



City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Resolution: 18-1201-RES

File Number: 18-0195

Enactment Number: 18-1201-RES

Requesting Approval of ECUA's Professional Services Agreement for Recyclables

WHEREAS, The Sanitation Department daily collects co-mingle recyclables as a service to the citizens of the City of Foley, and

WHEREAS, Emerald Coast Utilities Authority (ECUA) in Pensacola, Florida, has been accepting co-mingled recyclables from the City of Foley on a trial basis, which has come to an end, and

WHEREAS, ECUA in Pensacola, Florida, has submitted a proposal to accept all collected co-mingle recyclables from the City of Foley, in the amount of revenue or expense determined by a referenced market price index for recyclable commodities, and

WHEREAS, The Sanitation Department would like to enter into this professional services agreement with ECUA to dispose of collected co-mingled recyclables, and

WHEREAS, this contract agreement would be beneficial to both entities,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Accepts the professional services agreement with Emerald Coast Utilities Authority (ECUA) in Pensacola, Florida, concerning their acceptance of collected City of Foley recyclables.

SECTION 2: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, APPROVED AND ADOPTED this 6th day of August, 2018.



President's Signature

Date


8-8-18

Attest by City Clerk

Date

8-8-18

Mayor's Signature

A handwritten signature in blue ink, consisting of a large, stylized 'M' followed by a horizontal line and a small flourish.

Date

8/8/18

INTERLOCAL AGREEMENT FOR THE ACCEPTANCE AND PROCESSING OF SOURCE SEPARATED RECYCLABLES

This Interlocal Agreement for the Acceptance and Processing of Source Separated Recyclables (hereinafter "Agreement") is made and entered into as of this ____ day of _____, 2018, by and between the Emerald Coast Utilities Authority, a local governmental body, corporate and politic, which was formed by the Florida Legislature as an independent special district (hereinafter "ECUA"), with administrative offices located at 9255 Sturdevant Street, Pensacola, Florida 32514, and the City of Foley, Alabama, a municipal corporation of the State of Alabama (hereinafter "City" or "City of Foley"), with administrative offices located at 407 East Laurel Avenue, Foley, Alabama 36535 (each at times also being referred to as a "Party" or collectively as "Parties").

WITNESSETH:

WHEREAS ECUA is authorized by Section 163.01, Florida Statutes, to enter into Interlocal Agreements with cities in another State on a basis of mutual benefit and advantage, and thereby cooperatively utilize their powers and resources in the most efficient manner possible;

WHEREAS the City of Foley is authorized by Sections 11-102-1 and 11-89A-15, Code of Alabama, to enter into Interlocal Agreements with local governmental entities in another State which it believes to be mutually beneficial to both public entities;

WHEREAS the City of Foley has a curbside collection program for Source Separated Recyclables which residential and commercial customers in its service area have removed from the City's solid waste stream;

WHEREAS the Source Separated Recyclables collected by the City of Foley must be processed and sorted into separate commodities so as to facilitate their resale so that the recyclable materials may be recycled and put to beneficial use;

WHEREAS ECUA has built a Municipal Recycling Facility (MRF) which is able to process Source Separated Recyclables;

WHEREAS the City would like to deliver all of the Source Separated Recyclables it collects during the term of this Agreement to ECUA's MRF, so that the Source Separated Recyclables may be processed, segregated into recyclable commodities, and put to beneficial use;

WHEREAS both Parties have independently determined that entry into this Agreement will be mutually beneficial and inure to the benefit of their respective electorates; and

WHEREAS the Parties desire to clarify the terms and conditions under which the City may deliver and the ECUA MRF may accept Source Separated Recyclables collected by the City pursuant to its curbside collection program so they may be processed, segregated into recyclable commodities, and put to beneficial use.

NOW THEREFORE in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The recitals contained in the preamble to this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

2. Definitions. As used in this Agreement the following terms shall have the following meanings:

2.1 Applicable Law -- shall mean all applicable federal, state and local statutes, codes, ordinances and standards and all applicable rules, regulations, licenses, permits, registrations, approvals, decisions, authorizations, judgments, orders, writs, decrees, directives or other action adopted, issued or taken by an governmental authority.

2.2 Construction and Demolition Waste or C&D Waste -- shall mean waste building materials, packaging and rubble resulting from construction, remodeling, repair, or demolition operations on houses, commercial buildings, and other structures, or as otherwise defined from time to time. Such wastes include, but are not limited to, concrete and paving debris, masonry materials, sheet rock, roofing waste, insulation (not including asbestos or asbestos containing materials), scrap metal, wood products, wooden pallets, and other similar materials (not including asbestos or asbestos containing materials).

2.3 ECUA MRF -- shall refer to the Municipal Recycling Facility which was designed and constructed by ECUA and which is located at the Perdido Landfill at 13009 Beulah Road, Cantonment, Florida 32533.

2.4 Effective Date -- The Parties presently anticipate the Effective Date shall be _____, 2018, but the Parties will separately designate in writing an Effective Date after execution of this Agreement.

2.5 Garbage -- shall mean any putrescible animal and/or vegetative waste resulting from the handling, preparation, cooking and consumption of food, including, but not limited to, waste from markets, storage facilities, handling and sale of produce and other food products and further includes the packaging materials and containers, but excepting such materials that may be serviced by garbage grinders and handled as household sewage.

2.6 Hazardous Waste -- shall mean (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as may be amended from time to time, including: (i) the Resource Conservation and Recovery Act of 1976 ("RCRA") and the regulations contained in 40 CFR Parts 260-281, (ii) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766, and (iii) future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage, or disposal of toxic substances, or hazardous wastes; (b) radioactive materials, which are source, special nuclear, or by-product materials, as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40; (c) a chemical listed by the United States Environmental Protection Agency in accordance with Section 302(a)

or Section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §§ 11002(a), 110239(c) (Supp. 1993), in each case as the same may be amended, replaced, or superseded; (d) a material or substance which may endanger health or safety, including any material or substance or combination of materials or substances which are explosive, volatile, radioactive, toxic, corrosive, flammable, reactive, an irritant or a strong sensitizer, or which generate pressure through decomposition, heat or other means if such materials or substances may cause injury, illness or harm to humans, domestic animals, livestock or wildlife; (e) a material falling within the definition of Fla. Stat. § 403.703(13); or (f) a material or substance that is treated as a hazardous or toxic waste, substance, or material by any Applicable Law or is otherwise prohibited from being deposited in a municipal solid waste processing facility under Applicable Law. Household Hazardous Waste contained in SSR shall not be considered Hazardous Waste for purposes of this Agreement and shall be accepted at the Facility if such acceptance is in compliance with the requirements of RCRA and the requirements of the MRF. With regard to materials or substances which are not Hazardous Waste as of the Effective Date, if any Applicable Law is subsequently enacted or amended or any governmental authority thereafter determines that such material or substance is a hazardous or toxic waste, substance or material, then such material or substance shall be considered Hazardous Waste for the purposes of this Agreement from and after the effective date of such enactment or amendment of Applicable Law or governmental authority determination.

2.7 Municipal Solid Waste or MSW -- shall mean Garbage, household waste, and commercial solid waste; provided that for the purposes of this Agreement, Municipal Solid Waste shall not include Source Separated Recyclables, C&D Waste, Hazardous Waste, Special Handling Waste, Unacceptable Waste, or scrap tires.

2.8 Perdido Landfill -- shall mean the landfill currently operated by Escambia County, Florida which is located at 13009 Beulah Road, Cantonment, Florida 32533.

2.9 Prohibited Materials -- shall mean Municipal Solid Waste, C&D Waste, Hazardous Waste, Special Handling Waste, Unacceptable Waste, Yard Waste, scrap tires and any other solid waste or material of any kind that the ECUA MRF is prohibited from accepting pursuant to agreement, Applicable Law, or operational constraints.

2.10 Recyclables -- shall mean various recyclable products and packaging designated by ECUA to be accepted at the MRF for processing, including various types of paper (including but not limited to newspaper, junk mail, magazines, office paper, cardboard and paperboard packaging), containers (including but not limited to glass bottles and jars, aluminum and steel cans, and #1 - #7 plastics), and mixed ferrous and non-ferrous metals. The term Recyclables shall not include styrofoam, pine straw, wooden pallets, clothing, oil, filters, and antifreeze. Additionally, the term Recyclables shall not include Municipal Solid Waste, Construction and Demolition Waste, Hazardous Waste, Special Handling Waste, Yard Waste, Unacceptable Waste, or scrap tires. The list of Recyclables may be expanded or contracted from time to time as determined by ECUA and the operator of the ECUA MRF, if any.

2.11 Rejects -- shall refer to materials collected along with the Recyclable Materials that are not designated by ECUA to be accepted at the ECUA MRF for processing.

2.12 Residue -- shall refer to Rejects and Recyclable Materials that are accepted by the operator of the ECUA MRF, processed at the ECUA MRF, and not converted to Recovered Materials due to breakage and/or transportation or processing limitations or inefficiencies.

2.13 Shutdown -- shall refer to those times in which the operator of the ECUA MRF is unable to receive Source Separated Recyclables for any reason except Force Majeure.

2.14 Source Separated Recyclables or SSR -- shall refer to Recyclables which (a) have been diverted or removed from the Municipal Solid Waste prior to collection, (b) are not C&D Waste, Hazardous Waste, Special Handling Waste, Yard Waste, Unacceptable Waste or scrap tires, (c) are not Municipal Solid Waste, and (d) the ECUA MRF is not prohibited from accepting and/or Processing under Applicable Law. The Parties acknowledge, however, that incidental amounts of Rejects may be collected and delivered with Source Separated Recyclables as a normal part of a recycling collection program.

2.15 Special Handling Waste -- shall mean any waste or other material that requires the delivery and disposal to be supervised by a government authority, including confiscated drugs and records of a police department or similar governmental authority.

2.16 This paragraph is intentionally left blank.

2.17 Unacceptable Waste -- shall mean (a) Hazardous Waste, explosives and ordinance materials, pathological wastes, radioactive materials, lead acid batteries, sewage sludge, highly flammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or other large machinery, construction materials and demolition debris and hazardous refuse addressed by regulations adopted by the United States Environmental Protection Agency ("EPA") pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state statutes, such as, but not limited to, cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid; (b) unless consented to by ECUA, any item of waste exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion; (c) all large household appliances, commonly referred to as White goods@ including refrigerators, stoves, washing machines, drying machines and water heaters; (d) any controlled substances regulated under the Controlled Substances Act, 21 USA 801 et seq., or any equivalent state law; (e) small appliances containing chlorofluorocarbons (CFCs) including air conditioners, water coolers, and dehumidifiers; (f) cathode ray tubes; and (g) all other items of waste which pose a substantial threat to health or safety or the acceptance and disposal of which will cause substantial damage to, or adversely affect the continuous operation of the MRF or be in violation of any Applicable Law. Any substance or material which is determined by the EPA or any other Governmental authority subsequent to the Effective Date hereof to be hazardous, toxic, dangerous, harmful, or otherwise designated as a "waste ban," shall, at the time of such determination, be considered Unacceptable Waste.

2.18 Yard Waste -- shall refer to vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

3. Term. The initial term of this Agreement shall begin on the Effective Date, as defined in paragraph 2.4, above, and end on September 30, 2019. Provided, however, that the Parties may extend the term of this Agreement upon mutual written agreement.

4. Delivery and Acceptance of Source Separated Recyclables.

a. *Diversion of Source Separated Recyclables to ECUA.* Beginning on the Effective Date and throughout the term of this Agreement, the City will deliver, or cause to be delivered at City's expense, to the ECUA MRF, all SSR collected by the City pursuant to its curbside collection program.¹

b. Right to Reject Loads Containing Excess Rejects. In the event that SSR delivered to the ECUA MRF contains Rejects in excess of twenty-five percent (25%) by weight, the entire load may be rejected by the operator of the ECUA MRF. In the event that such a rejection occurs, the City shall be liable for a processing fee of \$250 per load plus the disposal costs attributable to that entire load at the Perdido Landfill, at the rates established by Escambia County which are then in effect.² Moreover, in the event that the City's SSR has excess Reject contamination on three (3) separate loads within a thirty (30) day calendar period, the ECUA Executive Director or his designee, in his sole discretion, may terminate this Agreement and disqualify the City from further deliveries.

c. Compensation/Charges to City. The City shall be compensated / charged quarterly for each ton of SSR processed at the ECUA MRF, in accordance with paragraph 6 of this Agreement, below.

d. Composition Study. The Parties recognize that subsequent to acceptance at the ECUA MRF, the SSR subject to this Agreement will likely be commingled with materials from other entities. Therefore, in order to facilitate reporting and accounting requirements, the City has provided to ECUA a composition study of City-provided SSR, prior to the Effective Date of this Agreement. ECUA may reasonably require further composition studies from the City as ECUA deems necessary or convenient, in its sole discretion.

5. Disposal of Residue. The Parties acknowledge and understand that each load of SSR may contain Garbage, Unacceptable Waste, or other Rejects which cannot be recycled and put to beneficial use (collectively hereafter referred to as Residue). Because the SSR received from the City of Foley will likely be commingled with SSR generated from other jurisdictions, the Parties acknowledge and understand that it is impossible to therefore segregate the Residue by each entity. Accordingly, all such Residue shall be disposed of at the Perdido Landfill at no charge to the City.

¹ The ECUA MRF shall only be obligated to receive SSR at those times and on those days in which the ECUA MRF is operating, receiving SSR, and not Shutdown.

² In the event some or all of the load cannot be lawfully disposed of at the Perdido Landfill, City shall be liable for all disposal costs associated with the disposal selected by the operator of the ECUA MRF.

6. Compensation/Charges for Delivered Recyclables. The Parties acknowledge and understand that the market for various Recyclable Materials fluctuates greatly based upon various market conditions. In order to reflect that reality, and make this Agreement viable and mutually beneficial, the Parties agree that the City shall be either compensated or charged for the SSR processed at the ECUA MRF in accordance with the document attached hereto as Exhibit A, which is hereby incorporated by reference as if fully set forth herein, based upon weights measured at the scale house operated by Escambia County at the Perdido Landfill. However, on each September 26 in which this Agreement remains in effect, a new Exhibit shall be prepared in which each number in Exhibit A shall be automatically adjusted by one hundred percent (100%) of the percentage change in the most recently published Consumer Price Index for All Urban Consumers (the "CPI-U"), South Region, 1982-84 = 100, published by the United States Department of Labor, Bureau of Labor Statistics, over the twelve (12) months immediately preceding that date.

7. Billing. ECUA shall send a bill to the City within thirty (30) days of the end of each quarter of the calendar year which reflects all charges and credits due to the Parties pursuant to paragraph 6, above. All charges and/or credits shall be paid by the respective Party within forty-five (45) days of the end of each quarter of the calendar year.

8. Compliance with Law and Procedures. ECUA and the City shall perform their respective obligations under this Agreement in compliance with all Applicable Law. The City shall transport and handle SSR in its control in a safe and workmanlike manner and in full compliance with Applicable Law. ECUA shall further endeavor to maintain throughout the term of this Agreement, all permits, licenses, certificates, and approvals required by Applicable Law for the operation of the ECUA MRF.

9. Staffing at the ECUA MRF. The Parties understand that the ECUA MRF may be operated by either a third party selected by ECUA or by ECUA staff, in ECUA's sole discretion.

10. Title to Source Separated Recyclables. Upon acceptance of a load of SSR (as opposed to a rejection in accordance with paragraph 4.b, above), title to the SSR shall vest with the operator of the ECUA MRF.

11. City's Obligations Regarding Recyclables; Delivery of SSR; and Tonnage Limit.

a. Collection and Delivery Requirements. The City agrees to keep the curbside recycling program it presently has in place for residential and commercial solid waste customers in its service area throughout the term of this Agreement and any extensions thereof. The Recyclables which the City collects through its curbside recycling program include but are not necessarily limited to plastic containers (No. 1 through No. 7), aluminum cans, metal cans, paper, and cardboard. Throughout the Term of this Agreement, the City shall continue to operate and maintain its curbside recycling program, receiving comparable recyclables, and it shall deliver all Source Separated Recyclables it collects to the ECUA MRF. The City anticipates it will collect approximately 50 tons of SSR per month, and the Parties anticipate comparable levels throughout the Term of this Agreement. So long as the City delivers all of the SSR it collects to the ECUA MRF, however, the City is under no obligation to provide a minimum quantity of SSR to the ECUA MRF.

b. *Tonnage Limit.* It is anticipated that approximately 600 tons of SSR will be collected by the City each year. Accordingly, despite the requirements in paragraphs 4.a and 11.a above that all SSR collected at such facilities be delivered to the ECUA MRF, the City is limited to delivering 650 tons of SSR per year to the ECUA MRF, absent subsequent written agreement between the Parties pursuant to the notice provisions set forth in paragraph 13, below.

12. *Events of Default.* A Party shall be in default of this Agreement only upon the expiration of thirty (30) days (ten (10) days in the event of failure to pay money) from receipt of written notice of default from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to the expiration of said thirty (30) days (ten (10) days in the event of failure to pay money), has rectified the particulars specified in said notice of default; provided, however, that such Party shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such Party is using good faith and commercially reasonable and diligent efforts to rectify the particulars specified in the notice of default.

13. *Notices.* All notices called for under this Agreement shall be made in writing and delivered by hand, certified mail with return receipt, or overnight courier, as follows:

To City:

The Honorable John Koniar
Mayor City of Foley
Foley City Hall
P.O. Box 1750
Foley, Alabama 36535

With a copy to:

Casey Pipes
HELMSING, LEACH, HERLONG, NEWMAN & ROUSE, P.C.
P.O. Box 2767
Mobile, AL 36652

To ECUA:

Randy Rudd
Deputy Executive Director of Shared Services
Emerald Coast Utilities Authority
9255 Sturdevant Street
Pensacola, Florida 32514

14. *Force Majeure.* In the event that performance by the Parties of any of its obligations under this Agreement shall be interrupted, delayed, or prevented by any occurrence not occasioned by the conduct of such Party, whether such occurrence be an act of God or any other occurrence whatsoever which is

beyond the reasonable control of such Party, including a change in environmental law or regulation rendering performance impractical or impossible, then such Party shall be excused from such performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof, or until such performance is no longer impractical or impossible.

15. ECUA's Right to Refuse to Accept SSR and Right to Cancel for Convenience. Notwithstanding the provisions of paragraph 4, above, in the event that the operator of the ECUA MRF declares a Shutdown, ECUA and the ECUA MRF shall be under no obligation to accept any SSR from the City through the duration of that Shutdown. Moreover, in the absence of a Shutdown, ECUA, acting through its Executive Director, may cancel this Agreement for convenience on one week's written notice, notwithstanding the provisions of paragraph 3, above. In the event of a Shutdown, the City may dispose of SSR elsewhere for the duration of the Shutdown, and the City shall not be obligated to reimburse ECUA or the operator of the ECUA MRF for lost revenue associated therewith.

16. Records. The Parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Applicable Law. In the event a Party fails to abide by the Applicable Law, including but not limited to those regarding open records and public records requests, the other Party shall give written notice of the alleged violation of Applicable Law and seven (7) calendar days to cure the alleged violation. If the alleged violation has not been cured at the end of that time period, then the Party giving such notice may terminate this Agreement for cause. The City further agrees to:

a. Keep and maintain public records required by the City to perform services under this Agreement.

b. Upon request from ECUA's custodian of public records, provide ECUA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law during the term of this Agreement and following completion of the Agreement if the City does not transfer the records to ECUA.

d. Upon completion of the Agreement, transfer, at no cost, to ECUA all public records in possession of the City or keep and maintain public records required by the City to perform the services under this Agreement. If the City transfers all public records to ECUA upon completion of the Agreement, the City shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the City keeps and maintains public records upon completion of the Agreement, the City shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to ECUA, upon request from ECUA's

custodian of public records, in a format that is compatible with the information technology systems of the ECUA.

IF THE CITY OF FOLEY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-969-3300, PUBLICRECORDS@ECUA.FL.GOV, AND "PUBLIC RECORDS CUSTODIAN," 9255 STURDEVANT STREET, PENSACOLA, FLORIDA 32514.

17. Assignment. This Agreement or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by any Party, without the prior written consent of all other Parties.

18. Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the Parties stipulate that venue for any matter which is the subject of this Agreement shall lie in Escambia County, Florida.

20. Sovereign Immunity. Except as expressly set forth in this Agreement, nothing herein shall be deemed to be a waiver by either party of its rights to sovereign immunity, and ECUA specifically reserves all of its rights as set forth in Florida Statute 768.28. Provided further, however, that nothing contained in this Agreement shall be deemed to constitute, either as to the ECUA or as to third parties, a waiver of any statutory damages caps set forth in Sections 11-47-190 and 11-93-2, Code of Alabama (1975), as the same may be amended from time to time and in any other statutes and case law otherwise available to the City which may be raised on City's behalf in any action or proceeding arising out of or otherwise pursuant to this Agreement. Each Party specifically acknowledges that the other Party does not waive any immunity defenses or the applicability of the statutory damages caps.

21. Dispute Resolution. The Parties agree that in the event of any dispute or claim relating to, arising out of, or interpreting this Agreement arises, all such disputes or claims shall be fully, finally, and exclusively decided by a State or Federal court of competent jurisdiction sitting in Escambia County, Florida. Additionally, the Parties knowingly and willingly hereby waive their respective rights to have any such disputes or claims decided by a jury; instead, their sole relief shall be via a bench trial in which the judge alone sits as the finder of fact.

22. Interpretation. For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise

defined that have well-known technical or industry meanings are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

a. If any Party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the Party shall immediately notify all other Parties and request clarification of this Agreement.

b. The Parties agree that they are knowledgeable and sophisticated entities and that this Agreement is entered into knowingly and voluntarily after having the opportunity to fully consider it and discuss it with their attorneys. Having had the opportunity to obtain the advice of legal counsel to review, comment upon, and redraft the Agreement, the Parties agree that this Agreement shall be construed as if the Parties jointly prepared it so that any uncertainty and ambiguity shall not be interpreted against any one party or in favor of the other.

23. Severability. The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if it did not contain such invalid or unenforceable portion or provision.

24. Further Documents. The parties shall execute and deliver all documents and perform further actions that may reasonably be necessary to effectuate the provisions of this Agreement.

25. No Waiver. The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either Party's right to thereafter enforce the same in accordance with this Agreement.

26. Relationship Between the Parties. The City and ECUA agree that they are independent entities and not an officer, agent, servant, or employee of the other Party; that the City shall have exclusive control of and exclusive right to control the details of the work performed hereunder by its personnel, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that ECUA shall have exclusive control of and exclusive right to control the details of the work performed hereunder by its personnel, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between ECUA and the City, their officers, agents, employees, contractors, subcontractors, and consultants; and nothing herein shall be construed as being a partnership or joint enterprise between ECUA and the City.

27. Third Party Beneficiaries. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions or any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal damages pursuant to the terms or provisions of this Agreement.

28. Binding Effect. This Agreement shall be binding upon the Parties, their predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, directors, officers, employees, and attorneys. Each of the signatories to the Agreement represents and warrants that he or she is authorized to execute this Agreement and to bind the party on whose behalf he or she is signing.

29. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement, by and through their duly undersigned representatives, as of the date and year first written above.

City of Foley, Alabama, a political subdivision of the State of Alabama acting by and through its duly authorized City Council.

By: _____
Printed Name: John E. Koniar
Title: Mayor
Date: _____

ATTEST:

By: _____

EMERALD COAST UTILITIES AUTHORITY, a local governmental body, corporate and politic

By: _____
Stephen E. Sorrell, P.E., M.P.A. Executive Director

Date: _____

ATTEST:

By: _____
Secretary

EXHIBIT "A"

Calculation of Average Market Value of Source Separated Recyclables

The Parties acknowledge that the Average Market Value (AMV) of the City's Source Separated Recyclables (SSR) must be based upon certain assumptions and estimates, as it is impractical to individually assess the composition of each load of SSR delivered to the ECUA MRF by the City. Consequently, the material percentages reflected in the City's most recent composition study, as referenced or contemplated by paragraph 4.d, shall be deemed the best estimate of the composition of the City's SSR.

The Parties also acknowledge that the City is but one of many polities delivering SSR to the ECUA MRF. Just as the City's SSR must be estimated based upon its composition study, other estimations must also occur in reference to the SSR generated in other jurisdictions/areas. Moreover, it is impractical for ECUA to determine the individual AMV of each SSR stream.

Consequently, AMV shall be determined based upon an aggregation of the various composition studies of those entities which contribute SSR to the ECUA MRF.

AMV will be computed for the ECUA MRF as a whole using market indices reflecting the average value, in the Southeastern United States, of each Recyclable Material included in the SSR delivered to the ECUA MRF. Those market indices are designated as the RISI/OBM index and the Recyclingmarkets.net index, as appropriate, for the Southeastern United States.¹ Those indices are intended to reflect average values; they are not intended to equate to the revenue received by ECUA.

For the purpose of calculating AMV, the value of Rejects shall remain fixed at zero dollars.

¹If at any time during the term of this Agreement, RISI/OBM and/or Recyclingmarkets.net no longer post or otherwise provide an applicable market index, 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, and this selection shall be memorialized in writing.

ECUA shall calculate the AMV of all Recyclables delivered to the ECUA MRF each calendar month. AMV calculations for each month shall be based upon the market indices first posted in the month. ECUA's calculation of AMV shall be deemed accurate, absent manifest error.

For illustrative purposes, Table A-1 calculates the AMV per ton for the SSR delivered to the ECUA MRF as a whole based upon the commodity prices first posted in the month identified. The AMV, computed in this fashion, will then be applied to Table A-2 to determine the compensation/charge to the City. The appropriate figure in Table A-2 will then be multiplied by the tonnage of SSR delivered to the ECUA MRF by the City for each month. The City shall then be compensated/charged accordingly on a quarterly basis, as set forth in paragraph 4.c of the Agreement.

Thus, if the City delivered to the ECUA MRF 60 tons of SSR in January, 2018; 40 tons of SSR in February, 2018, and 45 tons of SSR in March, 2018, based upon the information contained in Tables A-1 and A-2, the computation would be as follows:

January, 2018	$\$89.09 < \$95 \text{ -- } \$0 \times 60 \text{ tons} = \0
February, 2018	$\$89.54 < \$95 \text{ -- } \$0 \times 40 \text{ tons} = \0
March, 2018	$\$86.77 < \$95 \text{ -- } \$0 \times 45 \text{ tons} = \0

Total	$\$0$
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Accordingly, neither Party would owe the other Party any tipping fee or revenue share for SSR delivered to the ECUA MRF by the City for the first quarter of 2018.

TABLE A-2

Average Market Value	\$45.00	\$55.00	\$65.00	\$75.00	\$ 85.00	\$ 95.00	\$ 105.00	\$ 115.00	\$ 125.00	\$ 135.00	\$ 145.00
	or less	or less	or less	or less	or less	or less	or less	or less	or less	or less	or less
IMRF Tipping Fee	\$ 52.00	\$ 37.00	\$ 23.00	\$ 9.00	\$ 2.00	-	-	-	-	-	-
ECUA per ton revenue share	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5.00	\$ 10.00	\$ 15.00	\$ 20.00	\$ 25.00

TABLE A-1

Material	Index	Market Values (\$/ton)												Average
		Jan '18	Feb '18	Mar '18	Apr '18	May '18	Jun '18	Jul '18	Aug '18	Sep '18	Oct '18	Nov '18	Dec '18	
Mixed Paper PS#54	RIS/OBM	\$ 32.50	\$ 27.50	\$ 22.50	\$ 7.50									\$ 22.50
SRP PS#56	RIS/OBM	\$ 52.50	\$ 52.50	\$ 47.50	\$ 32.50									\$ 46.25
Cardboard PS#11	RIS/OBM	\$ 110.00	\$ 105.00	\$ 92.50	\$ 82.50									\$ 97.50
Aluminum Cans (Baled)	RecyclingMarkets.net	\$ 1,380.00	\$ 1,450.00	\$ 1,480.00	\$ 1,400.00									\$ 1,427.50
Steel Cans (Baled)	RecyclingMarkets.net	\$ 135.00	\$ 175.00	\$ 175.00	\$ 180.00									\$ 166.25
Mixed Metals	RecyclingMarkets.net	\$ 135.00	\$ 175.00	\$ 175.00	\$ 180.00									\$ 166.25
PET	RecyclingMarkets.net	\$ 270.00	\$ 280.00	\$ 290.00	\$ 305.00									\$ 286.25
Natural HDPE	RecyclingMarkets.net	\$ 640.00	\$ 680.00	\$ 750.00	\$ 750.00									\$ 705.00
Colored HDPE	RecyclingMarkets.net	\$ 320.00	\$ 315.00	\$ 350.00	\$ 380.00									\$ 341.25
Plastics #3-7	RecyclingMarkets.net	\$ (30.00)	\$ (30.00)	\$ (30.00)	\$ (30.00)									\$ (30.00)
Mixed Bulky Rigid	RecyclingMarkets.net	\$ 10.00	\$ 10.00	\$ 10.00	\$ 47.60									\$ 19.40
Mixed Glass	RecyclingMarkets.net	\$ (22.50)	\$ (22.50)	\$ (22.50)	\$ (22.50)									\$ (22.50)
Contamination	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Material	2017 RCS Composition (% weight)	AMV (\$/ton SSR)												Average
		Jan '18	Feb '18	Mar '18	Apr '18	May '18	Jun '18	Jul '18	Aug '18	Sep '18	Oct '18	Nov '18	Dec '18	
Mixed Paper PS#54	22.9%	\$ 7.43	\$ 6.29	\$ 5.15	\$ 1.72	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1.72
SRP PS#56	5.2%	\$ 2.72	\$ 2.72	\$ 2.46	\$ 1.68	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.80
Cardboard PS#11	29.1%	\$ 31.96	\$ 30.51	\$ 26.88	\$ 23.97	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9.44
Aluminum Cans (Baled)	1.5%	\$ 21.06	\$ 22.13	\$ 22.59	\$ 21.37	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7.26
Steel Cans (Baled)	1.3%	\$ 1.70	\$ 2.20	\$ 2.20	\$ 2.26	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.70
Mixed Metals	1.5%	\$ 1.99	\$ 2.58	\$ 2.58	\$ 2.66	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.82
PET	4.2%	\$ 11.42	\$ 11.84	\$ 12.26	\$ 12.90	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4.03
Natural HDPE	1.3%	\$ 8.39	\$ 8.91	\$ 9.83	\$ 9.83	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3.08
Colored HDPE	1.3%	\$ 4.23	\$ 4.17	\$ 4.63	\$ 5.03	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1.50
Plastics #3-7	0.8%	\$ (0.23)	\$ (0.23)	\$ (0.23)	\$ (0.23)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.08)
Mixed Bulky Rigid	1.9%	\$ 0.19	\$ 0.19	\$ 0.19	\$ 0.89	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.12
Mixed Glass	7.8%	\$ (1.76)	\$ (1.76)	\$ (1.76)	\$ (1.76)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.59)
Contamination	21.3%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total AMV		\$ 89.09	\$ 89.54	\$ 86.77	\$ 80.31	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 28.81