

FIRST AMENDMENT
to
MATERIALS RECOVERY FACILITY SERVICE AGREEMENT

This First Amendment is made and entered into as of _____, 20__ (“Effective Date of the First Amendment”), by and between **MECKLENBURG COUNTY** (“County”) and **FCR, LLC**, a Delaware corporation (“Contractor”).

RECITALS:

WHEREAS, the County and Contractor entered into that certain Material Recovery Facilities Service Agreement as of July 1, 2009 (the “Agreement” - County Contract 100003); and

WHEREAS, the County desires to increase the service area available for collection of Recyclables to be processed at the Materials Recovery Facility (“MRF”); and

WHEREAS, US Green Fiber is no longer leasing space at the MRF, and the County desires to make that space available to Contractor for the MRF operations; and

WHEREAS, the County desires to make modifications to the MRF to improve the efficiency of Recyclables processing;

NOW, THEREFORE, in consideration of the mutual premises set forth above, and the terms and conditions hereinafter set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the County and the Contractor do hereby agree as follows:

(1) Add the following definition to Section 1.01 as the first definition:

“Added Area” means the area of the MRF previously leased by the County to US Green Fiber marked as “Added Area” on Exhibit 1, which space is being added to the portion of the MRF that the Contractor will manage and operate pursuant to the terms of this Agreement.

(2) Add the following paragraph to the end of Section 3.01 “Agreement to Provide MRF and Retrofit”:

In addition, the County intends to purchase and install a new baler for the comingled processing line along with a conveyance system. The new comingled baler will be installed in the Added Area once purchased by the County.

(3) Add the following new sections :

Section 5.13 **Fixtures and Personal Property**. Any trade fixtures, equipment and other personal property installed in, located in, or attached to, the Added Area by or at the

expense of Contractor shall remain the property of Contractor, and Contractor shall have the right at termination of the Agreement provided it is not then in default hereunder, to remove any and all of such fixtures, equipment and personal property. Provided, however, that in such event Contractor must restore the Added Area to substantially the same condition in which it was in at the Effective Date of the First Amendment to the Agreement, ordinary wear and tear excepted.

Section 5.14 **Assignment and Sublease**. Contractor may not lease portions of the Added Area or allow other entities to use the Added Area without the prior written consent of the County, which consent shall not be unreasonably withheld. Contractor agrees to pay the County half of any net rents (i.e., rent after deducting expenses of Contractor in so leasing the Added Area) that it receives from any entity, including any of its subsidiaries, that it allows to use the Added Area. Such payments shall be made to the County within ten (10) business days after Contractor receives any such rent payments.

Section 5.15 **Acceptance of Added Area**. Contractor acknowledges that it has examined and accepts the Added Area in its present condition ("as is") as of the Effective Date of the First Amendment to this Agreement. No representation, statement, or warranty, express or implied, has been made by or on behalf of the County as to such condition, or as to the use that may be lawfully made of the Added Area, or whether such Added Area is suitable for Contractor's purposes. In no event shall the County be liable for any defect in the Added Area or for any limitation on its use except as provided herein. The Added Area shall be deemed delivered to Contractor for its use as part of the MRF on the Effective Date of the First Amendment to Agreement.

(4) Section 10.02 is revised to read as follows:

Section 10.02 Residential Sources of Non-Program Recyclable Waste

(a) From inside the Mecklenburg County boundaries, the Contractor will not solicit Non-Program Recyclable Waste from residential sources without prior written County approval.

(b) From outside the Mecklenburg County boundaries, the Contractor may solicit Non-Program Recyclable Waste from residential sources subject to Section 10.04.

(5) Section 11.01(c) "Service Fees") is revised to read as follows:

(c) Single Stream System: Beginning on the Effective Date of the First Amendment to Agreement, the Contractor shall charge a Service Fee to the County of \$44.56 per ton for tons of Recyclable Waste delivered to the MRF by or on behalf of the County or Municipalities.

(6) Article XII ("CELLULOSE INSULATION MANUFACTURING") is deleted and of no further force or effect.

- (7) The following section 17.16 is added:

Section 17.16 Authorized Decision Maker

Any approvals or consents to be given by the County as provided in this Agreement may be made by the Solid Waste Director.

- (8) Exhibit 1 as attached to the Agreement executed July 1, 2009 is replaced with the Exhibit 1 attached to this First Amendment.

- (9) Exhibit 4 as attached to the Agreement executed July 1, 2009 is replaced with the Exhibit 4 attached to this First Amendment.

[intentionally left blank - signatures on following page]

[signature page to First Amendment to Materials Recovery Facility Service Agreement]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to Agreement to be executed in their respective names by their duly authorized officers, or representatives and to be dated as of the date and year first written above.

ATTEST:

MECKLENBURG COUNTY

By: _____
Clerk to the Board

By: _____
County Manager

[COUNTY SEAL]

APPROVED AS TO FORM

County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Act.

Director of Finance

ATTEST:

FCR, LLC

By: _____
Secretary

By: _____
Sean P. Duffy
Its President and Chief Operating Officer

[CORPORATE SEAL]

EXHIBIT 1
General Description of the Building and Equipment

NEED REVISED EXHIBIT

Current Building and Equipment Layout

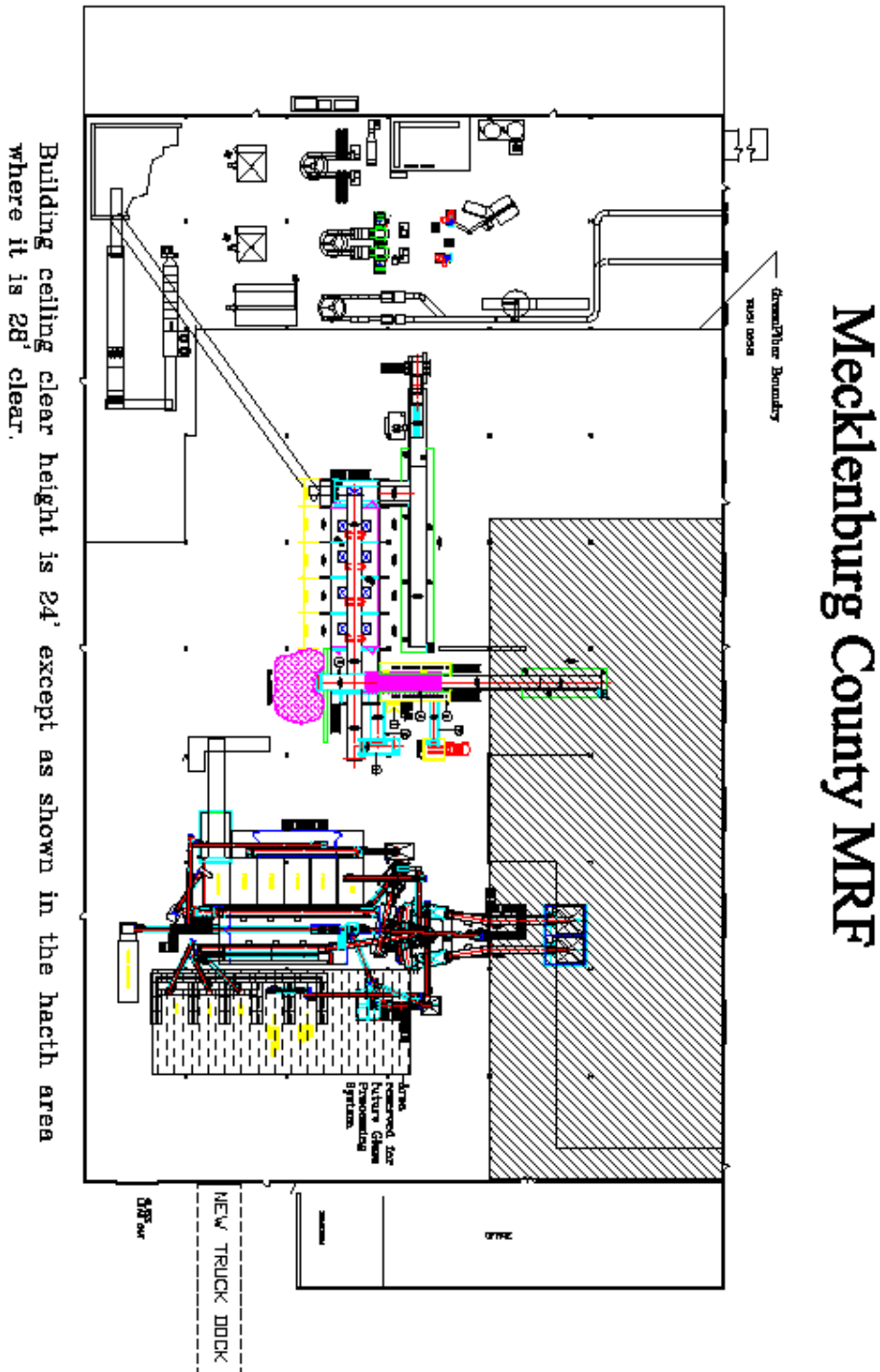


EXHIBIT 4

RECEIPT OF NON-PROGRAM MATERIALS RECYCLABLE WASTE SOURCES

The following are types of Non-Program Recyclable Waste that may be solicited by the Contractor for processing at the MRF:

- (a) Baling only streams. Recyclable Waste which require nothing more than floor sorts, a quality control sort from the baler feed conveyor, and baling into marketable Recovered Materials.
- (b) Residential Fiber. Residential Fiber that will be run through the fiber sorting system.
- (c) Commercial Fiber. Various mixes of commercial fiber that will be run through the fiber sorting system.
- (d) Commingled Containers. Commingled Containers from residential sources that will be run through the commingled container sorting system.
- (e) Commercial commingled containers. Various mixes of commingled containers from commercial sources or otherwise do not conform to the definition of Commingled Containers that will be run through the commingled container sorting system.
- (f) Alcoholic Beverage Control (ABC). Commingled Containers from commercial sources that primarily generate recyclable containers related to ABC recycling legislation and will be run through the commingled container sorting system.
- (g) Single Stream. Single Stream Recyclable Waste from residential sources that will run through the single stream sorting system.
- (h) Commercial single stream. Commercial single stream Recyclable Waste from commercial sources that will run through the single stream sorting system.
- (i) The County and Contractor recognize that other recyclable streams may become available as Non-Program Recyclable Waste and will negotiate in good faith to adapt terms appropriate for these streams.