processing facility.  
55

56 The City and the Contractor shall develop a work plan annually. The work plan shall  
57 include initiatives the Contractor will undertake to improve the City's recycling program.  
58

59 (Option 2)

60 Contractor shall deliver 64-gallon carts to single-family homes in December 2013.  
61 Residents who wish to use a different size cart shall call the contractor's hotline 651-222-  
62 7678 to make their request. The Contractor shall pay all costs associated with the initial  
63 cart order and rollout. The Contractor will place an order for replacement carts in April  
64 2014. That order shall be paid by the City. The Contractor shall pay all costs for  
65 swapping out the carts.  
66

67 The Contractor will maintain a sufficient new and replacement cart inventory that will be  
68 purchased by the Contractor. The Contractor shall, at its own expense, service and repair  
69 carts to meet supply and demand needs for the entire term of the contract.  
70

71 (Option 3)

72 Contractor shall deliver 96-gallon carts to single-family homes in December 2013.  
73 Residents who wish to use a different size cart shall call the contractor's hotline 651-222-  
74 7678 to make their request. The Contractor shall pay for the cost of ordering the carts.  
75 The City shall reimburse the Contractor for the cost difference between 64 and 96 gallon  
76 carts. Contractor shall pay the all costs associated with the rollout. The Contractor will  
77 place an order for replacement carts in April 2014. That order shall be paid by the City.  
78 The Contractor shall pay all costs for swapping out the carts.  
79

80 The Contractor will maintain a sufficient new and replacement cart inventory that will be  
81 purchased by the Contractor. The Contractor shall, at its own expense, service and repair  
82 carts to meet supply and demand needs for the entire term of the contract.  
83

84 2. **Term.** The term of this Agreement shall be from January 1, 2014, through December 31,  
85 2016, the date of signature by the parties notwithstanding.  
86

87 3. **Compensation for Services.** The City agrees to pay the Contractor pursuant to the  
88 relevant portions of Attachment E-1 of the Contractor's proposal attached hereto as  
89 Exhibit B and as follows:

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City agrees to pay Contractor \$2.22 per residential dwelling unit per month in 2014 for weekly curbside collection, processing and marketing of recyclables. For 2014 the City certifies that there are 9,611 residential curbside units that will receive service. The City will notify the Contractor by December 1 of each year what the certified number of curbside units will be for the subsequent year. In 2015 the City will pay Contractor \$2.26 per residential dwelling unit per month; and \$2.31 per residential dwelling unit in 2016.

The City agrees to pay Contractor \$2.22 per certified multi-family dwelling unit per month in 2014. City shall determine the number of units that will receive service during a given month by the last Monday of the previous month. For 2011 the City certifies that there are 6,076 residential multi-family dwelling units. In 2015 the City will pay Contractor \$2.26 per multi-family dwelling unit per month; and \$2.31 per multi-family dwelling unit in 2016.

Compensation will be subject to the following:

- A. Any changes in the Work which may result in an increase to the compensation due the Contractor shall require prior written approval of the City. The City will not pay additional compensation for Work that does not have such prior written approval.
- B. Third party independent contractors and/or subcontractors may be retained by the Contractor when required by the complex or specialized nature of the Work when authorized in writing by the City. The Contractor shall be responsible for and shall pay all costs and expenses payable to such third party contractors unless otherwise agreed to by the parties in writing.

4. **City Assistance.** The City agrees to provide the Contractor with the following assistance concerning the Work to be performed hereunder:

- A. Depending on the nature of the Work, Contractor may from time to time require access to public and private lands or property. To the extent the City is legally and reasonably able, the City shall provide access to and make provisions to enable the Contractor to enter upon public and private land and property as required for the Contractor to perform and complete the Work.
- B. The City shall furnish the Contractor with a copy of any special standards or criteria promulgated by the City relating to the Work that is needed by the Contractor in order to prepare for the performance of the Work.
- C. When dealing with contamination issues at multi-family properties, the City will assist the Contractor to obtain cooperation from the building owner/manager in removal of trash and separation of acceptable materials so that the carts can be serviced.

135 D. The City's Public Works Director or designee shall act as the City's representative  
136 with respect to the Work to be performed under this Agreement. Such representative  
137 shall have authority to transmit instructions, receive information, interpret, and define  
138 the City's policy and decisions with respect to the Work to be performed under this  
139 Agreement, but shall not have the right to enter into contracts or make binding  
140 agreements on behalf of the City with respect to the Work or this Agreement.  
141

142 5. **Method of Payment.** The Contractor shall submit to the City, on a monthly basis, an  
143 itemized invoice for Work performed under this Agreement. The Contractor shall verify  
144 all statements submitted for payment in compliance with Minnesota Statutes Sections  
145 471.38 and 471.391. Invoices submitted shall be paid in the same manner as other claims  
146 made to the City. To receive any payment pursuant to this Agreement, invoices shall  
147 contain the following:  
148

149 A. The current billing and past payments.

151 B. The following statement dated and signed by the Contractor: "I declare under penalty  
152 of perjury that this account, claim, or demand is just and correct and that no part of it  
153 has been paid."  
154

155 The payment of invoices shall be subject to the following provisions:  
156

157 A. The City shall have the right to suspend the Work to be performed by the  
158 Contractor under this Agreement when it deems necessary to protect the City,  
159 residents of the City or others who are affected by the Work. If any Work to be  
160 performed by the Contractor is suspended in whole or in part by the City, the  
161 Contractor shall be paid for any services performed prior to the delivery upon  
162 Contractor of written notice from the City of such suspension.  
163

164 B. The Contractor shall be reimbursed for services performed by any third party  
165 independent contractors and/or subcontractors only if the City has authorized the  
166 retention of and has agreed to pay such persons or entities pursuant to Section 3B  
167 above.  
168

169 Contractor shall, each quarter, pay the City one hundred percent of the net revenue from  
170 the sale of the recyclables. Net revenue will be calculated by multiplying the tons of  
171 individual material collected by the agreed upon market indices (indicated in the RFP)  
172 minus the processing fee of \$74 per ton for all recyclables processed. Because the owner  
173 of the Yellow Sheet Index discontinued the category Mixed Paper #1, the City and  
174 Contractor agree to replace that index with OMB Yellow Sheet, Chicago region for  
175 Mixed Paper #2, high side of the range.  
176

177 For commodities where revenue is based on Market pricing the Contractor shall provide  
178 copies of Load Verification Forms detailing the amount of material sold, the vendor, and  
179 the price paid. The Load Verification Forms shall be included with the Contractor's  
180 monthly report to the City. The following commodities will use Market pricing

181 confirmed by Load Verification Forms: Aseptic Cartons; Clothes, Linens and Rags; and  
182 Other Plastics  
183

184 6. **Project Manager and Staffing.** The Contractor has designated Christopher Goodwin,  
185 Director of Customer Relations (“Project Contact”) as the person for the City to contact  
186 and communicate with regarding the performance of the Work. The Project Contact shall  
187 be assisted by other employees of the Contractor as necessary to facilitate the completion  
188 of the Work in accordance with the terms and conditions of this Agreement. Contractor  
189 may not remove or replace Project Contact without 30 days written notice to the City.  
190 Contractor designates (651) 222-SORT (7678) as the number for residents to call with  
191 questions, concerns and complaints.  
192

193 7. **Standard of Care.** All Work performed by the Contractor under this Agreement shall be  
194 in accordance with the normal standard of care in Ramsey County, Minnesota, for  
195 professional services of like kind.  
196

197 8. **Audit Disclosure.** Any reports, information, data and other written documents given to,  
198 or prepared or assembled by the Contractor under this Agreement which the City requests  
199 to be kept confidential shall not be made available by the Contractor to any individual or  
200 organization without the City’s prior written approval. The books, records, documents  
201 and accounting procedures and practices of the Contractor or other parties relevant to this  
202 Agreement are subject to examination by the City and either the Legislative Auditor or  
203 the State Auditor for a period of six (6) years after the effective date of this Agreement.  
204 The Contractor shall at all times abide by Minn. Stat. § 13.01 et seq. and the Minnesota  
205 Government Data Practices Act, to the extent the Act is applicable to data, documents,  
206 and other information in the possession of the Contractor.  
207

208 9. **Termination.** This Agreement may be terminated at any time by the City, with or  
209 without cause, by delivering to the Contractor at the address of the Contractor set forth on  
210 page 1, a written notice at least seven (7) days prior to the date of such termination. The  
211 date of termination shall be stated in the notice. Upon termination the Contractor shall be  
212 paid for services rendered (and reimbursable expenses incurred if required to be paid by  
213 the City under this Agreement) by the Contractor through and until the date of  
214 termination so long as the Contractor is not in default under this Agreement. *In addition,*  
215 *the Contractor shall be reimbursed for all unamortized costs for any and all equipment*  
216 *purchased to provide the services for the City of Roseville so long as the contractor is not*  
217 *in default under this agreement.* If however, the City terminates the Agreement because  
218 the Contractor is in default of its obligations under this Agreement, no further payment  
219 shall be payable or due to the Contractor following the delivery of the termination notice,  
220 and the City may, in addition to any other rights or remedies it may have, retain another  
221 contractor to undertake or complete the Work to be performed hereunder.  
222

223 10. **Subcontractor.** The Contractor shall not enter into subcontracts for services provided  
224 under this Agreement without the express written consent of the City. The Contractor  
225 shall promptly pay any subcontractor involved in the performance of this Agreement as  
226 required by the State Prompt Payment Act.



- 227  
228 11. **Independent Contractor.** At all times and for all purposes herein, the Contractor is an  
229 independent contractor and not an employee of the City. No statement herein shall be  
230 construed so as to find the Contractor an employee of the City.  
231
- 232 12. **Non-Discrimination.** During the performance of this Agreement, the Contractor shall  
233 not discriminate against any person, contractor, vendor, employee or applicant for  
234 employment because of race, color, creed, religion, national origin, sex, marital status,  
235 status with regard to public assistance, disability, sexual orientation or age. The  
236 Contractor shall post in places available to employees and applicants for employment,  
237 notices setting forth the provision of this non-discrimination clause and stating that all  
238 qualified applicants will receive consideration for employment. The Contractor shall  
239 incorporate the foregoing requirements of this Provision 12 in all of its subcontracts for  
240 Work done under this Agreement, and will require all of its subcontractors performing  
241 such Work to incorporate such requirements in all subcontracts for the performance of  
242 the Work. The Contractor further agrees to comply with all aspects of the Minnesota  
243 Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act  
244 of 1964, and the Americans with Disabilities Act of 1990.  
245
- 246 13. **Assignment.** The Contractor shall not assign this Agreement, nor its rights and/or  
247 obligations hereunder, without the prior written consent of the City.  
248
- 249 14. **Services Not Provided For.** No claim for services furnished by the Contractor not  
250 specifically provided for herein shall be paid by the City.  
251
- 252 15. **Compliance with Laws and Regulations.** The Contractor shall abide with all federal,  
253 state and local laws, statutes, ordinances, rules and regulations in the performance of the  
254 Work. The Contractor and City, together with their respective agents and employees,  
255 agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes  
256 Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any  
257 violation by the Contractor of statutes, ordinances, rules and regulations pertaining to the  
258 Work to be performed shall constitute a material breach of this Agreement and entitle the  
259 City to immediately terminate this Agreement.  
260
- 261 16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall  
262 not affect, in any respect, the validity of the remainder of this Agreement.  
263
- 264 17. **Indemnification.** The Contractor agrees to defend, indemnify and hold the City, its  
265 Council, officers, agents and employees harmless from any liability, claims, damages,  
266 costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or  
267 indirectly from a negligent act or omission (including without limitation professional  
268 errors or omissions) of the Contractor, its agents, employees, and/or subcontractors  
269 pertaining to the performance of the Work provided pursuant to this Agreement and  
270 against all losses by reason of the failure of said Contractor to fully perform, in any  
271 respect, all of the Contractor's obligations under this Agreement.  
272



319 requirements stated above, the following applies to the insurance policies required  
320 under this Provision:

- 321
- 322 a. All policies shall be written on an “occurrence” form (“claims made” and  
323 “modified occurrence” forms are not acceptable);
  - 324
  - 325 b. All policies, except the Worker’s Compensation Policy, shall contain a waiver of  
326 subrogation naming “the City of Roseville”;
  - 327
  - 328 c. All policies, except the Worker’s Compensation Policy, shall name “the City of  
329 Roseville” as an additional insured;
  - 330
  - 331 d. All policies, except the Worker’s Compensation Policy, shall insure the defense  
332 and indemnify obligations assumed by Contractor under this Agreement; and
  - 333
  - 334 e. All policies shall contain a provision that coverages afforded thereunder shall not  
335 be canceled or non-renewed or restrictive modifications added, without thirty (30)  
336 days prior written notice to the City.
  - 337

338 A copy of the Contractor’s insurance declaration page, Rider and/or Endorsement, as  
339 applicable, which evidences the compliance with this Paragraph 18, must be filed  
340 with City prior to the start of Contractor’s Work. Such documents evidencing  
341 insurance shall be in a form acceptable to City and shall provide satisfactory evidence  
342 that Contractor has complied with all insurance requirements. Renewal certificates  
343 shall be provided to City prior to the expiration date of any of the required policies.  
344 City will not be obligated, however, to review such declaration page, Rider,  
345 Endorsement or certificates or other evidence of insurance, or to advise Contractor of  
346 any deficiencies in such documents and receipt thereof shall not relieve Contractor  
347 from, nor be deemed a waiver of, City’s right to enforce the terms of Contractor’s  
348 obligations hereunder. City reserves the right to examine any policy provided for  
349 under this Provision 18.

- 350
- 351 E. If Contractor fails to provide the insurance coverage specified herein, the Contractor  
352 will defend, indemnify and hold harmless the City, the City’s officials, agents and  
353 employees from any loss, claim, liability and expense (including reasonable  
354 attorney’s fees and expenses of litigation) to the extent necessary to afford the same  
355 protection as would have been provided by the specified insurance. Except to the  
356 extent prohibited by law, this indemnity applies regardless of any strict liability or  
357 negligence attributable to the City (including sole negligence) and regardless of the  
358 extent to which the underlying occurrence (i.e., the event giving rise to a claim which  
359 would have been covered by the specified insurance) is attributable to the negligent or  
360 otherwise wrongful act or omission (including breach of contract) of Contractor, its  
361 contractors, subcontractors, agents, employees or delegates. Contractor agrees that  
362 this indemnity shall be construed and applied in favor of indemnification. Contractor  
363 also agrees that if applicable law limits or precludes any aspect of this indemnity,  
364 then the indemnity will be considered limited only to the extent necessary to comply

365 with that applicable law. The stated indemnity continues until all applicable statutes  
366 of limitation have run.

367  
368 Contractor shall execute and deliver to City a Performance and Payment Bond with a  
369 corporate surety in the sum of \$25,000.00 or equal (“equal” may include a Letter of  
370 Credit from a banking institution approved by City). This Contract will not become  
371 effective until such a bond, in a form acceptable to City, has been delivered to City and  
372 approved by the City Attorney.

373  
374 19. **Ownership of Documents.** All plans, diagrams, analysis, reports and information  
375 generated in connection with the performance of this Agreement (“Information”) shall  
376 become the property of the City, but the Contractor may retain copies of such documents  
377 as records of the services provided. The City may use the Information for any reasons it  
378 deems appropriate without being liable to the Contractor for such use. The Contractor  
379 shall not use or disclose the Information for purposes other than performing the Work  
380 contemplated by this Agreement without the prior consent of the City.

381  
382 20. **Dispute Resolution/Mediation.** Each dispute, claim or controversy arising from or  
383 related to this Agreement or the relationships which result from this Agreement shall be  
384 subject to mediation as a condition precedent to initiating arbitration or legal or equitable  
385 actions by either party. Unless the parties agree otherwise, the mediation shall be in  
386 accordance with the Commercial Mediation Procedures of the American Arbitration  
387 Association then currently in effect. A request for mediation shall be filed in writing with  
388 the American Arbitration Association and the other party. No arbitration or legal or  
389 equitable action may be instituted for a period of 90 days from the filing of the request  
390 for mediation unless a longer period of time is provided by agreement of the parties.  
391 Cost of mediation shall be shared equally between the parties. Mediation shall be held in  
392 the City of Roseville unless another location is mutually agreed upon by the parties. The  
393 parties shall memorialize any agreement resulting from the mediation in a Mediated  
394 Settlement Agreement, which Agreement shall be enforceable as a settlement in any  
395 court having jurisdiction thereof.

396  
397 21. **Annual Review.** Prior to each anniversary of the date of this Agreement, the City shall  
398 have the right to conduct a review of the performance of the Work performed by the  
399 Contractor under this Agreement. The Contractor agrees to cooperate in such review and  
400 to provide such information as the City may reasonably request. Following each  
401 performance review the parties shall, if requested by the City, meet and discuss the  
402 performance of the Contractor relative to the remaining Work to be performed by the  
403 Contractor under this Agreement.

404  
405 22. **Conflicts.** No salaried officer or employee of the City and no member of the Council of  
406 the City shall have a financial interest, direct or indirect, in this Agreement. The violation  
407 of this provision shall render this Agreement void.

408  
409 23. **Governing Law.** This Agreement shall be controlled by the laws of the State of  
410 Minnesota.

- 411  
412 24. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which  
413 shall be considered an original.  
414
- 415 25. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for  
416 any reason, held by a court of competent jurisdiction to be contrary to law, such decision  
417 shall not affect the remaining provisions of this Agreement.  
418
- 419 26. **Entire Agreement.** Unless stated otherwise in this Provision 26, the entire agreement of  
420 the parties is contained in this Agreement. This Agreement supersedes all prior oral  
421 agreements and negotiations between the parties relating to the subject matter hereof as  
422 well as any previous agreements presently in effect between the parties relating to the  
423 subject matter hereof. Any alterations, amendments, deletions, or waivers of the  
424 provisions of this Agreement shall be valid only when expressed in writing and duly  
425 signed by the parties, unless otherwise provided herein.  
426

427 IN WITNESS WHEREOF, the undersigned parties have entered into this Agreement as  
428 of the date set forth above.  
429

430 CITY OF ROSEVILLE

431  
432  
433  
434  
435 \_\_\_\_\_  
436 Mayor

437  
438 \_\_\_\_\_  
439 City Manager

440  
441  
442 THE NEIGHBORHOOD RECYCLING  
443 CORPORATION

444  
445  
446 By: \_\_\_\_\_

447  
448 Its: \_\_\_\_\_  
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