

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Environmental Services
AGENDA DATE: April 12, 2011
CONTACT PERSON/PHONE: Ellen A. Smyth, P.E., (915) 621-6719
DISTRICT(S) AFFECTED: All

SUBJECT:

Addendum to City of El Paso, Invitation for Bids, Single Stream Curbside Recycling Collection and Processing Services for Environmental Services Department Bid No. 2006-015 – Friedman Recycling Processing Contract

BACKGROUND / DISCUSSION:

The addendum to the contract includes the expansion of acceptable plastics to include plastics #1 – 7. The modification is made after Friedman completed the necessary facility rehabilitation to accommodate the expansion of acceptable plastics. Furthermore, the revenue sharing modification is from a volume/market rate, which is open to fluctuation, to a flat rate per year.

PRIOR COUNCIL ACTION:

Original Contract February 2006; Addendum June 26, 2006

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

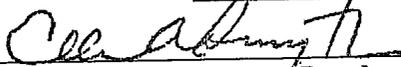
N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) Josette Flores

FINANCE: (if required) _____

DEPARTMENT HEAD: _____


(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager is hereby authorized to sign, on behalf of the City of El Paso, the First Amendment to Addendum to City of El Paso, Invitation for Bids, Single Stream Curbside Recycling Collection and Processing Services for Environmental Services Department Bid No. 2006-015, between the City of El Paso and Friedman Recycling of El Paso, LP ("Contractor"). Said amendment modifies the revenue sharing language, accepts new consideration and expands the residential curbside recycling program by including additional recyclables.

PASSED AND APPROVED this ___ day of April, 2011.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda, D. Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Environmental Services

STATE OF TEXAS)
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 COUNTY OF EL PASO)

FIRST AMENDMENT TO ADDENDUM TO
 CITY OF EL PASO, INVITATION FOR BIDS,
 SINGLE STREAM CURBSIDE RECYCLING
 COLLECTION AND PROCESSING SERVICES
 FOR ENVIRONMENTAL SERVICES
 DEPARTMENT BID NO. 2006-015

THIS FIRST AMENDMENT TO ADDENDUM TO CITY OF EL PASO, INVITATION FOR BIDS, SINGLE STREAM CURBSIDE RECYCLING COLLECTION AND PROCESSING SERVICES FOR ENVIRONMENTAL SERVICES DEPARTMENT, BID NO. 2006-015 (the "Amendment") is executed effective for all purposes as of this ____ day of _____, 2011, (the "Effective Date") by and between the City of El Paso, a home rule municipal corporation, (the "City") and Friedman Recycling of El Paso, LP, a Texas limited partnership (the "Contractor") (the City and the Contractor referenced together shall be the "Parties").

WHEREAS, on February 14, 2006, the City awarded to the Contractor Bid No. 2006-015, the processing services for city-wide residential curbside recycling (the "Project"), instructed City staff to negotiate and review and the City Manager to sign any and all additional contract documents and agreements as necessary;

WHEREAS, on June 26, 2006, the parties entered into the ADDENDUM TO CITY OF EL PASO, INVITATION FOR BIDS, SINGLE STREAM CURBSIDE RECYCLING COLLECTION AND PROCESSING SERVICES FOR ENVIRONMENTAL SERVICES DEPARTMENT, BID NO. 2006-015 (the "Addendum") to clarify certain non-material aspects of Bid No. 2006-015 to facilitate the administration and implementation of the Project;

WHEREAS, the Parties wish to modify the revenue sharing language; and

WHEREAS, the Parties seek to modify the Addendum's definition of Recyclable Materials to include additional commodities; and

WHEREAS, the Parties agree to credit part of the pending original consideration owed to the City through new consideration, including Contractor's enhanced participation in public recycling education and related tasks, acceptance of additional materials into the Program, Contractor's investment in additional plant and equipment, and agree to a payment plan for the remaining cash amount owed pursuant to the Addendum; and

WHEREAS, Texas Local Government Code 271.056 exempts the present contract from the advertisement requirements of the Texas bid statute.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1.01 The parties agree that Contractor owes \$2,499,332.12 to the City as pending consideration pursuant to the Addendum and that said amount shall be credited or paid in the manner set forth in this Amendment.

1.02 PUBLIC RECYCLING EDUCATION AND RELATED TASKS. In order to clarify Contractor's enhanced responsibility for public recycling education and related tasks, ARTICLE II, Section 2.1, entitled **INTRODUCTION**, Subsection 2.1.1.1 of the Addendum shall be replaced in its entirety as follows:

2.1.1.1 The fifth (5th) paragraph of the **INTRODUCTION** shall now read: "Since contamination can be a significant problem in residential recycling collection, the City commits to contributing \$150,000 per year to public recycling education for the first five years of the Contract. After the first five years of the Contract, additional public expenditures will be subject to approval by the El Paso City Council. The City will determine how public recycling education funds are directed. Additionally, the City will develop policies/ordinances aimed at further reducing curbside recyclable material contamination.

2.1.1.1.1 The City shall subtract as a credit against the pending consideration which has accrued pursuant to the Addendum and is owing to the City by Contractor, the following amounts which Contractor shall as a condition precedent provide as additional resources towards public recycling educational/outreach programs:

- a. Beginning January 1, 2011, Contractor shall contribute a total amount not to exceed \$69,400.00 consisting of cash or in-kind services for eleven of the remaining years of the Contract term and in a total amount not to exceed \$69,238.38 for the twelfth remaining year of the Contract term, which Contractor shall expend through entering into one or more agreements with one or more non-profit environmental service providers for services relating to the coordination of educational/outreach efforts, to include but not be limited to public events related to environmental issues.
- b. Contractor shall provide a minimum amount of ONE THOUSAND DOLLARS AND NO/100 (\$1,000.00) per year for the remaining twelve years of the Contract term for an Environmental Summit.
- c. Contractor shall make available to the public free weekly tours of the Processing Facility, valued as Contractor's in-kind contribution of \$650 per tour for approximately forty-eight (48) weeks a year for the remaining twelve years of

the Contract. If the public seeks the tours, the \$650 per tour shall be credited against Contractor's accrued amount. Should the public not seek the full amount of free weekly tours offered by Contractor, the City shall apply as a credit against the pending consideration amount, Contractor's cash payment of \$650 per offered but unfilled public tour. Said cash payment shall take place in January of the year following the year that experienced the unoccupied tour(s), with the twelfth year's payment to take place in April of that year.

2.1.1.1.2 As a condition precedent to the City crediting the following against the pending consideration owed by Contractor to the City, Contractor shall also contribute the amount of \$37,000 from its local corporate public relations contract towards a regional campaign to encourage recycling. The regional public relations campaign shall benefit the local community in the form of public informational presentations, promotional material, radio shows and billboard advertisements.

2.1.1.1.3 Contractor shall provide to the City an annual report of Contractor's public recycling educational/outreach program expenditures stemming from this Contract.

1.03 **ROCK WALL**. In order to acknowledge the administrative approval for an additional requirement for the processing facility operation and as additional consideration to be credited against the pending amount of consideration owed by Contractor to the City, the following shall be added to the end of ARTICLE II, as 2.5, entitled **PROCESSING FACILITY OPERATION**, to the Addendum:

- Contractor has erected a minimum of eight (8) foot high rock wall, which may be supplemented with a four (4) foot high screened chain link fence above the height of the rock wall, around the street perimeter of the Processing Facility property, which shall assist in containing Recyclables on the facility property and in shielding the view of the Recyclables from neighboring properties and passersby. The City shall apply the amount of \$181,117.37, which is what Contractor paid for the rock wall construction, as a credit against the pending consideration owed by Contractor to the City.

1.04 In order to acknowledge the administrative approval for an additional requirement for the processing facility operation and as additional consideration to be credited against the pending amount of consideration owed by Contractor to the City, the following shall be added to the end of ARTICLE II, as 2.6, entitled **PROCESSING FACILITY OPERATION**, to the Addendum:

- Contractor has made the following upgrades to the Processing Facility in order to accommodate the enhanced list of Recyclable Materials, and the City shall apply the listed amounts against Contractor's pending consideration owed to the City:
 - a. Processing equipment in the approximate amount of \$709,902
 - b. Electrical services in the amount of \$34,690.44
 - c. Electrical services in the amount of \$4,133.88
 - d. Concrete slabs for compactors in the amount of \$10,175.50

1.05 In order to acknowledge administrative approval for an additional requirement for the processing facility appearance and as additional consideration to be credited against the pending amount of consideration owed by Contractor to the City, the following shall be added to the end of ARTICLE II, Section 2.7, entitled **PROCESSING FACILITY OPERATION**, to the Addendum:

- Contractor has made the following upgrades to the Processing Facility in order to enhance the appearance and environmentally friendly aspect of said facility and in order to integrate the facility further into the neighborhood, and the City shall apply the listed amount against Contractor's pending consideration owed to the City as follows:
 - a. Landscape, irrigation, concrete work and lighting enhancements in the amount of \$37,393.25.

2.01 DEFINITION OF RECYCLABLE MATERIALS. In order to include additional commodities in the Project, the first paragraph of ARTICLE II, Section 2.4 for the definition of "**Recyclable Materials**" in the Addendum is replaced in its entirety by the following:

"**Recyclable Materials**" shall mean material that has been recovered or diverted from the nonhazardous solid waste stream for purposes of reuse, Recycling, or reclamation, and a substantial portion of which is consistently used in the manufacture of products, which may otherwise be produced using raw or virgin materials, and which for purpose of this Contract, shall be limited to those items appearing on Exhibit A. Recyclable Materials are not Solid Waste. However, Recyclable Materials may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be Solid Waste with respect only to the party actually abandoning or disposing of the material.

3.01 CONTAMINANT RESPONSIBILITY. To clarify Article III, Section 3.2 entitled **CONTAMINANT RESPONSIBILITY** in the Addendum, it shall be replaced in its entirety as follows:

The Contractor shall use reasonably good faith efforts to assure that Recyclable Materials collected under the City's curbside recycling program are not landfilled except for process residuals.

- 3.02 **REPORTING REQUIREMENTS.** In order to clarify Article III, Section 3.5 entitled **REPORTING REQUIREMENTS** in the Addendum, it shall further modify Section C, Section I entitled Reporting Requirements to Attachment A to the Addendum, by deleting the requirement for “Purchasers of Recyclable Materials” from Contractor’s monthly report to the City.
- 3.03 **REVENUE SHARING.** In order to modify and simplify the revenue sharing described in **ARTICLE III**, Section 3.11 entitled **REVENUE SHARING**, in the Addendum, it shall be replaced in its entirety as follows:

Revenue from the sale of all Recyclable Materials processed at the facility shall be paid in accordance with the following:

A flat annual fee of no less than SIX HUNDRED TWENTY-FIVE THOUSAND AND NO/100 (\$625,000) shall be paid through monthly payments from Contractor to the City. Upon execution of this Amendment, Contractor shall pay \$52,083 for the first eleven monthly amounts and \$52,087 for the twelfth monthly amount.

The flat fee described in the immediately preceding paragraph shall be increased every year in an amount equal to eighty (80) percent of the average annual increase to the Consumer Price Index for All Urban Consumers (“CPI-U”). The average CPI-U shall be determined in January of each remaining year of the Contract for the immediately prior twelve-month period. If the result of the January determination shows a decrease or no change to the CPI-U for said prior twelve-month period, Contractor shall pay to the City the fee that Contractor paid to the City for the immediately prior twelve-month period. The period from January 1, 2022 through April 21, 2022 shall be a prorated amount based on the 2021 flat rate plus any applicable CPI-U adjustment for 2021.

- 3.04 **CONSIDERATION ADJUSTMENTS.** Article III, Section 3.12 entitled **THE VALUE OF REVENUE TO BE EARNED THROUGH THE SALE OF RECYCLABLE COMMODITIES**, including Table 1, shall be deleted, renamed as **“CONSIDERATION ADJUSTMENTS”** and replaced in its entirety with the following:

3.12.1 Market conditions have resulted in a pending payment of \$2,499,332.12 owed to the City by Contractor for the \$870,609.50 total resulting from the revenue sharing described in Section 3.11 of the Addendum (with the latter total including \$29,186.31 to cover the 10% interest described in Section 4.2 of the Addendum and \$7,000 to cover the \$250 fee per monthly report described in Section 3.13b of the Addendum), and for the \$651,310.18 in unpaid landfill fees resulting from Section C.I. **GENERAL REQUIREMENTS FOR PROCESSING – Contaminant Responsibility** to Attachment “A” to the Addendum. This amount is being replaced by the \$977,412.44 in improvements made to Contractor’s plant and equipment for the Project as well as the \$1,521,919.68 in new consideration described in Sections 1.02-1.05 and Subsection 3.12.2 to this Amendment.

- 3.12.2 The pending amount of \$265,881.30 due to the City from Contractor for the annual commitment of \$126,000 from Contractor's November 30, 2005 letter to the City contained in Attachment "B" to the Addendum, will be repaid over thirty-one (31) months to commence upon execution of this Amendment, with an initial payment of \$70,881.30 and a monthly payment of \$6,500 for the remaining thirty (30) months.
- 4.01 **RATIFICATION OF IFB.** To further clarify Article VI, Section 6.1 entitled **RATIFICATION OF IFB** to the Addendum, it shall be replaced in its entirety with the following:
- 6.1 Unless specifically addressed herein, no provision of this Amendment alters or modifies any of the terms and conditions of the IFB or the Addendum. Except as expressly modified herein, all terms and conditions detailed in the IFB and the Addendum shall remain in full force and effect, including, but not limited to, the Termination provisions. To the extent of any ambiguity or lack of clarity between this Amendment, the Addendum, the IFB and/or the Friedman Recycling Co, Proposal to Provide Single-Stream Curbside Recycling Services to the City of El Paso, Solicitation #: 2006-015, the terms of this Amendment shall take precedence.
- 5.01 **CLARIFICATION REGARDING "SIGNING BONUS".** To modify the final payment date described in Article VI, Section 6.2 to the Addendum entitled **"CLARIFICATION REGARDING "SIGNING BONUS"** and to acknowledge receipt thereof, said Section shall be replaced in its entirety as follows:

The City acknowledges and agrees that the \$300,000 "signing bonus" to be paid by the Contractor as provided in the Proposal shall be payable in six semi-annual installments of \$50,000 each, payable on the first days of January and July in each of 2007, 2008 and 2009, except that the last such payment shall and did take place on November 18, 2010.

IN WITNESS WHEREOF the Parties hereto have executed this Amendment at El Paso, Texas on the Effective Date appearing heretofore.

[Signature page to follow]

STATE OF TEXAS)
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)
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COUNTY OF EL PASO)

**FIRST AMENDMENT TO ADDENDUM TO
CITY OF EL PASO, INVITATION FOR BIDS,
SINGLE STREAM CURBSIDE RECYCLING
COLLECTION AND PROCESSING SERVICES
FOR ENVIRONMENTAL SERVICES
DEPARTMENT BID NO. 2006-015**

Signature Page

CITY OF EL PASO

Joyce A. Wilson
City Manager

CONTRACTOR

Friedman Recycling of El Paso, LP,
A Texas Limited Partnership

By: FRC El Paso Management, Inc.
An Arizona Corporation
Its General Partner

By: _____
Name Printed: *Morris Friedman*
Title: *President*

APPROVED AS TO FORM:

J. Flores

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth

Ellen A. Smyth, P.E., Director
Environmental Services Department

EXHIBIT A

LIST OF ACCEPTED ITEMS

Plastics:

Plastic bags
Bubble wrap
*Milk, juice and soda bottles and their respective lids / caps
*Yogurt, dairy and margarine tubs
Shampoo and condition bottles
Window, bathroom and kitchen cleaner bottles
Detergent and fabric softener bottles
Shrink wrap
Clear deli trays
Empty prescription / over-the-counter medicine vials
*Stadium cups
*Tupperware containers
*Clamshell containers – black base / clear lids
Rigid plastics - laundry baskets / lawn furniture / buckets / toys
Mouthwash bottles
*Food jars / Squeezable bottles – mayonnaise / salad dressing / vegetable oils / mustard / ketchup
/ barbeque sauce / syrup
Bleach and household cleaner bottles
CD cases

Paper:

Newspaper and advertising inserts
Junk / advertising mail and envelopes
Colored / white paper
Cereal and dry food boxes (without the liner)
Paperback books
Hardback books
*Cardboard egg cartons
Magazines, catalogs and phone books
Paper wrapping paper
Shredded paper (paper should be bagged)
Flattened cardboard
Frozen food boxes
Paper bags

Metals:

*Soda cans
*Canned food cans
*Aluminum foil
Clothes hangers (bundled)

Pots / pans (without wood, plastic or rubber attachments)
Caps / lids

* Items should not contain food residue



BUILDING A BETTER COMMUNITY

El Paso Residential Curbside Recycle Program



Materials Now Accepted

- Cardboard
- Mixed Paper
 - Newspaper, office paper, junk mail, magazines, phone books, shredded paper
- Plastics #1 -#7 and Plastic Bags
- Mixed Metal Containers
 - Aluminum cans (and clean foil)
 - Tin cans
 - Steel, bi-metallic cans

NO Glass, NO Grass, NO Food

Contract Considerations

- \$651,310 Landfill Fees for two years
- \$1,848,022 Revenue Share for two years including Interest and Penalty

\$2,499,332.12 Total Owed to the City

Contract Considerations--Presented

- **\$2,499,332.12 Owed to the City**
- \$832,638.38 Non-Profit Environmental Group
- \$ 12,000 Environmental Summit
- \$374,400 Environmental Tours
- \$ 37,000 Regional Public Relations Info
- \$977,412.40 Improvements (wall, equip, landscaping)
- \$265,881.30 Cash

- \$2,499,332.12 Total Re-payment by Friedman

Education Outreach vs. Residuals

- In 2009 and 2010 no education outreach—resulted in residual/contamination going from 17% to 25%
- This 8% differential due to lack of education = 240 tons per month of trash (total is 3000 tons per month, thus 8% is 240 tons)
- Disposal = \$26/ton at Clint Landfill
- Transportation = \$34/ton (5 tons per load, 2 hr turnaround, \$85/hr labor & fuel)
- Total additional cost to Friedman = \$60/ton or \$14,400/mo or \$345,000 for past 24 months.

New Option—2 Credit for Residual, Roll all others into cash payment

- **\$2,499,332.12 Owed to the City**
- \$ 12,000 Environmental Summit
- \$ 37,000 Regional Public Relations Info
- \$977,412.40 Improvements (wall, equip,landscaping)
- \$345,600 Credit Residual Payments
- \$1,127,320.68 Cash

- \$2,499,332.12 Total Re-payment by Friedman

Option 3--No Credit for Residual/Roll all others into cash payment

- **\$2,499,332.12 Owed to the City**
- \$ 12,000 Environmental Summit
- \$ 37,000 Regional Public Relations Info
- \$977,412.40 Improvements (wall, equip,landscaping)
- \$1,472,919.68 Cash
- **\$2,499,322.12 Total Re-payment by Friedman**