

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 7, 2011

SUBJECT: Materials Recovery Facility (MRF)

ATTACHMENTS: Yes

1. Proposed Contract from American Recycling
2. Proposed Contract from Curbside Management
3. Email Requesting Proposed Contracts
4. Request for Proposals for MRF Private Partnership
5. Presentation Detailing Options

SUMMARY OF REQUEST:

During the Board of Commissioners meeting on August 2, 2010, direction was given to request proposals from private recycling companies to construct a Materials Recovery Facility (MRF) in Henderson County in partnership with Henderson County Solid Waste. The Request for Proposals (RFP) was developed and issued on September 23, 2010, see attached. One response was received by the deadline on October 22, 2010 which was the proposal from American Recycling of SC, LLC (ARSC). ARSC is a reputable company; Henderson County Solid Waste (HCSW) has been sending recycling material to their MRF in South Carolina for the past two years. In addition, their predecessor received material from HCSW for several years prior to that.

Separate from the RFP process discussed above, Curbside Management, Inc (CM) submitted a contract proposal to receive our material at their existing location in Woodfin, NC. CM is also a reputable company that HCSW has done business with for several years.

This item was pulled from the January 18, 2011 meeting to analyze changes in the submitted proposals made just prior to the meeting and after the agenda was published. On January 19, 2011 an email from Henderson County Engineering, attached, was sent to both proposers. This email requested actual proposed, signed contracts and included evaluation criteria for analyzing the proposals. Both contracts are attached as well as a presentation detailing the two proposals. Additionally, representatives from both companies will be present during the Board meeting to answer questions from the Board.

BOARD ACTION REQUESTED:

No Action: no motion needed.

Accept American Recycling Proposal: Direct the County Engineer and Attorney to complete negotiations for the contract with American Recycling of SC, LLC for the Board's final approval.

Accept Curbside Management Proposal: Direct the County Engineer and Attorney to complete negotiations for the contract with Curbside Management, Inc for the Board's final approval.

Suggested Motion(s):

Accept American Recycling Proposal: *I move that the Board direct the County Engineer and Attorney to complete negotiations for the contract with American Recycling of SC, LLC for the Board's final approval.*

Accept Curbside Management Proposal: *I move that the Board direct the County Engineer and Attorney to complete negotiations for the contract with Curbside Management, Inc for the Board's final approval.*

STATE OF NORTH CAROLINA) **SERVICES AGREEMENT**
) **Recyclable Materials**
COUNTY OF HENDERSON) **Processing and Marketing**

THIS AGREEMENT (“Agreement” or “Contract”) is made and entered into this ____ day of _____, 2011, by and between Henderson County, North Carolina, a duly organized political subdivision of the State of North Carolina (the “County”) and American Recycling of South Carolina, LLC, a Georgia limited liability company that is authorized to transact business in the State of North Carolina (the or “Contractor”) (collectively the “Parties”).

WITNESSETH

WHEREAS, the County has a comprehensive recycling program and desires to substantially expand its recycling program volumes; and

WHEREAS, the County desires a recycling materials processor to operate a materials recycling facility in Henderson County and to process and market all of the County’s recyclable materials; and

WHEREAS, the Contractor has reviewed the services required pursuant to this Agreement and is qualified, willing and able to provide recyclables processing services to County and perform all such services in accordance with its terms and conditions as well as process and market recyclable materials for other customers at such recycling facility; and

WHEREAS, the County desires to contract with the Contractor on such terms and conditions as are set forth herein.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each intending to be legally bound, agree as follows:

ARTICLE 1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- 1.1 **“Agreement”** – This Agreement between the County and the Contractor, including the Schedules and any written amendments to either as modified, supplemented or restated from time to time.
- 1.2 **“Blue Bag”** – Program Recyclables that are collected in plastic bags.
- 1.3 **“Commencement Date”** – Except as otherwise provided for herein, the Commencement Date is the date on which the Contractor commences to accept, process, and market Recyclable Materials in accordance with this Agreement.

- 1.4 **“Commercial Program Recyclables”** – Recyclable Materials from commercial, institutional, and industrial establishments in Henderson County that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.5 **“Commercial Fiber”** – Recyclable paper and board products designated by the County for recycling collection programs, including but not limited to office paper, cardboard, newspaper, magazines, junk mail and paperboard packaging from commercial, institutional, and industrial establishments in Henderson County that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.6 **“Commingled Containers”** – Plastic, metal, and glass containers that are mixed together for collection and delivery to the MRF or the Transfer Station.
- 1.7 **“Commission”** – The County Board of Commissioners of Henderson County, North Carolina which is the governing body of the County.
- 1.8 **“Contract Officer”** – The individual designated in writing by the County to represent it in all matters relating to the interpretation, implementation or enforcement of the Contract.
- 1.9 **“Contract Year”** – Beginning on the Commencement Date and ending June 30, 2011 and every twelve (12) months thereafter (July 1-June 30) for the term of the Agreement.
- 1.10 **“Contractor”** – American Recycling of South Carolina, LLC, with whom the County has entered into this Agreement.
- 1.11 **“County”** – Henderson County, a political subdivision of the State of North Carolina.
- 1.12 **“Department”** – The Henderson County Department of Engineering Services.
- 1.13 **“Dual Stream”** – A method of collecting and processing Recyclable Materials in two streams in which Commingled Containers (one stream) are collected separately from commingled paper products (the other stream).
- 1.14 **“Effective Date”** – The date upon which this Agreement is fully executed by both Parties. The later signature date shall be the Effective Date.
- 1.15 **“Environmental Laws”** – All applicable federal, state, county or local laws, directives, rules, ordinances, codes, guidelines, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted or amended, relating to safety, preservation or protection of human health and the environment (including, without limitation, ambient air, surface water, groundwater, land, or subsurface strata) and/or relating to the handling, treatment, transportation or disposal of waste, substances or materials, including, without limitation, any matters related to Releases and threatened Releases of materials and substances.

- 1.16 “Director”** – The Director of the Henderson County Engineering Services Department or any other agency, as may be designated by the County to administer this Agreement.
- 1.17 “Fees and Taxes”** – Any federal, state, local or other taxes, assessments, fees, surcharges or similar charges directly or indirectly related to the services provided by the Contractor pursuant to this Agreement which are imposed on either the County or Contractor, and are with respect to the operations of the MRF by law, ordinance, rule, order or regulation and/or agreement with a governmental authority, whether existing as of the Effective Date or as implemented or modified thereafter and whether imposed retroactively or prospectively.
- 1.18 “Force Majeure”** – Any event relied upon by the Contractor or the County, as applicable, as justification for delay in or excuse from complying with any obligation required of the Contractor or the County, as applicable, under this Agreement, including, without limitation: (i) an act of God, landslide, lightning, earthquake, hurricane, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county, or local court, administrative agency or governmental office or body that stays, invalidates, or otherwise affects this Agreement or any permits or licenses of the MRF or the Transfer Station with respect to the acceptance and/or processing of Recyclable Materials; (iii) the denial, loss, suspension, expiration, termination, or failure of renewal of any permit, license or other governmental approval required to accept and/or process Recyclable Materials at the MRF or the Transfer Station; (iv) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county, or local law, rule, permit, regulation or ordinance after the date of this Agreement, applicable to the obligations of the Contractor or the County, as applicable, under this Agreement; or (v) the institution of a legal or administrative action, or similar proceeding, by any person or entity which delays or prevents any aspect of the acceptance and/or processing of Recyclable Materials at the MRF or the Transfer Station.
- 1.19 “Hazardous/Biohazardous Waste”** – Medical sharps and all materials or substances defined or characterized as hazardous or biohazardous waste by the United States Environmental Protection Agency, the North Carolina Department of Environmental and Natural Resources (“NC DENR”), the Occupational Safety and Health Administration (OSHA) or any other agency pursuant to any Environmental Law and all current and future amendments thereto and all regulations promulgated thereunder.
- 1.20 “Materials Recovery Facility” or “MRF”** – The Recyclable Materials processing facility located on the Site.
- 1.21 “Non-Recyclable Materials”** – All materials that do not constitute Recyclable Materials.
- 1.22 “Program”** – The Henderson County Recycling Program as it may, from time to time, be defined by the County, which initially shall include residential recycling activities and potentially may include commercial recycling activities.

- 1.23 “Program Materials”** - All materials, both Recyclable Materials and Non-Recyclable Materials that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.24 “Program Recyclables”** – Recyclable Materials from the Program that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.25 “Recovered Materials”** – Recyclable Materials that have been processed to market specifications.
- 1.26 “Recyclable Materials”** – Various recyclable products and packaging originating in the County, including various types of paper (including but not limited to newspaper, junk mail, magazines, office paper, cardboard and paperboard packaging) and containers (including but not limited to glass bottles and jars, aluminum and steel cans, and #1 - #7 plastics). Recyclable Materials includes incidental amounts of Rejects and non-designated materials as can be normally expected as part of municipal recycling collection. The list of Recyclable Materials may be expanded or contracted from time to time as determined jointly by the County and the Contractor.
- 1.27 “Rejects”** – Materials other than Residue that cannot be processed into Recovered Materials.
- 1.28 “Residential Program Recyclables”** – Recyclable Materials from single-family and multi-family dwelling units in Henderson County that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.29 “Residue”** – That portion of the Recyclable Materials other than Rejects accepted by the Contractor that are not converted to Recovered Materials.
- 1.30 “Shutdown”** – Failure of the Contractor to accept all Recyclable Materials after the Commencement Date for any reason except Force Majeure.
- 1.31 “Site”** – The parcel of land to be leased by the Contractor, including the approximately 67,000 square foot structure in Storage Building A, located at 4600 Hendersonville Highway, Fletcher NC 28732.
- 1.32 “Single Stream”** – A method of collecting and processing Recyclable Materials whereby all Recyclable Materials are collected and delivered to the MRF or the Transfer Station mixed together.
- 1.33 “Third Party Hauler”** – A waste management/or and recycling transporter operating in the County under permit from the County which allows the transporter to deliver Recyclable Materials directly to the MRF.
- 1.34 “Ton”** – A unit of weight equal to 2,000 pounds, also referred to as a “short ton.”

1.35 **“Transfer Station”** – The County owned waste management station facility located at 802 Stoney Mountain Rd., Hendersonville, North Carolina 28791.

1.36 **“Unwanted Waste”** – Non-Recyclable Materials that Contractor deems in its sole discretion to be undesirable to sort as part of the processing of Program Recyclables, including but not limited to Non-Recyclable Materials that are likely to cause contamination to potentially Recyclable Materials.

ARTICLE 2. TERM OF AGREEMENT

2.1 **Effective Date.** Except as otherwise provided for herein, the obligations of the Parties shall take effect on *[January ____, 2011]*.

2.2 **Commencement Date.** Except as otherwise provided for herein, the Commencement Date shall be the day the Contractor accepts the County’s first delivery at the MRF or the Transfer Station.

2.3 **Term.** Unless terminated earlier as set forth herein this Agreement, the initial term of this Agreement shall remain in effect for ten (10) years from July 1, 2011 (the **“Initial Term”**). Thereafter, the Agreement will automatically renew for two additional and successive five (5) year terms (each a **“Renewal Term”**) unless (i) either party gives written notice to the other party ninety (90) days prior to the expiration of the Initial Term that the Agreement will terminate on the expiration of the Initial Term; or (ii) either party gives written notice to the other party ninety (90) days prior to the expiration of the Initial Term that the Agreement will terminate on the expiration of the first Renewal Term.

ARTICLE 3. CONTRACTOR’S RESPONSIBILITIES

- **Services of the Contractor.** The Contractor shall be responsible for receiving and processing all of the Recyclable Material delivered by the County to the MRF or the Transfer Station, as well as the County Office Program Recyclables to be picked up by the Contractor (**the “Work”**).

3.1 Material Acceptance – Transfer Station.

3.1.1 **Acceptance of Program Recyclables – Transfer Station.** Beginning with the Commencement Date, the Contractor shall accept Program Recyclables at the Transfer Station and be responsible for delivery to the MRF. Notwithstanding the foregoing, Contractor’s obligation to accept of Program Recyclables at the Transfer Stations shall only occur if and when (i) containers/trailers are loaded to visual capacity (each a **“Visual Capacity Load”**); (ii) each Visual Capacity Load is stowed in either open top roll off containers or walking floor trailers; and (iii) the County notifies the Contractor of a Visual Capacity Load

(each load meeting the requirement of (i) – (iii) referred to as a “Ready Load”).

3.1.2 Transportation to MRF; Transportation Costs. The Contractor shall be solely responsible for transporting Ready Loads to the MRF and all costs associated with such transfers shall be absorbed by the Contractor.

3.2 Acceptance of Program Recyclables - MRF.

3.2.1 Acceptance of Program Recyclables – MRF. Beginning with the Commencement Date, the Contractor shall accept deliveries of all County delivered Program Recyclables at the MRF during the Scheduled Receiving Hours specified in Section 3.2.6 below. Program Recyclable may be delivered by the County both Dual-Stream and Single Stream.

3.2.2 Method of Delivery. The Contractor shall accept County delivered Program Recyclables from a variety of different trucks including, but not limited to, packer trucks, roll-off trucks, self-unloading road trailers, and rear-discharging and side-discharging tilt-bed collection vehicles.

3.2.3 Scale House Operations. The Contractor shall operate the truck scale and electronic weigh system to weigh and record all inbound loads. In the event the truck scale or electronic weigh system is found to be inaccurate or is otherwise in need of repair, the Contractor shall notify the Contract Officer within 24 hours and be responsible for estimating the amount of Tonnage of County delivered Program Materials received in each load until such time as the scale or weigh system is repaired.

3.2.4 Weigh Tickets. For each inbound load of County delivered Program Materials, the Contractor shall provide the vehicle operator with a ticket showing vehicle weight before and after unloading, or gross weight and tare weight and the total net weight of material delivered to the MRF (each a “**Load Weigh Ticket**”). County Vehicles delivering Dual-Stream Program Recyclables shall be weighed between dumping of each stream and provided with a Load Weigh Ticket showing separate weights for each stream.

3.2.5 Turnaround Time at MRF. The maximum time for each truck to enter, weigh the inbound load, deposit County delivered Program Materials, and exit the MRF shall not exceed twenty (20) minutes. Delays that are not directly caused by the negligence of the Contractor shall not be computed in the turnaround time average. Additionally,

loads of County delivered Program Materials rejected by Contractor under either Section 3.3 or 3.4 below shall not be included in the maximum time calculation set forth herein this Section 3.1.5.

3.2.6 Scheduled Receiving Hours. The MRF shall be open and available to receive Program Recyclables from at least 7:30 a.m. to 4:30 p.m. Monday through Friday. The MRF may be closed on six holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas), but will be required to be open from 7:30 a.m. to 4:30 p.m. on the Saturday following the holiday (collectively the “**Scheduled Receiving Hours**”). No changes shall be made to these hours without the prior written approval of the Director.

The Contractor agrees to temporarily increase the Scheduled Receiving Hours to accommodate unusual quantities of County delivered Recyclable Materials resulting from unusual circumstances if both (a) the MRF is able, in the reasonable sole judgment of the Contractor to receive such additional quantities without adversely affecting the Contractor’s operation or maintenance of the MRF; and (b) the County provides the Contractor with advance written notice to such delivery sufficient to enable the Contractor to respond to any such request.

3.3 Over 35% Loads. Each load of County Program Materials containing thirty five percent (35%) or more of the total load in Non-Recyclable Materials by weight (each an “Over 35% Load”) may be refused at Contractor’s sole discretion. Any Over 35% Load that is accepted by the Contractor will be paid based on the received weight of Recyclable Materials. The Non-Recyclable Materials from an Over 35% Load will be weighed and shipped to the landfill. All disposal costs incurred by Contractor in connection with the disposal of Non-Recyclable Materials remaining after processing of an Over 35% Load will be the responsibility of the County and the Contractor will deduct all such incurred costs associated with such disposal from the amount owed to County under Section 6 below.

3.4 Downgrade Loads. Each load of County Program Materials containing more than five percent (5%) but less than thirty five percent (35%) of the total load in Non-Recyclable Materials (each a “Downgrade Load”) may also be refused at Contractor’s sole discretion in the event that the Downgrade Load is due to either Hazardous/Biohazardous Waste or Unwanted Waste, or a combination of the two. Any Downgrade Load that is accepted by the Contractor will be paid based on the received weight of Recyclable Materials. The Non-Recyclable Materials from a Downgrade Load will be weighed and shipped to the landfill. All disposal costs incurred by Contractor in connection with the disposal of Non-Recyclable Materials remaining after processing of a Downgrade Load will be the

responsibility of the County and the Contractor will deduct all such incurred costs associated with such disposal from the amount owed to County under Section 6 below.

3.5 Hazardous/Biohazardous Waste. If any Hazardous/Biohazardous Waste is detected in Program Materials, the Contractor will properly isolate the waste and notify the Contract Officer. Mutually, the Contractor and County will determine who will remove, pack and disposed of such Hazardous/Biohazardous Waste, but the County shall always be responsible for all costs associated with the removing, packing, and disposing of the Hazardous/Biohazardous Waste delivered by the County and the Contractor will deduct all such incurred costs associated with such disposal from the amount owed to County under Section 6 below.

3.6 Certified Scale and Electronic Weighing System. The Contractor shall maintain all mechanical and electronic components of the MRF truck scale. The Contractor will ensure that the truck scale is tested, calibrated and certified in accordance with all applicable requirements of the state North Carolina. The Contractor will operate the scale utilizing CieTrade, or a comparable and compatible, electronic weighing system that enables detailed tracking of all inbound loads of County delivered Program Materials, Recyclable Materials, Recovered Materials, Rejects and Residue.

3.7 Pilot Programs. The County may implement pilot recycling collection programs. The Contractor agrees to work collaboratively and in good faith with the County in order to process and market materials from County delivered Single Stream and commercial recycling pilots and other programs that may be mutually agreed to by the Parties.

3.8 Compliance with Laws and Regulations. In fulfilling its responsibilities under this Agreement the Contractor and County shall comply at all times with all applicable local, State and Federal laws, regulations, permits and similar requirements, including all applicable requirements concerning noise, odors, effluent and emissions.

3.9 Subcontracting. The Contractor may subcontract any or all of its duties or obligation under this Agreement with the prior written consent of the County, which consent may not be unreasonably withheld.

3.10 Public Relations.

3.10.1 MRF Tours. Contractor shall make the MRF available for tours by governmental officials during Scheduled Receiving Hours. The County will give one (1) week notice to the Contractor of a tour. MRF tours will be at no cost to the County. Designated areas for tour-group participants to safely observe the operations of the MRF will be created by the Contractor and the County and Contractor will take reasonable precautions to ensure tour group participants stay within such designated areas.

3.10.2 Promotional Events. The Contractor will participate in up to four (4) County's promotional events annually, such as award events, Henderson Recycles Day, America Recycles Day, and special events.

3.11 County Office Services. The Contractor will continue to pick-up and deliver to the MRF those Program Recyclables located at offices owned by the County (the "**County Office Program Recyclables**"). The Contractor will receive no fee for such transportation and the County will receive no payment for such County Office Program Recyclables. Notwithstanding the foregoing the County Office Program Recyclables will count towards the Annual Tonnage Requirement described in Section 5.1.

ARTICLE 4. DELIVERY AND EXCLUSIVITY

The County shall cause all Recyclable Material collected by or on behalf of the County to be delivered to the MRF or Transfer Station. The County shall use reasonable efforts, in good faith, to cause only Recyclable Material to be delivered to the MRF or Transfer Station and to minimize quantities of County delivered Non-Recyclable Materials. During the Initial Term and any Renewal Term of the Agreement, the County will not enter into any new agreements with any other entity, whether written or oral, that provides services similar to those provided by Contractor as contemplated by this Agreement without Contractor's written consent. Nothing in this Agreement shall restrict Contractor in any manner from providing recycling material processing services for other potential customers.

ARTICLE 5. RESPONSIBILITIES OF THE COUNTY

5.1 Minimum Tonnage Requirements Guarantee. The County guarantees either (i) to personally deliver to the MRF or Transfer Station (which shall include County Office Program Materials under Section 3.11); or (ii) to cause a Third Party Operator to deliver to the MRF, a minimum of 4,000 Tons per Contract Year of Recyclable Materials, with the first day of year one starting on the Commencement Date (each year the "**Annual Tonnage Requirement**"). Because the County has a July 1-June 30 fiscal year (the County's "Fiscal Year"), each Annual Tonnage Requirement will be measured over the duration of a County Fiscal Year. For the stub year starting on the Commencement Date and ending on June 30, 2011, the Annual Tonnage Requirement will be adjusted downward on a pro-rata basis based on the percentage of days remaining in the County's Fiscal Year ending June 30, 2011.

By way of example only, in the event that the Commencement Date is May 1, 2011, the Annual Tonnage Requirement for the Fiscal Year ending June 30, 2011 will equal $[(61/365 - \text{DAYS}) \times 4,000 - \text{TONS}] = \mathbf{668.5 \text{ TONS}}$.

The County acknowledges that its meeting the Annual Tonnage Requirement is a material inducement for the Contractor to enter into this Agreement. Failure by the County to meet the Annual Tonnage Requirement each Contract Year will result in material damages to Contractor described in detail in Article 8 herein.

5.2 Site Damage Caused by County. The County shall repair all Site damage, including any damage to buildings or structures or vehicles or other personal property of the Contractor, caused by its fault or negligence.

5.3 Equipment Financing. The County will provide debt financing up to an amount of \$550,000 (the "County Loan") as partial financing for the processing equipment to be installed at the Site (the "Financed Equipment"). The County will make incremental County Loan disbursements within five (5) days upon pre-conditions being met which include (i) County receipt of an invoice for equipment to be used on the Site; and (ii) delivery of such equipment to the Site. Subject only to the County Loan cap, upon the pre-conditions in the preceding sentence being met, the amount paid by the County shall be 1.5 X the amount listed on each applicable invoice. The County Loan being disbursed in accordance with the terms of this Section 5.2 is a condition precedent the Commencement Date.

The County will hold a first priority security interest in the Financed Equipment in the amount of the unpaid principal and interest of the County Loan. Interest on the unpaid principal of the County Loan shall commence on the day of the first day all or a portion of all of the County Loan is disbursed to the Contractor and shall accrue at a simple rate of 4.5% (four and one half percent) annually. For so long as all or a portion of the County Loan is outstanding, the Contractor will maintain a surety bond in an amount that is either equal to or greater than the outstanding balance of the County Loan.

Additionally, the Contractor, by terms of the lease for the Site, will grant the County a right of first refusal to take over as tenant in the event the Contractor defaults on the lease.

To payoff the County, the Contractor shall make One Hundred Twenty (120) equal monthly payments to the County commencing on the first day of the month immediately following the Commencement Date. Payment dates, amounts and unpaid principal are detailed in the amortization schedule in Appendix 1. Interest accruing from the time the County Loan is made until the Commencement Date will be added to the principal for purposes of calculating the payment amounts set forth on Appendix 1. The twelve monthly payments of principal and interest for each Contract Year shall be collectively referred to as the "Annual Debt Service Payment". Contractor shall be permitted to prepay the County Loan prematurely, either in whole or in part(s), and without penalty. If and upon the Contractor's payoff in full of the County Loan, the County grants the Contractor an irrevocable power of attorney to release the security interest and terminate any UCC-1 filings made by the County.

ARTICLE 6. PAYMENTS TO THE COUNTY

6.1 Monthly Minimum Payments. Each month, the Contractor shall pay revenue to the County equal to the total monthly tons of Dual Stream, Single Stream and Single Stream with Blue Bags delivered to either the MRF or the Transfer Station by the County multiplied by the Minimum Per Ton Revenue Formula in Table 2 below (the "Monthly

Minimum Payment”). Material which exceeds 10% Blue Bag material will be classified as Single Stream with Blue Bags.

6.2 Annual Profit Sharing Payments

6.2.1 Average Annual Market Value Calculation. After each Contract Year the Contractor shall calculate the Average Annual Market Value index for the just ended Contract Year (“AAMV”) of Residential Program Recyclables defined as the 12-month average (shorter month average for first stub year Contract Year) of (i) the monthly sum of commodity prices (U.S. Dollar per Ton) posted on the first day of each of the twelve months of the Contract Year in SecondaryMaterialsPricing.com and SecondaryFiberPricing.com (the “Original Pricing Sources”) multiplied by (ii) the composition of Recyclable Materials (see Table 1 below). In the event that either one or both of the Original Pricing Sources either (i) no longer exist; or (ii) no longer accurately reflect the County and Contractor’s intent for establishing pricing on the Effective Date; the County and Contractor agree to negotiate in good faith and establish a replacement pricing source(s) that is as comparable as possible to the Original Pricing Source(s).

6.2.2 End-of-Year Payment. After each Contract Year, upon the Contractor’s determination of the AAMV, the Contractor shall make a one-time annual profit sharing payment to County based on the AAMV equal to the total annual tons of Dual Stream, Single Stream and Single Stream with Blue Bags delivered to either the MRF or the Transfer Station by the County multiplied by the Per Ton Profit Sharing Formula in Table 3 (the “Profit Sharing Payment”). Material which exceeds 10% Blue Bag material will be classified as Single Stream with Blue Bags.

Table 1
Composition of County Delivered Residential Program Recyclables and Market Indexes for Determining Average Market Value

MATERIAL	Percentage¹	Waste News Pricing Type²
Aluminum	1.79%	Aluminum Cans (sorted and baled)
Steel	2.65%	Steel Cans (sorted & densified)
HDPE Colored	2.38%	Colored HDPE (baled)
HDPE Natural	1.28%	Natural HDPE (baled)
PET	3.88%	PET (baled)
OCC	10.20%	PS 11 Corrugated Containers
Office Fiber	2.40%	PS 37 Sorted Office Paper
ONP	38.68%	PS 8 Special De-ink Quality News
Mixed Paper	7.00%	PS 1 Soft Mixed Paper

Mixed Plastics	0.44%	All containers 1-7s
Mixed Glass	24.80%	3 Sort Glass
Residuals	4.50%	
	100.00%	Average Monthly Market Value

Table 2
Minimum Per Ton Revenue Formulas for Dual Stream, Single Stream and Single Stream with Blue Bags Delivered By County.

MATERIAL	GUARANTEED FLOOR PRICES
Dual Stream	\$20/ton
Single Stream	\$10/ton
Single Stream with Blue Bags	\$0/ton

Table 3
Per Ton Profit Sharing Formulas for Dual Stream, Single Stream and Single Stream with Blue Bags Delivered By County.

MATERIAL	FORMULA BASED ON THE AVE. ANNUAL MARKET VALUE
Dual Stream	AAMV - \$110.00/ton
Single Stream	AAMV - \$115.00/ton
Single Stream with Blue Bags	AAMV - \$125.00/ton

6.3 Timing and Method of Payment. Subject to setoff by Contractor for costs of County incurred by Contractor under Article 3 above, the Monthly Minimum Payment due under Section 6.1 shall be submitted to the County within thirty (30) calendar days from the end of the month for which the payment is being made. Additionally, within thirty (30) calendar days from the end of each Contract Year the Profit Sharing Payment shall be submitted to the County. Concurrently with the submission of the Profit Sharing Payment, the Contractor shall submit an annual report for the previous Contract Year detailing the calculation of the Profit Sharing Payment due under Section 6.2.

6.4 Adjustments to the Composition of Residential Program Recyclables. The Contractor or County may request a study to measure the composition of Residential Program Recyclables utilized to calculate the AAMV pursuant to Article 6 of this Agreement, such request being subject to approval by the County, and such approval not unreasonably withheld. If approved by the County, Contractor and Director shall jointly develop a methodology and cost estimate to conduct the composition study. The Parties shall share equally in paying for the cost of the study. Once approved, adjustments to the composition of Residential Program Recyclables shall become effective for the following month and remainder of the Term, or until further adjusted in accordance with this article.

6.5 Proration. If any payments, rights or obligations under this Agreement (whether relating to Fees and Taxes, insurance, or to any other provision of this Agreement) relate to a period in part before the Effective Date or in part after the date of expiration or termination of the Term, the Parties hereto agree that appropriate adjustments and prorations shall be made.

ARTICLE 7. RECORD KEEPING AND REPORTING

7.1 Recordkeeping. The Contractor shall create, maintain, and make available records as defined herein, and which may be required by applicable local, state, and federal laws, rules and regulations:

7.1.1 Recyclable Materials. The Contractor will record Recyclable Materials Tonnage by date, type and source.

7.1.2 Reject and Residue. The Contractor will record Reject and Residue Tonnage by date.

7.1.3 Other. The Contractor shall maintain other records, documents and reports as the County may reasonably require to verify compliance with the Agreement.

7.2 Document Retention. The Contractor shall maintain and allow access to books, records, data, documents, and reports relating to this Agreement for three (3) years following the conclusion or termination of this Agreement.

ARTICLE 8. TERMINATION

8.1 For Default. If either Party fails to comply with any of the terms and conditions of the Agreement deemed to be material, such refusal or failure shall be deemed a default under this Agreement.

In the event of default, the non-defaulting Party may give written notice of the default to the defaulting Party. The defaulting Party shall have thirty (30) days from the receipt of the notice to cure any default. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement by providing written notice of termination to the defaulting Party. In the event of a default, the Contractor shall be entitled to compensation from third party vendors for materials processed, marketed and sold under this Agreement.

8.2 Liquidated Damages. County acknowledges and agrees that any and every breach by County of its Annual Minimum Tonnage Requirement obligation under Section 5.1 above (“**Annual Tonnage Requirements Breach**”) will result in damages, the amount of which will be difficult or impossible to ascertain with any accuracy and the proof of which would be burdensome and costly, but will be real, meaningful and substantial to Contractor. County further acknowledges and agrees that the liquidated damages

calculated in accordance with this Section 8.2 represent the fair, reasonable and best estimate of damages associated with any Annual Tonnage Requirements Breach, and such liquidated damages shall not be considered a penalty but rather fair and reasonable compensation for the damages Contractor shall suffer upon a Annual Tonnage Requirements Breach by County. Therefore and in addition to any other rights or remedies Contractor may have, in the event that County commits an Annual Tonnage Requirements Breach, County agrees to pay Contractor liquidated damages, an amount based on the percentage shortfall of Annual Tonnage Requirement multiplied by the total Annual Debt Service Payment paid for such Contract Year by County (each, the “**Liquidated Amount**”). By way of example if the County only delivers 3,000 Tons in a Contract Year and the Annual Debt Service Payment for such Contract Year is \$70,000, then the Liquidated Amount for such year will be \$17,500.

The County authorizes and directs the Contractor to refrain from making the next monthly debt service payment(s) due for the next Contract Year for the purpose of setting-off the Liquidated Amount owed by County. Using the preceding hypothetical figures as the example, the County would setoff the \$5,833.33 debt service payments for the first three months of the next Contract Year as a means of collecting the \$17,500 Liquidated Amount for the prior Contract Year.

Notwithstanding anything to the contrary contained in this Section 8.2, nothing contained in this Section 8.2 shall preclude Contractor from asserting or obtaining any other relief or remedy available to it pursuant to this Agreement or under applicable law. This Section 8.2, in its entirety, shall survive termination or expiration of this Agreement.

8.3 Rights Cumulative. The rights and remedies of the County and Contractor provided in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES.

9.1 Contractor. The Contractor represents and warrants as follows:

- 9.1.1** The Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia and is authorized to do business in North Carolina.
- 9.1.2** This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity.

9.1.3 The Contractor has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Contractor has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby to be consummated by it.

9.2 **County.** The County represents and warrants as follows:

9.2.1 This Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

9.2.2 The County has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The County has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby to be consummated by it.

ARTICLE 10. NOTICES

All notices or other communications to be given hereunder shall be in writing and shall be sent by facsimile, overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

To the Contractor:

American Recycling of South Carolina, LLC
1240 White Horse Rd.
Greenville, SC 29605
Phone: 864-277-7722
Facsimile: 864-277-7733
Attn: Ron Moore

To the County:

[Insert]

Phone:

Facsimile:

Attn:

ARTICLE 11. GENERAL PROVISIONS

11.1 Hold Harmless/Indemnification.

11.1.1 As to the Contractor. The County hereby agrees to save, protect, defend, indemnify, and hold the Contractor and its employees harmless from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, arising out of (i) the negligence or intentional misconduct of the County and its employees, (ii) the breach by the County of any of the representations, warranties, covenants, and agreements made by the County set forth in this Agreement, (iii) any damage to property and injuries (including death) to any persons, caused by the County or its employees and (iv) any damage to property and injuries (including death) to any persons, caused by the Contractor, its employees, agents, or permitted subcontractors. The County, at its option, may control the defense of any claim subject to the foregoing indemnity, and the Contractor will cooperate with the County in such defense in all reasonable respects, at no cost to the Contractor.

11.1.2 As to the County. The Contractor hereby agrees to save, protect, defend, indemnify, and hold the County and its employees harmless from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, arising out of (i) the negligence or intentional misconduct of the Contractor and its employees and its permitted subcontractors, (ii) the Contractor's use of subcontractors' services if permitted hereunder, (iii) the breach by the Contractor of any of its representations, warranties, covenants, and agreements made by the Contractor set forth in this Agreement, and (iv) any damage to property and injuries (including death) to any persons, caused by the Contractor, its employees, agents, or permitted subcontractors. The Contractor, at its option, may control the defense of any claim subject to the foregoing indemnity, and the County will cooperate with the Contractor in such defense in all reasonable respects, at no cost to the County.

11.2 Insurance. Before performing any work under this Agreement, Contractor shall procure and maintain, during the life of the Agreement, unless otherwise specified, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the County. The Contractor shall also require any sub-contractors to carry the same coverage in the same amounts.

11.2.1 Workers' Compensation. Contractor will provide Workers' Compensation insurance on behalf of all employees who are to provide a service under this Agreement, as required by the laws of North Carolina.

11.2.2 Commercial General Liability. Including but not limited to bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personnel injury with a \$1,000,000 general aggregate limit covering all work performed under this Agreement.

11.2.3 Umbrella Liability. With limits of not less than \$5 million each occurrence covering all work performed under this Agreement.

11.3 Controlling Law. This Agreement sets forth the entire agreement and understanding of the Parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of either Party hereto. This Agreement may not be modified, amended, supplemented, canceled, or discharged, except by written instrument executed by all of the Parties hereto. There are no restrictions, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted the waiver. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part. This Agreement is not intended to confer upon any third parties, other than the Parties hereto, any rights or remedies. This Agreement shall be governed by the laws of the State of North Carolina and any and all disputes arising out of the Agreement shall, if they cannot be resolved without litigation, be litigated only in a non-jury hearing. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.4 Arm's Length Negotiations. Each Party hereto expressly represents and warrants to all other Parties hereto that: (a) before executing this Agreement, said Party has fully informed itself of the terms, contents, conditions and effects of this Agreement; (b) said Party has relied solely and completely upon its own judgment in executing this Agreement; (c) said Party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) said Party has acted voluntarily and of its own free will in executing this Agreement; (e) said Party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm's length negotiations conducted by and among the Parties hereto and their respective counsel.

11.5 Construction. The Parties hereto agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumptions or burdens of proof shall arise favoring any Party hereto by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. If any Party hereto has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from

or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

ARTICLE 12. ASSIGNMENT AND/OR SUBCONTRACTING

This Agreement and any permits required for performance of the Agreement, may not be assigned, conveyed, or otherwise disposed of without the written permission of the other Party, which will not be unreasonably withheld. Unless otherwise expressly agreed by the Parties hereto, no such assignment shall relieve either Party of its liability under this Agreement. In the event Contractor elects to use any subcontractors, Contractor shall retain prime responsibility to the County of full and complete satisfactory and acceptable performance under this Agreement.

ARTICLE 13. TAXES

Contractor shall pay all applicable sales, consumer, use and other similar taxes required by Federal, State and local law. Contractor is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.

ARTICLE 14. FORCE MAJEURE

14.1 Force Majeure. Except for any payment obligation by either Party, if the County or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the County or Contractor to correct the adverse effect of such event of Force Majeure.

14.2 Notification. In order to be entitled to the benefit of this Section, a Party claiming an event of Force Majeure shall be required to give prompt written notice to the other Party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The Parties agree that, as to this Article, time is of the essence.

ARTICLE 15. MISCELLANEOUS

15.1 Succession of Agreement. This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

15.2 Survival. Any rights either Party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination.

- 15.3 Relationship.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Contractor and County.
- 15.4 Further Assurance.** Contractor and County agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the Parties declare their intention to cooperate with each other in effecting the terms of this Agreement.
- 15.5 Time of the Essence.** For purposes herein, the Parties agree that time shall be of the essence of this Agreement and the representations and warranties made are all material and of the essence of this Agreement.
- 15.6 Captions and Section Headings.** Captions and Section headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.
- 15.7 No Waiver.** No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the Party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- 15.8 Gender.** All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.
- 15.9 Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action remain in full force and effect.
- 15.10 Schedules and Exhibits.** All schedules or exhibits attached hereto contain additional terms of this Agreement. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.
- 15.11 Attorney Fees.** In the event of arbitration or litigation between the Parties regarding this Agreement, each Party shall be responsible for their own attorney's fees and costs.

15.12 Third Party Rights. The Parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.

15.13 Modification. Any modification to this Agreement must be in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement under their respective signatures the day and year first written above.

WITNESSETH FOR CONTRACTOR:

**AMERICAN RECYCLING OF SOUTH
CAROLINA LLC**

1) Christina Pallone

[Signature]

by its: President/Member-manager

2) _____

WITNESSETH FOR COUNTY:

COUNTY OF HENDERSON

1) _____

by its: _____

2) _____

APPENDIX 1
AMORTIZATION SCHEDULE
[TO BE INSERTED]



January 24, 2011

Marcus A. Jones, PE
Director of Engineering, Henderson County
100 North King Street
Hendersonville, NC 28792

Dear Mr. Jones:

Curbside Management, Inc. is honored to place before you our proposal to benefit Henderson County's material recycling efforts. We will require no loan assistance with this proposal and can begin services effective immediately. With this proposal, Curbside Management removes all transportation and fuel escalation risks from Henderson County. In addition, at no time will Henderson County experience any costs associated with the fluctuating commodity based recycling market. Curbside Management will share revenue generated by the County's recycling materials. Curbside Management will transport, process, and market all recyclables collected by the County. This proposal is valid until June 30, 2011.

Curbside Management Inc. (CMI) is one of the largest independently owned Material Recovery Facilities in North Carolina. We are locally owned and operated so executive management can be at your site in hours not days. Our company is a community-minded business which has the best interests of our Western North Carolina residents in mind.

Curbside Management's sole business is the collection, processing and marketing of recyclable materials. Curbside Management, Inc. began service in March 1991 as a private recycling collection company servicing area residents. In August of 2003, Curbside Management, Inc. opened our Material Recovery Facility. Curbside Management, Inc. is currently processing and shipping—exclusively for recycling—in excess of 30,000,000 pounds annually with the potential to process significantly more.

We believe our past accomplishments are an indication of what Curbside Management, Inc. can do for Henderson County in the future. All new strategies and approaches will be rooted in the same dependability and integrity we've displayed for the past nineteen years of faithful service. We look forward to continuing to serve Henderson County.

Sincerely,

Barry Lawson
President
Curbside Management, Inc.
116 North Woodfin Avenue
PO Box 18722
Asheville, NC 28814
Office: (828) 252-2532 extension 310
Office fax: (828) 251-2588
Cell: (828) 230-6051
Email: blawson@curbie.com

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

MATERIAL RECYCLING CONTRACT

THIS MATERIAL RECYCLING CONTRACT made and entered into this ____ day of _____, 2011, by and between Henderson County, NC with offices at 100 North King Street, Hendersonville NC (hereafter referred to as the “County”) and Curbside Management, Inc., a North Carolina corporation, with its principle offices located at 116 North Woodfin Avenue, Asheville, NC (hereafter referred to as the “Contractor”).

WITNESSETH

WHEREAS, the County has duly advertised for bids for recycled material processing and bids were received and duly opened; and

WHEREAS, after careful consideration of the bid submitted by the Contractor, the County of Henderson has resolved to accept the bid and the execution of a contract with the Contractor for recycled material transportation and processing; and

WHEREAS, the Contractor is in the business of transporting and processing recycled material and has the ability, facilities and desire to provide such service to the County.

NOW, THEREFORE, in consideration of the premises and in further consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, both parties hereto agree as follows:

DEFINITIONS

“Dual Stream” recyclable material is defined as material that has been segregated into:

- “Comingled Containers” – meaning recyclable residential recyclable metal cans, glass bottles, and plastic containers as defined in the Material Acceptance Protocol – See Appendix 1.
- “Comingled Fiber”- meaning recyclable residential fiber as defined in the Material Acceptance Protocol – See Appendix 1.

“Single Stream” recyclable material is defined as loose, non-bagged, recyclable material which may be mixed together, instead of being sorted into separate commodities (newspaper, cardboard, plastic, glass, etc.) by the resident. Material allowed to be collected in single stream is defined in the Material Acceptance Protocol – See Appendix 1.

“Bagged Single Stream” sometimes referred to as “blue bag” material, means all recyclable materials collected in a single bag, usually clear blue so the contents can be easily identified.

Material allowed to be collected in the bagged single stream is defined in the Material Acceptance Protocol – See Appendix 1.

“Floor Pricing” – means the minimum price per ton the Contractor will pay the County for recyclable material

“Market Price” – based on the high side of the monthly Official Board Market yellow sheet pricing index for the Southeast Region for Mixed Paper and OCC. Means the market pricing available to the contractor for PET, HDPE, Steel cans, Aluminum cans and glass bottles during the period.

“Materials Acceptance Protocol” – is included in this Agreement as Appendix 1 and defines the recyclable material that is allowed to be made available by the County to the Contractor. The protocol may be amended in the future by consent of both parties to include additional recyclables.

“Material Mixture”- means the percent of the whole by commodity of the recyclable materials made available to the Contractor.

“Recyclables” – are defined in the “Materials Acceptance Protocol” Appendix 1.

“Revenue Sharing” – is defined as the market pricing and material mixture that is the basis for compensation to Henderson County, included in this contract.

“Fiber or Container Residue” – means any material made available by the County to the Contractor that cannot be processed and marketed as a recycled material.

“MRF” – Material Recovery Facility operated by Curbside Management, Inc.

TERMS AND CONDITIONS

The term of this Contract shall be for five (5) years beginning on the first day the County makes available to the Contractor recyclable material from the Counties collection sites. Thereafter, the Contract will continue in effect for an additional one (1) year periods unless either party notifies the other party of its desire to terminate this Contract within thirty (30) days of the Contract’s annual anniversary.

Acceptance of this contract is contingent upon acceptance by the County by June 30, 2011.

The County will make available recyclable material to the Contractor no later than 30 days after Contract signing.

FLOOR PRICE

The minimum Floor Price the Contractor will pay the County per ton for:

Dual Stream:

Comingled Fiber is \$39.54/ton

Comingled Containers is \$1.00/ton

Single Stream is \$6.10

Bagged Single Stream is \$0.00

REVENUE SHARING

The revenue sharing is based on the monthly Market Pricing and the Material Mixture as determined by the Materials Acceptance Protocol – Appendix 1 received by the County.

DUAL STREAM

Comingled Fiber

County will receive 40% of OCC monthly Market Price for material.

County will receive 50% of Mixed Paper monthly Market Price for material.

Based on December 2010 pricing:

County would receive \$57.44/ton for Comingled Fiber.

100 tons of Comingled Fiber multiplied by \$57.44 = \$5,744.28 monthly

Or \$344,656.80 over 5 years.

Comingled Containers

County will receive 12.5% of the revenue of the market pricing available to the Contractor for PET, HDPE, Other #3-7 Plastic, Steel cans, and Aluminum cans.

County will receive 100% of the revenue/expenditure of the market pricing for glass bottles and jugs generated by the County during the period.

Based on December 2010 pricing:

County would receive \$34.82/ton for Comingled Fiber.

50 tons of Comingled Containers multiplied by \$34.82 = \$1741.05 monthly

Or \$104,463.15 over 5 years.

BAGGED SINGLE STREAM

The revenue sharing is based on the monthly Market Pricing and the Material Mixture as determined by the Materials Acceptance Protocol – Appendix 1 received by the County.

Up to 499 tons/month – Contractor will share 50% of revenue generated above the average per ton price of \$100/ton.

500 to 999 tons/month – Contractor will share 65% of revenue generated above the average per ton price of \$100/ton.

Above 1000 tons/month – Contractor will share 90% of revenue generated above the average per ton price of \$100/ton.

Based on December 2010 pricing:

County would receive \$11.23/ton for Bagged Single Stream (under 499 tons/month).

150 tons of Bagged Single Stream multiplied by \$11.23 = \$1,683.85 monthly

Or \$101,030.85 over 5 years.

County would receive \$20.21/ton for Bagged Single Stream (above 1000 tons/month).

1150 tons of Bagged Single Stream multiplied by \$20.21 = \$23,237.10 monthly

Or \$1,394,225.73 over 5 years.

The Contractor will compensate the County in the month following the recyclable material deliveries.

TRANSPORTATION COSTS

The transportation cost from the County Facility to the MRF will be at zero cost to the County. Curbside Management Inc. will transport, process, and market all recyclables collected by the County.

RESPONSIBILITIES OF THE COUNTY

The County will cause to be made available for transportation by the Contractor in a manner acceptable to the Contractor all recyclable material received by the County.

The County shall make available to the Contractor reasonable access to all recyclable material.

The County shall have consolidated the recyclable materials in trailers or other means of conveyance furnished by the Contractor.

The County will comply with the Material Acceptance Protocol - see Appendix 1.

For the mutual benefit of the County and Contractor, the County will preclude the scavenging of recyclables.

RESPONSIBILITIES OF THE CONTRACTOR

The Contractor will transport, process, and market all recyclables collected by the County.

All transportation costs will be the responsibility of the Contractor. This contract contains no fuel escalator.

The Contractor requires no consideration from the County for loans.

The Contractor will sample the recyclable material made available from the County at least quarterly to determine if the Material Mixture percentage requires adjusting. The Contractor invites a representative from the County to observe the sampling.

The Contractor will provide the County with a monthly report which shall indicate the weights for Bagged Single Stream, Commingled Containers, Commingled Fiber, and Single Stream recyclable material received for that calendar month.

All weights will be determined by the Contractors certified scales.

INDEMNIFICATION

A. Each party shall be responsible for its own acts and for the acts of its agents, officers, employees, licensees, contractors, and anyone else for whom such party has legal responsibility. Each party does hereby agree to indemnify and hold harmless the other from and against any and all suits, judgments, costs, and expenses arising out of personal injury (including death) or property damage which were caused solely by the wrongful acts, omissions to act, or negligence of the acting party, its agents, officers, employees, licensees, contractors, or anyone else for whom such party has legal responsibility.

B. If personal injury (including death) or property damage is caused by the concurrent wrongful acts, omission to act, or negligence of the parties, or their respective agents, officers, employees, licensees, contractors, or others for whom each party has legal responsibility, then, in such event, the parties share proportionately the liability for such damage or injury.

EVENTS OF DEFAULT

No waiver by either party with respect to any breach or default or of any right or remedy shall be deemed to constitute a continuing waiver of any other breach or any other right or remedy, unless such waiver is expressed in writing and signed by the party to be bound. No failure by the party to exercise a right or remedy available hereunder, or otherwise available under law shall constitute a waiver of any obligation of the other party to perform strictly in accordance with the terms hereof. Notwithstanding the aforementioned, the following events shall, without limitation, constitute an event of default:

- If the County should fail to make available to the Contractor all Recyclables collected by the County during the term of this Agreement.
- If the Contractor should fail to accept any Recyclables from the County during the term of this Agreement.
- If the Contractor fails to pay the County in a timely manner.

CONTINGENCIES/FORCE MAJEURE

Either party to the Agreement shall be excused from failure to perform any of its obligations hereunder if and to the extent such failure to perform is caused by, arises out of, or is attributable

to war, riot, fire, explosion, extreme weather, acts of God, labor disputes, sabotage, accident, embargo, injunction, compliance with governmental order, inability to obtain fuel or raw materials preventing either party from performing any of its obligations hereunder, provided the party claiming such excuse shall promptly notify the other party of the reason therefore and the approximate duration of such delay or failure.

TERMINATION

In the event there should be a material default, including an Event of Default, in the performance of any covenant or obligation of County or the Contractor which has not been remedied within thirty (30) days after receipt of written notice from the injured party specifying such default, the injured party may terminate this Agreement upon written notice. Termination by one party for fault of the other party shall not constitute a waiver of any obligation of the other party to perform strictly in accordance with terms hereof. Nothing in this Agreement shall obstruct the right of either party to exercise any right, power or remedy permitted to it by law, in equity, or under this Agreement.

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the successors and assignees of either party. A party desiring to assign its obligations to an assignee shall provide the other party with advance notice of such assignment. In the event of a stock sale or a sale of substantially all of the assets of either County or Contractor, this Agreement shall be disclosed to the purchasing party and the purchasing party will be required to assume, in good faith, the terms and obligations of this Agreement.

AGREEMENT TO ARBITRATE

The undersigned parties agree that any disputes that may arise between them (including but not limited to any controversies or claims arising out of or relating to this Agreement or any alleged breach thereof, and any dispute over the interpretation or scope of this arbitration clause) shall be settled by arbitration administered by the American Arbitration Association in accordance with its commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. No party shall be entitled to punitive or treble damages.

Acknowledgement of arbitration. The parties hereto acknowledge that this document contains an agreement to arbitrate. After signing this document each party understands that he/she/it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by this arbitration agreement except as provided in this paragraph or unless it involves a question of constitutional law or civil rights. Instead each party has agreed to submit any such dispute to an impartial arbitrator.

GOVERNING LAW

This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of North Carolina. If any of the provisions of this Agreement is declared invalid, the remainder of the Agreement shall not be affected thereby, and each term and provision of the Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be duly executed pursuant to authorization contained in a duly adopted resolution or has otherwise been duly authorized to sign on behalf of their respective organization.

For the County of Henderson:

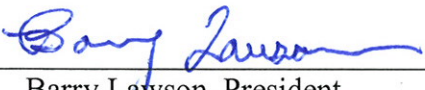
Person to sign Contract

Date

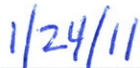
Attest to:

County Clerk
(Corporate Seal)

For Curbside Management Inc:

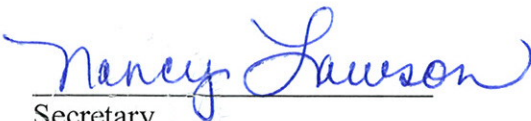


Barry Lawson, President



Date

Attest to:



Secretary
(Corporate Seal)

Appendix 1
MATERIALS ACCEPTANCE PROTOCOL

RECYCLABLE RESIDENTIAL COMMINGLED CONTAINERS consist of the following, loose, uncompacted, and commingled

- Glass, transparent and translucent food and beverage bottles and jars. Paper labels are acceptable. Ceramics, drinking glasses, window and mirror glass, and light bulbs are not acceptable.
- Tin/Steel cans, tin plated, food and beverage containers, all sizes; paper labels are acceptable.
- Aluminum used beverage containers, pie plates and food trays (no food residue).
- Plastic bottles-blow-molded (bottle necked) HDPE, PET and other plastic bottles and jugs, including plastic milk jugs, water jugs, detergent bottles, soda bottles, dishwashing soap bottles, and some shampoo bottles and similar items. Motor oil and anti-freeze containers are not acceptable.
- Plastic margarine tubs, yogurt containers, and clear clamshell takeout containers. Lids, bags, strapping, plant pots, frozen entree trays, are not acceptable.

RECYCLABLE RESIDENTIAL COMMINGLED FIBER consist of the following loose, and commingled:

- ONP – old newspapers and advertisement. Old newspaper that contains incidental moisture from rain on collection days is acceptable. Soaked paper or yellowed newsprint is unacceptable.
- OMG – old magazines containing glossy coated paper, including catalogues, glossy fillers or mailers, with the exception of wet material or material that was once wet.
- OCC – old corrugated containers (cardboard) Staples and tape with water soluble glues do not have to be removed. OCC can be damp but not soaked. Wax-coated and oriental old corrugated containers are not acceptable.
- Kraft (brown) paper bags – all sizes of loose, bundled or bagged Kraft paper grocery sacks.
- Junk mail – all dry, loose or bagged bulk mail. All unopened junk mail and envelopes with window are acceptable.
- High grade paper – all dry, loose or bagged white and colored ledger and copier paper, note pad paper (no backing), loose leaf fillers, computer paper (continuous-form perforated white bond or green-bar paper).

- Boxboard or Chipboard-- all non-corrugated cardboard, commonly used in dry foods and cereals boxes, shoe boxes, and other similar packaging. Boxboard with wax or plastic coating and boxboard that has been contaminated by food is not acceptable.

Please note: Delivered materials that do not meet the Material Acceptance Protocol may be subjected to a surcharge. Deductions will be made for fiber residue or container residue.

Marcus Jones

From: Marcus Jones
Sent: Wednesday, January 19, 2011 10:32 AM
To: Marcus Jones
Cc: Natalie Berry; Alexis Baker
Subject: Information Request
Attachments: image003.png

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Proposers for County Recycling Options:

Thanks you for your interest in Henderson County's recycling program. Please respond to this email with a signed, proposed contract based on your proposal. I will compile a matrix comparing the proposals and present these to the Board for their approval.

The criteria for comparison will be:

- Market Pricing / Revenue Sharing (see below for details)
- Floor Pricing for Dual Stream, Singlestream and Bagged Singlestream
- Transportation Cost from the County Facility to the MRF
- Consideration from Henderson County (loan, disposal cost of residual material, rejected loads, etc)
- Length of Contract

In addition, please submit the corresponding monthly revenue based on last month's market and your revenue sharing or market pricing option.

- Current monthly volume of 150 tons of dual stream and 150 tons of bagged singlestream.
- Our five year goal volume of 150 tons of dual stream and 1,150 tons of bagged singlestream.

If at all possible, please submit these proposed contracts by this Friday. There is a possibility that they can be presented to the Board during their Budget Workshop Tuesday, Jan 25th.

Thanks,



Marcus A. Jones, P.E.
Director of Engineering
Henderson County Government
Phone 828-694-6526
www.hendersoncountync.org

All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties.

HENDERSON COUNTY ENGINEERING



Memorandum To: Interested Recycling Professionals

*From: Marcus A. Jones, P.E.
Director*

*Subject: Request for Proposals
Public / Private Partnership
Henderson County Materials Recovery Facility*

Date: September 23, 2010

Henderson County Solid Waste (County) is soliciting proposals from qualified persons, firms or corporations (Vendor) to construct and operate a Singlestream Materials Recovery Facility (MRF) in Henderson County. This facility will process recycling material from Henderson County Solid Waste operations as a priority and if possible may accommodate out of County material. Henderson County is willing to partnership with a private organization in order to reduce processing costs of County material. Henderson County is open to various options that may assist a private organization with the construction and / or operation of a MRF located within Henderson County.

Detailed Scope of Services:

It is anticipated that the MRF will be located in available warehouse space within the County. Several potential locations have been identified by staff but other options will be considered. The Vendor will be responsible for all required permits and the facility will operate separate from the County's permit to operate with the Department of Environment and Natural Resources.

The County recyclable material will generally be delivered via roll-off trucks. The initial recyclable material is projected to be approximately 5,000 tons per year with 20% Blue bag Singlestream and 80% dual stream. It is anticipated that the County stream will quickly grow in excess of 10,000 tons with the growth coming from Singlestream material. Material from outside of the County will be permitted but have a secondary priority to Henderson County material.

100 North King Street – Hendersonville, North Carolina 28792
Phone 828.694-6560 Fax 828.694.6610
www.hendersoncountync.org

Minimum Qualifications:

Qualified Vendors should have a minimum of four (4) years continuous experience in the installation and operation of Singlestream Materials Recovery Facilities with at least 10,000 tons of materials.

Submittal Requirements:

The Vendor will supply, as a part of their submittal, the following:

- Information relative to the Vendor submitting the statement of qualifications including but not limited to: Name of Vendor, primary contact, years in business, location of regional offices, and financial stability of Vendor.
- Information relating to the experience/history of the Vendor as it pertains to the design, layout, manufacture, installation and / or operation of MRF equipment up to and in excess of 10,000 ton of material per year.
- A detailed description of the sorting process that will effectively and efficiently meet the County's goals.
- A detailed description of the process and equipment's expandability.
- A detailed description of the operational experience, reliability of the technology and equipment the Vendor would utilize to meet the County goals.
- A detailed description of the partnership required from the County.
- List a minimum of three (3) references with contact person and contact information)
- Other actors/information that may have a material bearing on the County's ability to evaluate the Vendor's qualifications to install and operate a MRF.

Interested Vendors should electronically submit their Proposals to the following address in accordance with the instructions and guidance provided for herein, by the close of business **Friday, October 22, 2010** to (pdf document preferred):

Marcus A. Jones, P.E.
Director of Engineering
County of Henderson
majones@hendersoncountync.org

RFP: Public / Private Partnership for Henderson County Materials Recovery Facility

September 23, 2010

Page 3

The County will review the proposals and will select the most qualified and financially feasible Vendor for negotiations. The County reserves the right to reject any and all proposals.

Questions regarding selection or submittal requirements relative to this RFP may be directed to Marcus Jones, Director of Engineering at majones@hendersoncountync.org.

Henderson County Solid Waste

**Request for Proposals
MRF Private Partnership**

January 18, 2011

Henderson County Engineering



RFP: MRF Private Partnership

Evaluation Criteria

- ▶ **Market Pricing:** Prices to be paid to County during good markets based on published market pricing. Evaluated by the amount that would have been paid during Dec 2010.
- ▶ **Floor Pricing:** lowest prices (per ton) to be paid to County during poor markets
- ▶ **Transportation Costs:** Cost to transport the material from Henderson County Solid Waste to the MRF
- ▶ **Consideration from County:** Benefits from the County to the MRF
- ▶ **Length of Contract:** term of Contract in years



RFP: MRF Private Partnership

American Recycling of SC (ARSC) Proposal

- ▶ **Market Pricing:** \$7,536
- ▶ **Floor Pricing:**
 - \$20 for Dual Stream
 - \$10 for Singlestream
 - \$0 for Bagged Singlestream
- ▶ **Transportation Costs:** \$0
- ▶ **Consideration from County:** Loan for \$550,000 for 10 years at 4.5% with bank / bond guaranteed surety. Also, ARSC exclusive vendor.
- ▶ **Length of Contract:** 10 years with options to extend



RFP: MRF Private Partnership

ARSC Proposal, continued

► Other Points:

- **Priority Service:** over all ARSC customers at the local facility and guaranteed best pricing.
- **Jobs:** generates 15 to 20 jobs in Henderson County with 2 supervisor level positions
- **Taxable Investment:** over \$800,000 in equipment added to property tax listings
- **Fund Balance Investment:** 4.5% is better than current rates but with more risk. Negotiations to increase ROI by revenue sharing or host fees for non County material were not successful.



RFP: MRF Private Partnership

ARSC Proposal, continued

▶ Other Points:

- **Competition:** introduces competition in WNC recycling industry
- **Construction Project:** estimated \$250,000 project to local contractor for upfit of existing warehouse space



Alternative Option: Outside County MRF

Curbside Management (CM) Proposal

- ▶ **Market Pricing:** \$9,269
- ▶ **Floor Pricing:**
 - \$13.85 for Dual Stream
 - \$6 for Singlestream
 - \$0 for Bagged Singlestream
- ▶ **Transportation Costs:** \$0
- ▶ **Consideration from County:** CM exclusive vendor
- ▶ **Length of Contract:** 5 years (10 possible) with options to extend
- ▶ **Other Points:** Potential Henderson County MRF in future



Summary Table

	American	Curbside
Market Pricing	\$7,536	\$9,269
Floor Pricing: Dual Stream	\$20	\$13.85
Singlestream	\$10	\$6
Bagged Singlestream	\$0	\$0
Transportation Cost	\$0	\$0
Consideration	\$550,000 loan Exclusivity	Exclusivity
Contract Length	10 years	5+ years

Henderson County Solid Waste

Questions?

Thank you

