

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, entered into as of the ___ day of _____, 2017, by and between **OGDEN CITY CORPORATION, SOUTH OGDEN CITY, RIVERDALE CITY, WASHINGTON TERRACE CITY**, all of which are municipal corporations of the State of Utah ("Cities"), and **RECYCLED EARTH, LLC**, a Utah limited liability company, located at 3027 Midland Drive, Ogden, Utah ("Recycled Earth").

RECITALS

WHEREAS, Cities and other Eligible Users operate a curbside recycling program that collects recyclable materials in a single stream; and

WHEREAS, Cities and other Eligible Users need to deliver recyclable materials to a materials recycling facility where the materials can be processed and sold into the market; and

WHEREAS, Cities and other Eligible Users intend to pursue a formal bid process to locate and establish a contractual relationship with a qualified materials recycling vendor or facility, but have a need to process recyclable materials during the time required to formalize a long term agreement; and

WHEREAS, Recycled Earth operates a recycling facility that is capable of meeting Cities' and other Eligible Users' short term needs.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. **Eligible Users.** This Agreement is the result of a cooperative negotiation between Cities and Recycled Earth for the benefit of Eligible Users and may be used by Eligible Users without the Eligible Users signing a participating addendum or separate agreement. Any municipality within Weber County is an Eligible User.
2. **Facility.** Recycled Earth shall provide and operate a recycling center ("Facility") to process and market recyclable materials.
 - a. Recycled Earth verifies that the Facility is available for use and operational as of the date this Agreement is signed.
 - b. Recycled Earth is responsible for the operation and maintenance of the Facility. By entering into this Agreement, Recycled Earth verifies that it possesses and complies with any required government or other required operating permits.
 - c. Recycled Earth shall assure for the term of this Agreement adequate material processing capability will be provided at the Facility for all materials delivered by an Eligible User or an Eligible User's contracted haulers.

3. **Materials Collection.** An Eligible User is responsible for the collection and delivery to the Facility of all Recyclable Materials collected through Eligible User's municipal recycling programs. Eligible Users shall deliver the Recyclable Materials in a single stream (with no separation by type of material) with any sorting and other treatment being conducted by Recycled Earth at the Facility.
4. **Location of Facility.** The Facility is in the corporate limits of Ogden City at 3027 Midland Drive.
 - a. Recycled Earth will not cease operating the Facility at its present location or relocate the Facility to a new location without Cities' prior written consent.
 - b. The Facility shall be open and operating to accept deliveries from Eligible Users between 8:00 am and 5:30 pm, Monday through Friday, except for federal and state holidays (but not including Columbus Day).
 - c. Recycled Earth shall remain in compliance with the conditional use permit issued by Ogden City; shall comply with all applicable employment, safety and health laws, ordinances and codes; shall take all reasonable and practicable action to prevent littering of materials, refuse and dust to minimize litter and odor; and shall document any complaint and the response to a complaint for property maintenance.
5. **Term.** Unless terminated under Section 12 of this Agreement, the term of this Agreement shall be for a period not exceeding one year commencing on the effective date.
 - a. Cities, at their sole discretion, may terminate this Agreement earlier than the end of the term upon completion of a contracting process whereby a long term materials recycling facility and recycling company has been chosen to serve the Eligible Users' needs.
6. **Price.** Recycled Earth shall accept the contents of an Eligible User's recycling vehicles, including contract haulers acting on behalf of an Eligible User, in a single stream at a charge not to exceed Thirty Six Dollars and Eighty Cents (\$ 36.80) per ton (the "Facility Charge"). The price per ton will remain at or below the Facility Charge even if the delivered contents include items that are not recyclable materials or if the contents are contaminated and cannot be recycled. Except as provided in paragraph 17, no other charge may be assessed to an Eligible User that would result in the cost per ton exceeding the Facility Charge. Recycled Earth shall be solely responsible for any and all costs associated with the handling, disposal and any and all other costs related to the materials delivered under this agreement and any unacceptable or residue material remaining after recyclable material has been processed at the Facility. Recycled Earth, at its sole discretion, may from time to time elect to charge less than the Not to Exceed Amount

and, if it so elects, will charge the same per ton amount to all Eligible Users during such periods of reduced pricing.

7. **Facility Requirements.** The Facility shall have adequate maneuvering room for delivery vehicles and appropriate and necessary scales of sufficient size and capacity to accommodate delivery vehicles upon entry and exit from the Facility.
 - a. The scales shall meet state standards and shall be inspected semi-annually to ensure accurate calibration.
 - b. Recycled Earth shall maintain weight records for each of an Eligible User's vehicles delivering materials. The records shall contain the identification of the vehicle besides the weight of the vehicle.
 - c. Recycled Earth shall maintain records showing the date, truck number, ticket number and net weight for each truck that delivers material for an Eligible User or contract hauler acting on behalf of an Eligible User to the Facility.

8. **Recyclable Materials and Contamination.** If any Eligible User delivers material which contains hazardous waste (as defined under the federal Resource Conservation and Recovery Act), Recycled Earth shall immediately notify the respective Eligible User, record the necessary information to allow the Eligible User to follow up on the occurrence, and jointly determine the appropriate action for disposal of the hazardous materials. If Recycled Earth disposes of the materials described in this paragraph for an Eligible User, such user shall reimburse Recycled Earth for the costs incurred to dispose of such hazardous waste.

9. **Marketing of Recyclable Materials.** To the extent commercially practicable, Recycled Earth shall use its best efforts to contract for the sale of recyclable materials generated by the Eligible Users' recycling programs.

10. **Assignment.** Recycled Earth shall not assign, subcontract, convey, or otherwise dispose of this Agreement or permits required for this Agreement without the written permission of Cities. If Recycled Earth assigns, subcontracts, conveys, or otherwise disposes of this Agreement or permits without the written permission of Cities, Recycled Earth shall remain liable to Eligible Users under this Agreement. If Cities provide Recycled Earth written permission to subcontract, Recycled Earth shall remain liable to Eligible Users for full and complete satisfactory and acceptable performance of Recycling Services in accordance with this Agreement.

11. **Ownership of Material.** All material delivered by Eligible Users to Recycled Earth shall be the property of Recycled Earth until title passes from Recycled Earth to the purchaser or recipient of such materials.

12. **Participation by other Municipalities.** Participation under this Agreement by Eligible Users is voluntarily determined by each Eligible User. Recycled Earth agrees to supply each Eligible User with services based upon the same terms, conditions and prices of this Agreement.
13. **Individual Customers.** Each Eligible User that participates in this Agreement will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Agreement. Recycled Earth agrees that each Eligible User or contract hauler acting on behalf of and Eligible User will be responsible for their own charges, fees, and liabilities. Recycled Earth shall apply the charges to each Eligible User or contract hauler individually. No Eligible User is responsible for any unpaid invoice for services provided to another Eligible User.
14. **Separate Nature.** A breach of the terms of the Agreement by either Recycled Earth or an Eligible User city shall not affect the validity or enforceability of this Agreement with another Eligible User.
15. **Termination of Agreement for Cause.** If, through any cause, Recycled Earth shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if Recycled Earth shall violate any of the covenants, agreements or stipulations of this Agreement, Cities may terminate this Agreement by giving written notice to Recycled Earth of such termination and specifying the effective date thereof. If termination occurs, Recycled Earth shall be entitled to receive any compensation provided in this Agreement through the date of termination and shall provide Eligible Users with services and payments provided in this Agreement through the date of termination. Notwithstanding the above, Recycled Earth shall not be relieved of liability to an Eligible User for damages sustained by the Eligible User because of any breach of the Agreement by Recycled Earth, and any affected Eligible User may withhold any payments to Recycled Earth as a setoff until the exact damages due to the user from Recycled Earth is determined.
16. **Amendment.** This Agreement may be amended, altered, or terminated only in writing signed by Cities and Recycled Earth.
17. **Subordination.** If an Eligible User has previously entered into a contract with a private hauling company and a provision of this Agreement would violate or create a breach of such third party contract, the provision I this Agreement will be waived or will be subordinated to the third party contract. If such waiver or subordination results in increased materials processing, delivery or operational costs or charges to Recycled Earth, the Eligible User with the third party contract shall pay the difference in cost to Recycled Earth.

18. **Recycled Earth's Obligation to Verify Employment Status.** Recycled Earth shall register and participate in the Status Verification System and comply with Utah Code Ann. Section 63G-11-103 of the Utah Identity Document and Verification Act.
19. **Furnishing of W-9.** Payment under this Agreement is contingent upon Recycled Earth furnishing Cities with a signed and completed W-9 IRS tax form. Such form shall be attached hereto and is incorporated fully herein. Recycled Earth shall cooperate with Eligible Users in furnishing any additional information needed to comply with rules and regulations of the Internal Revenue Service.
20. **Indemnification.** Recycled Earth agrees to indemnify, save harmless and defend Cities and Eligible Users, together with their elected officials, authorized agents, officers, employees, and volunteers from and against any and all claims, damages, demands, actions, costs and charges arising out of or from Recycled Earth's performance or failure to perform this Agreement.
21. **Independent Contractor.** Recycled Earth is independent of Cities and Eligible Users and shall perform all services according to its own methods without being subject to the control of an Eligible User except as to the results obtained. Neither Cities nor any Eligible User shall carry Workers Compensation insurance or any health or accident insurance to cover Recycled Earth. Cities and Eligible Users shall not pay nor be responsible for any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Recycled Earth, as an independent contractor, shall provide and be responsible for any of Recycled Earth's, and its employees or agents, Workers Compensation contributions, federal and state withholding, unemployment compensation contributions and social security tax withholding, etc. Recycled Earth agrees to report and pay any contributions for taxes, unemployment insurance, Social Security and other benefits.
22. **When Rights and Remedies Not Waived.** In no event shall any payment by an Eligible User hereunder constitute or be construed to be a waiver by such user of any breach of conditions or any default which may then exist, or while any such breach or default shall exist, in no way impair or prejudice any right or remedy available to such user regarding such breach or default.
23. **Integrated Document.** This Agreement embodies the entire agreement between Cities and Recycled Earth for the services and the terms and conditions described herein. No verbal agreements or conversations with any officer, agent or employee of Cities or an

Eligible User prior to the execution of this Agreement shall affect or modify any of the terms or obligations in any documents comprising this Agreement. Any such verbal agreement is unofficial information and in no way binding upon Cities or Eligible Users cumulatively or on any individual city.

IN WITNESS WHEREOF, the parties hereto execute the foregoing instrument as of the day and year first above written.

OGDEN CITY CORPORATION

By: _____
Mark Johnson, CAO

ATTEST:

City Recorder

SOUTH OGDEN CITY

By: _____

ATTEST:

City Recorder

RIVERDALE CITY

By: _____

ATTEST:

City Recorder

WASHINGTON TERRACE CITY

By: _____

ATTEST:

City Recorder

RECYCLED EARTH, LLC

By: _____

Its: _____