CONTRACT FOR

RECYCLABLE MATERIALS PROCESSING

CITY OF MINNEAPOLIS

AND

B.F.I. WASTE SYSTEMS OF THE TWIN CITIES

FINAL DRAFT **FINAL DRAFT** **FINAL DRAFT**

THIS AGREEMENT, made and entered into and to be effective as of the first day of May, 2004, by and between the City of Minneapolis, a home rule charter City in the County of Hennepin, State of Minnesota, hereinafter called the "CITY" and BFI Waste Systems of North America, Inc., a Delaware corporation that is qualified and duly licensed to do business in the State of Minnesota, hereinafter referred to as "B.F.I.".

WITNESSETH:

WHEREAS, the CITY through the Solid Waste and Recycling Division of the Department of Public works is engaged in a City wide program of collecting recyclable materials from residents and landowners in the CITY of Minneapolis, and

WHEREAS, the CITY goal is to maximize the recyclables collected in the City that are marketed into recycled content products and to achieve the most cost-effective processing and marketing solution for the Recycling Cost Center of the Solid Waste Enterprise Fund, and,

WHEREAS, the CITY has engaged in a competitive Request for Proposals process that resulted in the selection of BFI as the vendor for processing and marketing the recyclables,

NOW, THERFORE, in consideration of the covenants and agreements hereinafter set forth, the CITY and BFI agree as follows,

ARTICLE I

Section 1. General Statement

BFI agrees to receive and process recyclable material as collected by the "curbside" collection vehicles under this agreement in a fully enclosed facility that complies with all applicable federal, state and local laws and regulations. BFI specifically agrees that the only facility, which will be used by it for the receipt of recyclable materials under this contract, shall be the facility owned by it located at Lyndale and 44th Avenue North in the CITY of Minneapolis.

Section 2. Definitions

For the purposes of this RFP the following terms and definitions will apply:

Athletic Shoes: Shoes having a rubberized sole with cloth, canvass or vinyl uppers, excluding those with leather uppers.

Collection Contractor: The company under contract with the City for refuse and recyclables collection service.

Gate to Gate Times: means that time from the entry of a truck B.F.I. campus gate on 44th Street to

exit from the facility onto 44th Street.

Hardback Books: any publication with a rigid front and back cover

Processing: The sorting, volume reduction, baling, containment or other preparation of recyclable materials delivered to the processing center for transportation or marketing purposes.

Processing Center: A facility in which recyclable materials are processed. The facility will conform to all applicable rules, regulations and laws of state, local or other jurisdictions.

Process Residuals: The materials received at the facility that are not recovered and are transported for disposal. Process Residuals include subcategories of process residuals including but not limited to bulky items, contaminants, unsorted tailings, floor sweepings and rejects from specific processing equipment (e.g. materials cleaned from screens, etc).

Recycled Content Products: Products or goods, including roadbed or other aggregate products that are openly marketed and have positive value. Recycled content products do not include use of any commodity as landfill cover.

Source Separated Recyclable(s): Any material that is sorted and separated from Minneapolis solid waste for use and/or reuse as a substitute for raw material in a manufacturing or re-manufacturing process. Minneapolis recyclables shall include but are not limited to:

1. Metal food and beverage cans and foil: primarily steel, tin, aluminum and bi-metal

2. Glass food and beverage bottles, jars and containers: sorted as either clear or colored

3. Old Newspaper (ONP): printed, ground wood newspaper including all advertising inserts and "kraft" grocery bags

4. Plastic bottles with a neck, including: food, beverage (milk, soft drink, water, juice), & toiletry, cosmetic, detergent jugs and containers

5. Old Corrugated Cardboard (OCC): cardboard used primarily as packaging material to the extent it is not contaminated with food residue or other extraneous substances

6. Magazines.

7. Boxboard: containers used for the packaging of any dry goods such as cereal, crackers and Kleenex

8. Home Office Paper and Mail (HOPM): Mixed "office" paper collected from residences, including "junk mail," colored and construction papers, school papers and books, and other materials of a similar nature.

9. Old Telephone Directories (OTD's): any of the several directories distributed by the various telephone companies

Textiles: Re-usable clothing in good wearable condition. Not to include rags, torn, dirty or unwearable clothing.

Waste: Shall mean any delivered recyclable material that is deemed by the processor to be unable to be marketed into recycled content products. Typical "waste" in this context includes pumps on plastic bottles, ceramic material in glass streams, pizza cartons in corrugated cardboard streams, etc.

ARTICLE II

General Requirements

1 Interest of Members of City

B.F.I. agrees that no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Contract.

2 Equal Opportunity Statement

B.F.I. agrees to comply with the provisions of all applicable federal, state and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363, and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

3 Non-Discrimination

B.F.I. will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran or the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

B.F.I. shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements the Minneapolis Code of Ordinances, Chapter 139.

5. Performance Surety Bond; Payment Surety Bond.

B.F.I. shall provide a performance surety bond and a payment surety bond in a form approved by the City of Minneapolis to run the full term of the contract of $3,500,000 for the performance surety bond and $3,500,000 for the payment bond as security for the faithful and satisfactory performance of this Agreement and for the payment of all persons performing labor and furnishing services, materials and/or equipment in connection with this Agreement.

6. Insurance

B.F.I. shall secure insurance issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the contract and shall remain continuously in force for the duration of the contract. B.F.I. and its sub-contractors shall secure and maintain the following insurance:

a) Workers Compensation insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least $100,000 each accident, $500,000 disease - policy limit and $100,000 disease each employee.
b) Commercial General Liability insurance with limits of at least $1,000,000 general aggregate, $1,000,000 products - completed operations $1,000,000 personal and advertising injury, $1,000,000 each occurrence $500,000 fire damage and $50,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.
c) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least $500,000 per accident.
d) Professional Liability Insurance or Errors & Omissions insurance providing coverage for 1) the claims that arise from the errors or omissions of B.F.I. or its sub-contractors and 2) the negligence or failure to render a professional service by B.F.I. or its sub-contractors. The insurance policy should provide coverage in the amount of $1,000,000 each occurrence and $1,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of B.F.I. Any policy deductibles or retention shall be the responsibility of B.F.I. B.F.I. shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect B.F.I.'s interest or provide adequate coverage. Evidence of coverage is to be provided on a City-approved Insurance Certificate. A thirty- (30) date written notice is required if the policy is canceled, not renewed or materially changed. B.F.I. shall require any of its subcontractors, if sub-contracting is allowable under this contact, to comply with these provisions.

7. Transfer of Interest

B.F.I. shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City, provided,

however, that claims for money due or to income due to B.F.I. may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice of any such assignment or transfer shall be furnished to the City. B.F.I. shall not subcontract any services under this contract without prior approval of the City Department Contract Manager designated herein.

8. Compliance Requirements

B.F.I. is required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. B.F.I. will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires contractors associated with the City of Minneapolis to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship.

B.F.I. agrees to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination. The above requirements also apply to the Minnesota Human Rights Act, Minn. Stat. C. 363.

In the event of B.F.I.'s noncompliance with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended, in whole or part, and B.F.I. may be declared ineligible by the Minneapolis City Council from any further participation in City contracts in addition to other remedies as provided by law.

9 General Compliance

B.F.I. agrees to comply with all applicable Federal, State and local laws and regulations governing all applicable laws related to the performance of this agreement.

10 Performance Monitoring

The City will monitor the performance of B.F.I. against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by B.F.I. within a reasonable period of time after being notified by the City, contract termination procedures will be initiated.

11 Independent Contractor

Nothing contained in this agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. B.F.I. shall at all times remain an independent contractor with respect to the services to be

performed under this Contract. Any and all employees of Contractor or other persons engaged in the performance of any work or services
required by Contractor under this Contract shall be considered employees or sub-contractors of B.F.I. only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of contractor.

12 Hold Harmless

B.F.I. agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, resulting directly or indirectly from an act or omission of B.F.I., its employees, its agents, or employees of subcontractors, in the performance of the services provided by this contract or by reason of the failure of B.F.I. to fully perform, in any respect, any of its obligations under this contract. If a Contractor is a self-insured agency of the State of Minnesota, the terms and conditions of Minnesota Statute 3.732 et seq. shall apply with respect to liability bonding, insurance and liability limits. The provisions of Minnesota Statutes Chapter 466 shall apply to other political subdivisions of the State of Minnesota.

13 Accounting Standards

B.F.I. agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this contract.

14 Retention of Records

B.F.I. shall retain all records pertinent to expenditures incurred under this contract for a period of three years after the resolution of all audit findings. Records for non-expendable property acquired with funds under this contract shall be retained for three years after final disposition of such property.

15 Data Practices
B.F.I. agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. B.F.I. must immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from B.F.I. concerning data requests. B.F.I. agrees to hold the City, its officers, and employees harmless from any claims resulting from B.F.I.'s unlawful disclosure or use of data protected under state and federal laws.

16 Inspection of Records

All Contractor records with respect to any matters covered by this agreement shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

17 Living Wage Policy

All contractor employees will be paid at least a living wage. The definition of a Living Wage is at a minimum 110 percent of the current year federal poverty level for a family of four as provided by the federal Department of Health & Human Services for a contractor that does not supply employer-paid health insurance and 100 percent for a contractor that does supply employer-paid health insurance. The City will supply the current year federal poverty level for a family of four to B.F.I. yearly.

18. Applicable Law

The laws of the State of Minnesota shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota.

19. Conflict and Priority

In the event that a conflict is found between provisions in this Contract, B.F.I.'s Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals.

20. Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon final approval of the final report or upon request by the City at any time before then. The City may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to B.F.I.

21. Billboard Advertising

Through Ordinance 109.470, City and City-derived funds are prohibited from use to pay for billboard advertising as a part of a City project or undertaking.

22. Conflict Of Interest/Code Of Ethics

Contractor agrees to be bound by the City's Code Of Ethics, Minneapolis Code Of Ordinances, Chapter 15. Contractor certifies that to the best of its knowledge all City employees and officers participating in this Agreement have also complied with that

Ordinance. It is agreed by the Parties that any violation of the Code Of Ethics constitutes grounds for the City to void this Agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

23. Termination

The City may cancel this Contract for any reason without cause upon thirty (30) days written notice, except that if either party fails to fulfil its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract, the other party shall have the right to terminate this Contract, if the default has not been cured after a ten (10) days written notice has been provided. If termination shall be without cause, the City shall pay contractor all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Contractor, the City shall pay Contractor all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by B.F.I. under this agreement shall, at the option of the City, become the property of the City, and B.F.I. shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, B.F.I. shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by B.F.I.. The City may, in such event, withhold payments due to B.F.I. for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by B.F.I., from asserting any other right or remedy allowed by law, equity, or by statute.

24. Small & Underutilized Business Program (SUBP) Requirements.

B.F.I. must comply with the Small & Underutilized Business Enterprise Program (SUBP), as outlined in Minneapolis City Ordinance Chapter 423 (the "(SUBP) Ordinance

B.F.I. shall make and document every reasonable effort to include qualified and available certified small businesses, including companies owned by women and minority persons, as part of this contract. A list of certified small businesses can be obtained by contacting the Small and Underutilized Business Program at 612/673-2272 or the CERT web site at www.jitservicesinc.com

The SUBP goals for this project are 8 % WBE and 0 % MBE.

Any inquiries relating to the participation goals for small and underutilized businesses should be directed to the City of Minneapolis Civil Rights Department, SUBP Unit, 239 City Hall, 350 South 5th Street, Minneapolis, Minnesota 55415, Attention: Manager, SUBP Unit, (612-673-2272).

25. Force Majeure

In the event either party is prevented from performing any of the obligations and/or duties required pursuant to this agreement due to governmental or administrative prohibitions, acts of God, acts of public enemies, fire, riot, or end-user mill or plant shut down, as the case may be, the party so prevented shall, upon written notice to the other party, be thereafter released from its obligation to the extent so affected, except for payment (s) already due under the terms of the agreement, so long as such cause (s) continue. "End-user mill or plant shutdown" within the terms of this paragraph shall not include periodic shutdowns or seasonal shutdowns nor shall it include temporary shutdowns, but shall be limited to unplanned or catastrophic shutdowns of the end-user mill or plant being used by BFI to process a particular recyclable.

26. Equal Benefits for Domestic Partners

Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to this contract. Compliance with Section 18.200 is required commencing January 1, 2004.

ARTICLE III

Special Requirements

1. Facility and Facility Operating Requirements

Operations must occur totally in an enclosed facility that complies with all applicable federal, state and local laws and regulations. As stated in Article I, Section 1, the 44th and Lyndale Facility is the primary facility.

a. The facility shall be open to the City and it's Collection Contractors between the hours of 6:30 a.m. and 5:00 p.m. Monday through Friday. The City intends that City and Collection Contractor vehicles will empty between the hours of 6:30 a.m. and 5:00 p.m.; however, the facility shall be open additional hours in the event of unforeseen circumstances. During weeks containing Major Holidays (Memorial Day, 4th of July, Labor Day, Thanksgiving, Christmas and New Year's Day) the facility must be open on the Saturday following the Holiday, unless the Holiday falls on a Saturday.

b. An alternate facility shall be identified by BFI and agreed to by the City for immediate use if the primary facility is not, for any reason, available. The use of the alternate facility shall be by prior written approval of the City. The alternate facility proposed by B.F.I. is Pioneer Paper.

c. In previous contracts and in the RFP, the City has specified that facilities used by the City shall have adequate dumping and maneuvering room for the materials to be handled and the vehicles that the CITY and it's contractors will utilize. The City trucks and/or trailers continue to require a minimum of 26 feet of unrestricted floor to ceiling clearance to be

emptied without risk of equipment damage. Door height in the dumping areas must meet or exceed 26 **feet** clear height. If door heights do not meet or exceed 26 feet clear height, any and all damage to City equipment that results from vehicle interaction with doors and surroundings shall be reimbursed to the City. The City shall make every reasonable effort to instruct and train employees to safely dump at the facility, including progressive disciplinary action up to and including termination.

d. The facility shall have adequate staging, maneuvering and dumping space and adequate personnel to allow the sequential dumping of each vehicle and the recyclable materials in each vehicle on a timely basis. A space of at least 2700 square feet, in the approximate dimensions of 90 feet by 30 feet is necessary for this purpose. The City's trailer may be dumped concurrently by a dedicated forklift in another area of the facility separate from the vehicles. Care shall be taken when dumping the trailers to prevent any damage, immediate or cumulative. B.F.I. shall reimburse the City for damages caused by B.F.I. to the trailers.

e. The City has concerns with adequate space and flow of traffic and worker safety at the facility. In order to manage traffic movement and address the City's concerns, BFI and the CITY agree that;

BFI shall appoint a "Safety Officer" to whom employees of the City, or the City's contractors, shall report safety issues and concerns regarding the facility. This Safety Officer shall reply to the stated concerns, in writing, not more than 48 (working) hours from the date of report of the safety concern. This reply shall contain an evaluation of the concern, actions, if any recommended to be taken by the City or its contractors to address the concern, and a timetable for implementation.

BFI shall continue to convene a Committee of Customers. Said Committee of Customers shall have the following composition:

1 member from BFI commercial recycling Operations
1 member from Minneapolis Refuse, Inc., the Collection Contractor of the CITY or its' successor
1 member from the CITY
1 member of the facility staff (may be traffic regulator)
1 member from the remaining customers of the facility

BFI may appoint up to three additional members representing other customers or BFI collections employees. The Committee will make Recommendations to the Contract Officers, who will have final approval or disapproval of the recommendations. The Committee shall meet at least annually but shall also meet at the request of any member, to discuss any concerns of the City or BFI or its Customers Re: traffic flow and worker safety. In addition, the City member and the Safety Officer shall communicate on a weekly basis to maintain open and free dialog.

The Committee shall produce a written, updated safety plan that will be provided to all employees and customers, that addresses all appropriate provisions of the Agreement. The scope of this plan shall not include internal plant processes that have no relation to the

delivery of recyclables (e.g. placement of kill switches for the baler), but shall address all matters appropriate to recyclables delivery, such as traffic flow, recyclables delivery dumping and scale area safety and yard safety. One product of this written safety plan shall be a summary sheet (e.g. maximum of a front and back page) of key operating procedures that affect safety. This summary shall shall be translated into all languages spoken by employees and customers at the facility. This updated safety plan, including summary sheet(s), shall be finalized, produced and disseminated to all employees and drivers of customers within three months of the execution of this Agreement. Additional updates to this safety plan shall be produced as needed at any time that facility building, equipment or operating procedures are substantially changed. Such updates to this safety plan shall be produced within one month of the date of such substantial change.

f. BFI shall continue to employ a traffic regulator to direct the flow of traffic during the hours of 7:00 a.m. to 3:30 p.m. Outside of the above hours, or when the traffic regulator is on break or at lunch for example, the Loader Operator shall serve as the traffic regulator. This traffic regulator will "police" traffic according to rules determined by best safety practices and agreed to by the Committee of Customers. Drivers will be required to work with the traffic regulator, and to take instructions as directed by the traffic regulator. Any damage to CITY vehicles as a result of dumping shall be the responsibility of the CITY if the traffic regulator's clear directions are not heeded by CITY employees; any damage to CITY vehicles as a result of dumping or vehicle operation at the facility shall be the responsibility of BFI in all other cases. Any damage to the City's Collection Contractor's vehicles as a result of dumping shall be the responsibility of the (MRI) if the traffic regulator's clear directions are not heeded by Collection Contractor's employees; any damage to Collection Contractor's vehicles as a result of dumping shall be the responsibility of BFI in all other cases.

g. Traffic lane markings shall be maintained and clearly visible at all times to insure safe and efficient traffic flow throughout the facility.

h. The facility shall always be available during the time period specified in provision III.1.a for City vehicles and the City's Collection Contractor's vehicles to deliver recyclable materials, except for shutdowns due to acts of God or acts imposed by the City.

i. The sequence of dumping in the facility shall be convenient to the design of the vehicles of the City and it's Collection Contractor. Any proposed changes to the facility, or to dumping procedures, shall be first brought to the Committee of Customers for discussion and input.

j. BFI shall assign personnel to assist as spotters at the dump area on the north side of the building, and the west side area for magazines, etc. The spotters will have the authority to direct traffic on their sides of the building.

k. The trailers used by the City are to be emptied by a forklift. B.F.I. must provide and maintain a medium sized fork lift, lifting capacity of 4,000 pounds, with qualified operator, to position and dump the trailers. Damages to the trailers by B.F.I. shall be minimized. B.F.I. shall reimburse the City for damages caused by B.F.I. to the City recycling trailers.

l. B.F.I. will weigh on certified scales, or provide weighing on certified scales, all recyclables

accepted by the facility which were delivered by the City or it's Collection Contractor. Gross, tare and net weights by load will be provided to the City daily, and summarized on a monthly basis. Two loads per day, as designated by the City, will be weighed successively by commodity and will be reported by commodity to the City. Daily information may be provided on vehicle weigh tickets. Not less than once per week, the "can split" of aluminum and non-aluminum cans will be reported for the day's City and Contractor "cans" tonnages. The City collected cans and the contractor-collected cans may be commingled. The City reserves the right to spot check all tonnages and relative recyclables amounts.

m. It is understood that from time to time there may be conditions under which it would be mutually beneficial to change certain operational conditions at the facility. In those cases, agreement by both Contract Officers shall be necessary to accomplish such changes.

2. Facility Personnel Requirements

In order to reduce the amount of temporary personnel facilitated at the North BFI Recyclery, BFI agrees to the following:

- To reduce the use of temporary help to the extent possible in the North BFI Recyclery and maintain the existing twenty permanent positions that relate to the Minneapolis contract
- To offer every qualified temp employee after 60 days a permanent position
- To document this offer and report by the fifteenth day in the month after each quarter to the City of Minneapolis the results of these offers. Each report will contain a paragraph of text commenting to an overview for the reporting period.
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To address the issues of full time permanent positions in a "plan" that expands the current process BFI employs to reach various communities in the recruitment process. The first "plan" will be due 15 days after the first quarter of this contract. It will be submitted to the appropriate City officials for comment. The "plan" will stand as such unless, at BFI's choosing, new additions or substantial changes are made to it. Then BFI will again submit it for review and comment.

3. Marketing Agreements and Reporting Requirements

a. B.F.I. shall provide copies of current marketing agreements and/or contracts for all materials, for Primary and Secondary markets for each commodity within thirty days of execution of this agreement. As such agreements, change, expire or are re-negotiated, current copies of all agreements shall be provided to the City.

b.. It is intended that all recyclables delivered by the City will go to recycling markets to be manufactured into recycled content goods. Any tonnage delivered by the City in excess of **0.5% per day** which is disposed of as "waste" by B.F.I. will be delivered to disposal facilities only with the specific prior approval of the City.

c. The facility will report, on a monthly and year to date basis, the following information:

Tons of City material a) received, by recyclable material, including all splits
b) marketed (sold), by recyclable material
c) stored, by recyclable material
d) disposed of tonnage, with relative estimate of material type

An evaluation of current and projected market strength, by recyclable type.

d. The facility will report, on a quarterly and year to date basis, the destination and tonnage, by recyclable material, of marketed materials.

e. Monthly reports shall be due to the City by the last day of each month for material received by B.F.I. during the preceding calendar month. Quarterly reports to the City shall be due by the last day of April; July; September; and January for material received by B.F.I. during the preceding three calendar months. Year to date basis reports to the City shall be due by the last day of January for materials received by B.F.I. during the preceding twelve calendar months.

3. Payment Requirements

a. Payment to the CITY shall be made on the last day of each month for material received by BFI during the preceding calendar month (e.g., payment on February 28, 2005 for recyclables received in January, 2005.

b. The CITY shall receive payment according to the schedule contained in Appendix A.

4. Alternate Materials

By mutual agreement of the Contract Parties, materials may be added to the stream as additional marketing and collection opportunities present themselves. Adding materials shall be by mutual agreement. Deleting materials from the recycling program shall be at sole City discretion.

ARTICLE IV

Liquidated Damages

The Contract Monitor(s) for the City shall notify Contractor in writing or electronically of each act or omission in this Agreement reported to or discovered by the City. It shall be the duty of Contractor to take whatever steps or action may be necessary to remedy the cause of the complaint.

The following acts or omissions shall be considered a breach of the Agreement. The parties agree that reasonable liquidated damages for each enumerated act or omission shall be that amount specified below and that disputes regarding these alleged acts or omissions shall be resolved as specified in Article IX.

a.) Failure to maintain “gate to gate” times for any City or City Contract collection vehicles during normal periods: $50.00 per instance

(a) Failure to operate facility in conformance with Article III, Section 1, inclusive: $100.00 per day

(b) Failure to employ a “traffic regulator” and to have that person, or his designated replacement on duty at the facility: $100.00 per day

(c) Failure to make progress on Article III, Section 2: $500 per month

(d) Failure to provide net revenue payments on the schedule specified in Section III, inclusive: Five (5) percent of monthly net revenue payment due for every day delay in payment.

(e) Failure to provide monthly report of tonnages received from the City: $25 per day for every day of delay.

(f) Failure to have the facility open and available to receive City recyclables materials as per the scheduled established in Article III, Section 1.a,, inclusive: $1,000 per day.

(g Failure of the Safety Committee to produce safety plan(s) as per Section III, inclusive: $50.00 per week beyond due date.

ARTICLE VIII

Notice of Default/Non-Performance and Cure

Unless a different procedure or time limit is provided in the article or paragraph of this Contract under which the default, failure to perform, or breach occurs, no event shall constitute a default giving rise to the right to terminate unless and until written notice of default is given to the defaulting party, specifying the particular event, series of events, or failure constituting the default.

If the party in default fails to cure the specified circumstances as described by the Notice of Default within thirty (30) days or such other time as may be specified under the terms of this Contract, then this Contract may be terminated. In addition, the parties hereto agree to use their respective best efforts to mitigate any damage, which might be suffered by reason of any event, giving rise to a remedy hereunder.

Presumptive Default In Certain Cases

Three occurrences of non-compliance with Contract Standards contained in Article III are deemed to be a substantial breach of the terms of this Agreement and shall be presumptive grounds to implement the default provisions of this Agreement. There shall be no opportunity to cure defaults for violating provisions of Article III.