

AGENDA

SPECIAL COMMITTEE ON SOLID WASTE ACTIVITIES

December 12, 2005
Aldermen Roy, Guinta,
Thibault, Forest, O'Neil

5:00 PM
Aldermanic Chambers
City Hall (3rd Floor)

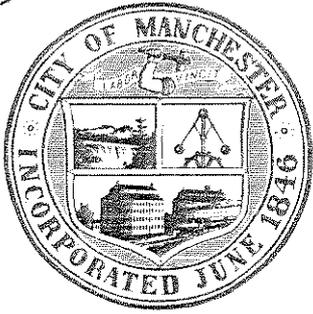
1. Chairman Roy calls the meeting to order.
2. The Clerk calls the roll.
3. Communication from Kevin Sheppard, Deputy Public Works Director, recommending Corcoran Environmental Services as the contractor for yard waste and recycling services for the City.
 - a) Agreement for Recycling and Yard Waste Services and for the Construction and Management of a Regional materials Recovery Facility;
 - b) Dunbarton Road Facility Ground Lease; and
 - c) cost matrix.

Gentlemen, what is your pleasure?

TABLED ITEM

A motion is in order to remove the following item from the table for discussion.

4. Communication from Arline Parent relative to concerns regarding yard waste collection.
(Tabled 09/13/2005)
5. If there is no further business, a motion is in order to adjourn.



**City of Manchester
Department of Highways**

227 Maple Street
Manchester, New Hampshire 03103-5596
(603) 624-6444 Fax # (603) 624-6487

Commission
Edward J. Beleski
- Chairman
Henry R. Bourgeois
William F. Kelley
Michael W. Lowry
William A. Varkas

Frank C. Thomas, P.E.
Public Works Director

Kevin A. Sheppard, P.E.
Deputy Public Works Director

December 8, 2005

Solid Waste Committee of the
Honorable Board of Mayor and Aldermen
CITY OF MANCHESTER
One City Hall Plaza,
Manchester, New Hampshire 03101

Attn: Alderman Mark E. Roy, Chmn.

Re: *Recycling/Yard Waste Contracts*

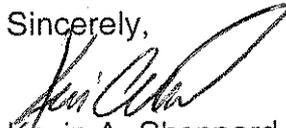
Dear Committee Members:

I am writing to inform the Committee that after several months of proposal reviews and negotiations, City staff is prepared to recommend Corcoran Environmental Services (C.E.S.) as the contractor for yard waste and recycling services for the City. In our opinion, C.E.S. has submitted a proposal which will meet the City's needs, increase recycling, reduce solid waste disposal costs and increase revenues to the City. It is our anticipation that based on Corcoran's plan, the diversion rate for recyclables should increase from 8% to the State's goal of 40% over a period of 10 years, netting a savings of over \$1,000,000 per year in solid waste disposal costs in future years.

Our existing contract with Waste Management, Inc. expires on February 28th 2006, therefore we are requesting the Committee's concurrence on this recommendation. A summary of the contract is attached.

Mr. Thomas and myself will be available at your meeting to address this recommendation in further detail.

Sincerely,



Kevin A. Sheppard, P.E.
Deputy Public Works Director

/cd

cc: Frank C. Thomas, P.E.
Joanne McLaughlin
Kevin Clougherty

Tom Clark
Mike Colby

Major Points of Contract

- Minimum of (4) recycling and (4) yard waste trucks.
- Ability to add vehicles, based on 95% collection capacity, at a cost of \$200,200 per truck.
- *Phase 1* Weekly dual-stream curbside recycling collection in 18 gal. bins. Yard waste services, same.
- *Phase 2* Prior to third anniversary of contract, 64-68 gallon totes provided to all residents, to provide weekly single stream recycling. Yard waste services as is.
- Collection of recycling/yard waste anticipated to be same day as refuse collections.
- Extensive education program, up to \$25,000 per year.
- Obtain a ground lease from the City on a piece of property (Drop-Off Facility) located on Dunbarton Road for a term of 30 years with two 10 yr. options to extend. For the construction of a 200 ton per day regional Material Recycling Facility (MRF).
 - Lease payment of \$26,000/yr. for first 3 years.
 - Lease payment of \$39,000/yr. for year 4.
 - Lease escalated at 3%/yr. every third year thereafter
- City will receive host revenues of \$2.50/ton for every ton of material received at the Material Recycling Facility, not including Manchester's recyclables. Host revenue escalation is tied to future tipping fee increases at MRF.
- Revenue sharing from the Material Recycling Facility as follows:
 - 0 to 15,000 tons, no revenues.
 - 15,001 to 49,999, 10% of net revenue
 - 50,000 + tons, 20% of net revenues
- Term of curbside collection contract for recyclables and yard waste is for 10 years with four 5-year extension options, at discretion of City.
- Penalties of \$100 per occurrence up to \$1,000 per day.

Major Points of Contract (Cont'd)

- Compensation for curbside yard waste programs is \$770,000/yr. inflated at a maximum of 3% per year (tied to CPI).

- Compensation for recycling services:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Contract:	889,800	916,494	1,075,106	1,107,359	1,140,580
Est. Toter Acquisition:	-----	-----	392,700	392,700	392,700
Sub-Totals:	<u>\$ 889,800</u>	<u>\$916,494</u>	<u>\$1,467,806</u>	<u>\$1,500,059</u>	<u>\$1,533,280</u>
Est. Add'l. Trucks:	-----	-----	200,206	404,400	404,400
Totals:	<u>\$ 889,800</u>	<u>\$916,494</u>	<u>\$1,668,006</u>	<u>\$1,904,459</u>	<u>\$1,937,680</u>

- Estimated Revenues/Solid Waste savings:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Ground Lease:	26,000	26,000	39,000	39,000	39,000
MRF Host Fee:	-----	-----	19,000	39,750	60,500
Revenue Sharing:	-----	-----	-----	59,240	93,592
Sub-Total	<u>\$ 26,000</u>	<u>\$26,000</u>	<u>\$ 58,000</u>	<u>\$137,990</u>	<u>\$192,592</u>
MSW Disposal Savings:	30,325	33,049	317,068	512,712	743,685
Totals:	<u>\$ 56,335</u>	<u>\$59,049</u>	<u>\$375,068</u>	<u>\$650,702</u>	<u>\$936,277</u>

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**AGREEMENT FOR RECYCLING AND YARD WASTE SERVICES
AND FOR THE CONSTRUCTION AND MANAGEMENT OF A
REGIONAL MATERIALS RECOVERY FACILITY**

THIS AGREEMENT is made this ____ day of _____, 2005, by and between the CITY OF MANCHESTER, a body politic and corporate having a place of business in the City of Manchester, State of New Hampshire (hereinafter the "City") and CORCORAN ENVIRONMENTAL SERVICES, INC. a Maine corporation with a mailing address of P.O. Box 536, West Kennebunk, Maine 04094 (hereinafter "Corcoran").

WITNESSETH:

WHEREAS, the City did advertise for Proposals by a Request for Proposals for Recycling and Yard Waste Services; and

WHEREAS, Corcoran, did submit a proposal for such work; and

WHEREAS, the CITY has determined that Corcoran has the ability to provide services required by the Request for Proposals; and

WHEREAS, after due consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall apply:

Director: The Director of the Department of Highways for the City of Manchester, New Hampshire, or his designee.

Downtown Toter Collection Zone: Those business locations and establishments which receive trash collection services from the City at one or more of the following locations:

Hampshire Lane	West Auburn Street to Granite Street West Merrimack Street to Mechanic Street Bridge Street to Landgon Street
Manhattan Lane	Lake Avenue to Central Street
Nutfield Lane	Monadnock Lane to Manchester Street Hanover Street to the unnamed alley directly north of Bridge Street (also known as Pearl South Back)
Elm East Back	Auburn Street to Cedar Street

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Elm East Back is the unnamed alley between Auburn Street and Cedar Street and between Manchester Street and Hanover Street, both segments lying directly east of Elm Street

Monadnock Lane Nutfield Lane to Chestnut Street

Londonderry Lane Elm East Back to Chestnut Street

Derryfield Lane Nutfield Lane to Chestnut Street

Seneca Lane Nutfield Lane to Chestnut Street

Pearl South Back Nutfield Lane to Chestnut West Back
Chestnut West Back is the unnamed alley between Pearl South Back and Orange Street, directly west of Chestnut Street.

Church Street Pearl South Back to Myrtle Street

Chestnut West Back Pearl South Back to Orange Street

The northeastern corner at the intersection of Elm and Merrimack Streets

The southwestern corner at the intersection of Amherst and Chestnut Streets

The southeastern corner at the intersection of Amherst and Chestnut Streets

Barrister Lane

West Merrimack Street (south side) west of the intersection of West Merrimack and Franklin Streets

Materials Recovery Facility (MRF): A State-permitted specialized plant that separates, processes, and stores recyclables that have been collected. The MRF receives recyclable materials from households and businesses. The facility is designed to sort and process these materials into marketable goods. This sorting process combines advanced, automated material-handling technology with manual labor.

Non-Profit Organizations and Small Commercial Business: Non-profit organizations and small businesses that use a maximum of two 95-gallon totes per week for trash, and separate out recyclables for collection.

Office Recyclable Materials: Aluminum cans, and a comprehensive paper mix that may include corrugated cardboard, office paper, computer paper, and white and colored ledger paper and newsprint (including glossy inserts) collected from offices and buildings belonging to or used by agencies, offices or departments of the City.

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Recycling Bin: A durable plastic container (18-gallon capacity) provided by Corcoran, at no cost to the City or to residents of the City, in which residents place recyclable materials at the curbside.

Residences: 1) Any and all residences (including all individual dwelling units, whenever established, within any such residences); and 2) business locations or establishments which, prior to the date of this Agreement, received solid waste collection directly from the City, but not including business locations or establishments in the Downtown Toter Collection Zone. Residences also include residences constructed in the City after the effective date of this Agreement and all residences on streets accepted by the City after the effective date of this Agreement.

Residential Recyclable Materials: Corrugated cardboard; clear and tinted polyethylene terephthalate (PETE )¹, clear and colored high density polyethylene (HDPE )², aluminum cans, ferrous (tin) cans (including used aerosols), glass jars and bottles (including flint, amber and green), residential mixed paper (including but not limited to boxboard such as cereal boxes, 6-pack containers, etc.), newsprint (including glossy inserts), magazines, catalogs, telephone directories and junk mail.

Residential recyclable materials also include automotive recyclables (tires, batteries, and used oil). Additional recyclable materials consist of light iron and white goods. These metals include, iron, steel, stainless steel, copper, brass, off-spec aluminum, lead, and any like combination of metals as one piece or in combination with one or more devices.

Revenues: Unless otherwise specified in this Agreement, for any Fiscal Year, the aggregate amount of all revenues earned by Corcoran or any of its Affiliates, calculated on an accrual basis, in such Fiscal Year arising out of or in connection with this Agreement or use and or operation of the MRF, directly or indirectly, wherever earned.

Toter: A durable plastic container with a fixed, hinged lid, wheels and a horizontal handle.

Yard Waste. Includes leaves, grass clippings, weeds, hedge trimmings, garden waste, twigs, and brush. Brush may be no larger than 3-inches in diameter and must be bound into manageable bundles no larger than two feet by three feet.

2. SCOPE OF SERVICES.

Corcoran's Proposal, dated June 30, 2005, along with additional material dated October 11, 2005, are hereby incorporated into this Agreement. See Appendix A. In the event that there are conflicts between the Proposal and this Agreement, this Agreement shall take precedence over the Proposal.

A. Recycling and Yard Waste Services.

- i. The implementation of the recycling services shall be accomplished in a phased-in schedule, as set forth below:

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Phase I. Corcoran shall provide, on an as needed basis, 18-gallon green recycling bins to residents, for weekly curbside collection of two-stream commingled recycling services;

Phase II. Corcoran shall provide to Residents at or prior to the third anniversary date of the contract, 64 to 68 gallon wheeled toters for weekly collection of single-stream curbside recycling services.

The daily collection schedule for recyclables to be utilized by Corcoran shall coincide with the schedule used for collection of solid waste by or on behalf of the City.

- ii. The implementation of the collection of yard waste shall be performed as follows:
 - a. Spring: six week weekly collection beginning on or about April 1, as set by the Director;
 - b. Growing Season: For a period of twenty two weeks on a biweekly collection basis, to directly follow the Spring pick up;
 - c. Fall: Six-week weekly collection beginning on or about October 15, to directly follow the growing season collection. The Director shall retain the right to extend the Fall yard waste collection for an additional week(s) at a cost of \$15,000 per week with an annual CPI increase as set forth in Section 14.
 - d. Christmas trees: two-week weekly collection of Christmas trees during the first two full weeks of January.

The yard waste collection schedule to be utilized by Corcoran shall coincide with the schedule used for collection of solid waste by or on behalf of the City.

- iii. Refusal to Collect Recyclables or Yard Waste. Corcoran shall supply and utilize, an "Unable to Collect" sticker (with the reason(s) for non-collection) when, in the opinion of Corcoran, yard waste or recycling that has been left for collection should not be collected because it is in violation of any local, state or federal statute, law or Ordinance.

B. General Provisions Pertaining to Recycling and Yard Waste Services

- i. Hours. Corcoran shall collect and transport residential recyclable material from the curbside of Residents (except for automotive recyclables including tires, used oil, and batteries, and light iron, which are to be delivered by residents to the Drop-Off), and Office Recyclable Materials from City offices and buildings specified by the Director. Corcoran shall collect and transport

yard waste from the curbside of residents and small businesses that are eligible to receive solid waste collection from the City.

Collection shall not start before 7:00 AM or continue after 5:00 PM on any day, and shall be on routes established by Corcoran with prior approval by the Director. Exceptions to collection hours shall be effected only upon prior approval by the Director; provided, however, that in the event the Director cannot be reached to obtain prior approval, Corcoran shall use its best judgment to extend collection hours to complete a collection route if unusual circumstances over the course of a workday so require; and provided further, that in all such events, Corcoran shall promptly inform the Director after the event, describing the circumstances leading to the event and the measures taken by Corcoran to address the event and to prevent a reoccurrence.

- ii. No Collection on Holidays. Collections shall not be made on the following observed holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Veterans' Day, and Christmas Day. Collections that would have normally occurred on such holidays shall be postponed for one (1) day unless an alternative schedule is mutually agreed upon by Corcoran and the Director. There will be no collections on Sundays without prior approval of the Director.
- iii. Collection Equipment. Corcoran shall furnish all materials, supplies, equipment, vehicles, facilities and labor necessary to provide the following services, as submitted in their proposal: Provide curbside recyclable collection at residences, City Offices, and small businesses, and non-profits, and collect yard waste from all residences and small businesses that receive collection of solid waste from the City. Corcoran shall provide the Director with a list of all collection vehicles to be used. All collection vehicles shall be watertight and readily cleaned. Each vehicle shall be thoroughly cleaned and sanitized inside and outside at least once a week. Each vehicle shall be secured in such a manner as to prevent littering or leaking of fluids.

All vehicles and associated equipment shall be standard products of reputable manufacturers. Corcoran shall prominently and legibly display on both sides of each vehicle, the name of the Contractor, the vehicle's identification number and such additional information as may be reasonably required by the Director to properly identify the vehicle. All equipment must be properly registered and insured in accordance with the Motor Vehicle laws of the State of New Hampshire and all rules and regulations of the City of Manchester. Corcoran shall utilize a minimum of four (4) recycling trucks for weekly recyclable collection and a minimum of four (4) yard waste trucks during the yard waste collection season.

Upon the annual anniversary review of this Agreement and approval by the Director, Corcoran shall add an additional recycling collection truck and crew,

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when all vehicle and crew utilization has reached 95% of collection capacity during a normal work day, for a minimum of thirty (30) consecutive collection days. A minimum of ten (10) hours per day and a minimum of 1,000 stops per day per truck shall be allocated for collection by each crew. The cost per additional collection vehicle and crew is \$200,200.00 with an annual CPI increase as set forth in Section 14. (See Appendix B)

- iv. Container Damage. Any container damaged by Corcoran shall be replaced by the Contractor within two (2) days at no cost to the resident or the City. The replacement container shall be similar in style, material, quality and capacity to the damaged container. The cost of replacement for containers damaged, lost or stolen, through no action of Corcoran, shall be borne by the resident and/or the City.
- v. Manner of Collection. Corcoran shall collect recyclable materials with as little disturbance as possible.
- vi. New Residences. Corcoran shall expand the service area for recyclable materials and yard waste to all newly constructed residences and all residences on newly accepted streets, at no increased cost to the City.

Corcoran shall provide recycling bins in Phase I and totes in Phase II, to all new residents in the city, and shall be required to maintain a sufficient inventory to meet residents' needs.

- vii. Litter and Spillage. All recyclable materials and yard waste hauled by Corcoran shall be so contained, tied, or enclosed that leaking, spilling, or blowing are prevented. In the event of any spillage, the Contractor shall immediately clean up the spillage or litter before proceeding to the next point of collection.

3. EDUCATION PROGRAMS.

Upon execution of this Agreement, Corcoran shall begin a comprehensive, ongoing, education program to introduce residents and businesses to the changes about to take place in the City's recycling program. The education initiative shall reach out to residents by newspaper, radio, television, the City Website, Internet, at schools, and at public events. Corcoran shall provide a dollar amount sufficient to support the program for education and outreach as listed in this section (approximately, but not to exceed \$25,000 annually). Corcoran shall work together with the Director to promote the curbside recycling and yard waste programs by providing multi-media advertising, educational and promotional materials and programs, school curriculum, public presentations, and recycling education brochures. Corcoran and the Director shall agree on each program of education prior to its execution and/or distribution.

Corcoran shall work with the City to develop a comprehensive educational brochure for distribution to residents, businesses and in local schools also. Corcoran shall explore the

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possibility of adapting a strategy of utilizing Tax Bill and/or utility bill mailings to distribute recycling program information to the City. A 4-inch by 3.5-inch index card containing important contact information and a snapshot of the recycling program is an effective means of reaching the residents to promote the program. Corcoran shall display posters and branded merchandise at local events, as well as work with the Manchester School System to bring it to students through video and live presentations.

4. CUSTOMER SERVICE.

Corcoran shall provide an appropriate level of service as required by this Agreement. Corcoran shall be responsible for the prompt and appropriate resolution of customer complaints, whether relayed from the Director or directly from customers.

In the event that a regularly scheduled collection is missed, except as set forth below, and a complaint received by either the Director or Corcoran and it is determined that the missed pickup was not the result of the customer's failure to place materials curbside at the appropriate time, Corcoran shall collect such materials within twenty-four (24) hours of Corcoran's receipt of the complaint of the missed collection. See Penalties Section 21.

Corcoran shall maintain a telephone service line(s) (Hot Line) with a toll-free or local telephone number(s) staffed during regular business hours to provide assistance to and receive complaints from residents and the Director. All calls shall be routed to Corcoran, which shall have the ability to direct connect (radio-call) to service personnel at the transfer station or to staff on the route picking up the curbside material.

Corcoran shall maintain a complaint log setting forth the name and telephone number of each complainant, date and time of the complaint, and the substance of the resolution of the complaint. The Director shall receive a copy of the complaint log on a monthly basis.

5. ADVERTISING.

Upon execution of this agreement, Corcoran shall, at its own expense, mail to each resident and publish at least twice in a newspaper of city-wide circulation, and on the City website, a notice approved by the Director setting forth Corcoran's collection schedule, routes and guidelines. The notice shall, at a minimum, set forth information as to how a resident can obtain service, the guidelines for the service, as well as the telephone number(s) supplied, which will be available for residents for service and complaint calls.

Upon execution of this agreement, Corcoran shall be responsible for the publication of an 8-inch by 6-inch recycling advertisement in the Manchester Union Leader, advising of its services and include the telephone number(s) and website information where it can be reached as well as any other information required by the Director. Said advertisement shall be pre-approved by the Director. Said advertisement to be published at a minimum of two times annually.

Corcoran shall be responsible for the publication of an 11-inch by 6-inch advertisement in the Manchester Union leader advising of the, "Yard Waste Collection Schedule". Said advertisement

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and dates of collection shall be pre-approved by the Director. Said advertisement shall be published at a minimum of two times, once prior to the initial spring collection commencement date and prior to the fall yard waste collection.

The local media shall be fully utilized in order to get information to the residents in the form of PSAs and general advertising.

6. ROUTES/COLLECTION SCHEDULES.

At least thirty days prior to the date of the first collection of recyclable materials, Corcoran shall submit to the Director for approval a proposed operations plan, including collection schedules, routes, guidelines for residents, and the text of proposed notices for publication. The Director shall review and approve at his sole discretion all such submittals, including all subsequent changes proposed by Corcoran.

Corcoran shall provide services to all public streets located in the city. Corcoran and the Director shall review the list within thirty days after the commencement of work under this Agreement to make sure that the list is complete as to streets that have received solid waste and recycling collection services from the Director and shall add to the list any street omitted from it. Thereafter the list shall be reviewed annually.

Corcoran shall provide the Director with a map of its collection routes and a schedule for pickups on those routes. The Director may require changes to routes or schedules, with prior notice to Corcoran.

7. DISPOSAL FACILITIES.

All recyclable material and yard waste staged at the Drop-Off shall be processed, stored, and transported from the site in a timely manner by Corcoran. Baled and sorted commodities produced at the MRF may be warehoused for a limited period of time. Yard waste shall be contained in rolling stock to be transported off site in a timely manner.

8. DROP-OFF FACILITY.

During the term of this Agreement and any extensions thereto Corcoran shall have unlimited access to a portion of the Drop-Off property for purposes of staging the collected recyclable materials for delivery and recycling to the recycling end markets. During Phase I of this Agreement, Corcoran shall store only City recyclable material at the Drop-Off Facility. See Appendix B for Site Layout. Corcoran shall also have unlimited use of the scale facilities currently maintained at the Drop-Off facility and any other future scale facility utilized by the City, during regular facility hours or as negotiated with the Director. Any improvements or replacement costs to the Drop-Off scale and/or software shall be shared on an equal basis by both Corcoran and the City. Corcoran shall have the opportunity within six (6) months of this signing to discuss with the Director, additional service opportunities at the Drop-Off Facility.

The City shall provide a Residents' Drop-Off Facility Area for recyclable materials, yard waste, light iron and white goods. Corcoran shall provide, maintain and clean periodically all necessary containers for recyclable materials and yard waste collected at the Drop-Off at no cost to the City. Corcoran shall charge a fee of \$145.00 per haul and \$110.00 per ton (as noted in proposal dated June 30, 2005, under alternatives) for yard waste disposal. These fees shall have an annual CPI adjustment as set forth in Section 14.

A fee for the extraction of Freon based white goods, delivered to the Drop-Off for disposal shall be charged to the City, and subtracted from the revenues provided by Corcoran to the City (based on the current market pricing at the time of sale) collected by Corcoran for the sale of said metals. There will be no charge for the disposal of light iron and/or serviced white goods, iron, steel, stainless steel, copper, brass, off spec aluminum, lead, and any like combination of metals as one piece or in combination with one or more devices

9. LEASE OF DUNBARTON ROAD SITE

Corcoran and the City shall enter into a 30-year ground lease, with two (2) 10-year option periods, with the City having the right to extend said ground lease, for an area to be determined, at the Dunbarton Road facility. The ground lease shall be annexed hereto in Appendix "C". The 30-year lease period shall be dependent on Corcoran's ability to secure a 30-year funding package from his creditors. Upon execution of said ground lease Corcoran shall commence construction of a Materials Recovery Facility (MRF) to house, stage and process all collected recyclable materials under this agreement.

The ownership of the recyclable materials, light iron and white goods, shall run concurrent with this collection Agreement. However, should the collection agreement be terminated, the City hereby grants a right of first refusal to Corcoran for the ownership of recyclable material. Upon receipt of a good faith third-party written offer, the City agrees to provide written notice of the offer to Corcoran, including the price and a summary of the material terms and conditions of the offer. Corcoran shall have a period of sixty (60) after the receipt of such notice to notify the City that it desires to own the recyclable materials on the same terms and conditions, and at the same price as the third party offer. If Corcoran rejects the offer or fails to respond within the sixty day period, the City shall be free to consummate the transaction with the third party.

10. MATERIALS RECOVERY FACILITY (MRF).

Construction of the MRF. Corcoran assumes all responsibility for financing, permitting and construction of a Regional MRF. Corcoran shall own, design, build, maintain and manage a single-stream recyclable processing facility at the City's Dunbarton Road Facility. The plans and specifications for the MRF shall meet with the Director's approval before construction commences.

Design and construction of the MRF will make every effort to utilize environmentally friendly architecture and techniques, and employ cutting edge technology wherever functional. The facility shall be handicap-accessible and shall offer a wide range of

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employment opportunities. The MRF shall seek the US Green Building council's LEED (Leadership in Energy and Environmental Design) certification.

The MRF shall be permitted by the State of New Hampshire and shall operate between the hours of 7:00 AM to 5:00 PM. These hours of operation may be amended by the Director at the request of Corcoran. The MRF will be of a size and capacity to adequately handle/process all of Manchester's recyclables. The MRF's operational capacity shall be a maximum of 200 tons per day.

The MRF shall be constructed and fully operational prior to the third anniversary of this Agreement, or by March 1, 2009. If the MRF is not fully built and fully operational, Corcoran shall make payment to the City in the amount of \$5,000 per month until the MRF is fully operational.

11. REVENUES TO THE CITY.

A. Host Revenues. The City will receive from Corcoran \$2.50 per ton for each ton of recyclables delivered to the MRF that does not have its origin from the City recycling program as described above. The Host Revenues to the City will escalate based on any increases in the tipping fee. The increases to the host revenue will be equal to the same percentage as the tipping fee increase, i.e. a tipping fee increase of 10% will increase the host revenue payment by 10%. Corcoran shall make the Host revenue payments to the City on a quarterly basis.

B. Revenue Sharing. The City shall enjoy revenue sharing from the program beginning in the third year of this Agreement. The revenue sharing scale for all tonnages received at the MRF is as follows:

- i. 0 – 15,000 tons, no revenues
- ii. 15,001 – 49,999 tons, 10% of net revenue
- iii. 50,000 plus tons – 20% net revenue

Revenue Sharing shall be paid to the City on a yearly basis based on an audit of Corcoran's books of the Dunbarton Road MRF.

C. Potential Future Recycling Programs. Future programs may include the development and implementation of a Downtown Toter Collection Zone recycling program to include corrugated cardboard, paper, and container recycling, as determined by the Director.

12. PERMITS AND LICENSES.

Corcoran shall be responsible for the cost, acquisition and maintenance of all permits and licenses necessary for the performance of work under this Agreement.

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13. TERM OF AGREEMENT.

The term of this Agreement for recycling and yard waste curbside collection services as described herein, shall commence collections on March 1, 2006, and shall end on the last day of February, 2016 (recycling and yard waste services contract period); provided however, that educational and promotional programs shall commence as soon as possible after January 1, 2006. The City shall have the option to renew this Agreement up to four (4) additional terms of five (5) years each under the same terms and conditions as set forth herein. Corcoran shall notify the Director in writing one hundred and twenty (120) days in advance of the expiration of the recycling and yard waste services contract period and of each subsequent option period exercised by the City. The Director shall inform Corcoran in writing at least sixty (60) days in advance of the expiration of the recycling and yard waste services contract period or option period as to whether City wishes to renew the Agreement for the subsequent option period. If the Director fails to take such action at least sixty (60) days in advance of the expiration of the applicable contract or option period, the City shall be deemed not to have exercised its option; provided, however, that Corcoran may, in its sole discretion, extend the deadline for final notice from the City if the City requests such an extension.

14. COMPENSATION FOR RECYCLING AND YARD WASTE SERVICES.

The City agrees to pay Corcoran for recycling services set forth in this Agreement a sum of \$889,800 for weekly two-stream curbside recycling services for the first twelve months of the Agreement, commencing on the "First Day of Collection". The base year cost shall be payable in twelve equal monthly sums of \$74,150 per month. The first payment to Corcoran to be made by the City is due on April 15, 2006.

Corcoran agrees to purchase 65-gallon toters for the collection of recyclables in Phase II of this agreement. The City of Manchester agrees to compensate Corcoran invoiced amount plus 10% for distribution and assembly. See Matrix Appendix D.

The City agrees to pay Corcoran for yard waste services set forth in this Agreement a sum of \$770,000 for the first twelve months yard waste services as described. The base year service shall be payable in ten (10) equal monthly sums of \$77,000 for each of the months of March through December, the December payment being intended to include all yard waste services associated with Christmas tree collection in the month of January immediately following.

The Program Base Costs for the second and subsequent years shall be as per the agreed upon Matrix annexed hereto as Appendix "D".

15. COST OF LIVING ADJUSTMENT.

- A. Designation of Adjustment Date and Index. Starting March 1, 2007, effective on the annual Cost of Living Adjustment Date during each subsequent year of the Agreement and option terms, Corcoran shall become entitled to compensation at a New Monthly Payment Rate equal to the average monthly payment over the prior twelve months ("the Prior Year Monthly Payment Rate," which is the sum of all

payment in the prior twelve (12) months for collection recycling and yard waste services provide under the Scope of Services of this Agreement, divided by twelve (12)) adjusted by any increase or decrease in the cost of living over the prior calendar year, determined in accordance with the Bureau of Labor Statistics "Consumer Price Index for Urban Consumers (CPI-U), Boston, All Items, 1982-1984 = 100," in the manner as set forth below. In the event that the Bureau of Labor Statistics (BLS) ceases to calculate and publish the CPI-U for Boston, all subsequent cost-of-living adjustments shall be determined in the manner as set forth below, based on the BLS "Consumer Price Index for All Urban Consumers (CPI-U), Boston, All items, 1982-1984 = 100."

- B. Formula for Calculating Cost of Living Adjustment Rates. The Annual Cost of Living Adjustment Rate shall be determined by subtracting from the Boston CPI-U Index for May of the year of the adjustment (Current CPI-U) for May of the prior year) (Prior Year CPI-U), and dividing the difference by the Prior Year CPI-U; provided, however, that the period commencing July 1, 2006 the Prior Year CPI-U shall be the Boston CPI-W Index for September 2005.
- C. Calculating the New Monthly Rate. The New Monthly Payment Rate is calculated by multiplying the applicable Annual Cost of Living Adjustment Rate by the Prior Year Monthly Payment Rate, and adding that sum to the Prior Year Monthly Payment Rate, as set forth in the following formula and subject to the limitations set forth in subsection D, below:

$$\left(1 + \frac{\text{CurrentCPI-U} - \text{PriorYearCPI-U}}{\text{PriorYearCPI-U}} \right)$$

- D. Limitation on Annual Increase. The maximum cost of living adjustment increase for any annual period shall be three percent (3%), and no increase that would otherwise apply absent this limitation shall be carried forward into a subsequent year.

16. PAYMENT FOR RECYCLING AND YARD WASTE SERVICES.

Corcoran shall send an invoice to the City by the 25th of the month for which the invoice is due. The City shall remit payment to Corcoran by the 15th of the following month, subject to any deductions or claims resulting from Corcoran's failure to perform work as required under this Agreement. The first payment to Corcoran shall be on April 15, 2006.

17. INSURANCE.

Corcoran shall provide the following insurances:

Public Liability Insurance (or Commercial General Liability) of \$5,000,000, combined single limit, for either bodily injury by accident or bodily injury by disease, with aggregate Occurrence coverage \$5,000,000 to protect Corcoran and the City from claims and damages that

may arise from operations under this Agreement, whether such operations be by Corcoran or by anyone directly or indirectly employed by them.

Automobile Liability Insurance of \$5,000,000 combined single limit per accident, and \$5,000,000 in aggregate, to protect Corcoran and the City from claims and damages that may arise from operations under this Agreement, whether such operations are by Corcoran or by anyone directly or indirectly employed by them.

Workers' Compensation Insurance in amounts required by New Hampshire law and **Employer's Liability Insurance**, as necessary, as required by New Hampshire law. All such insurance policies shall name the City and its officers, agents and employees as additional insureds, except that for purposes of Workers' Compensation Insurance, Corcoran instead may provide a written waiver of subrogation rights against the City, as permitted by New Hampshire law. All insurance policies shall be issued by companies authorized to do business under the laws of the State of New Hampshire, shall be in form satisfactory to the City's Risk Manager and shall contain a provision prohibiting cancellation except upon at least fourteen (14) days prior written notice to the City and shall contain a complete waiver by the insurer of subrogation against the City. All such insurance policies will be primary in the event of a loss arising from Corcoran's performance and shall provide that where there is more than one insured, the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured. Corcoran shall not commence Work under the Agreement until it has obtained all insurance coverages required under this subparagraph and any insurance policies have been approved by the City. All such insurance policies shall have a retroactive date which is the earlier of the date of the Agreement between the parties or Corcoran's commencement of services hereunder.

It is the responsibility of Corcoran to ensure that all sub-contractors comply with the same insurance requirements.

Corcoran agrees to furnish certificate(s) of the above-mentioned insurance to the City's Risk Manager within fourteen (14) days from the date of this Agreement and with respect to the renewals of the current insurance policies, at least thirty (30) days in advance of each renewal date. Such certificates shall, with respect to comprehensive general liability and auto liability insurance, name the City and the Department of Highways as an additional insured (except workers compensation) and, with respect to all policies shall state that in the event of cancellation or materials change, written notice shall be given to the City of Manchester, Office of Risk Management, 27 Market Street, Manchester, New Hampshire 03101 and the Department of Highways at least thirty (30) days in advance of such cancellation or change.

Every fifth anniversary of this contract, the City shall have the right to review and revise the insurance requirements of this agreement.

18. BOND REQUIREMENTS.

Prior to commencing performance under the Agreement, Corcoran shall provide a Performance Bond executed by a surety company acceptable to the City in the amount of Five Million Dollars

(\$5,000,000). The Performance Bond shall remain in effect for the total life of this Agreement and shall be adjusted on the Agreement Anniversary date to reflect cost of living adjustments determined under Section 15 of this Agreement.

19. INDEMNIFICATION.

Corcoran shall defend, indemnify and hold harmless the City, and its officers, employees and agents from and against all claims, damages, losses and expenses (including attorney's fees and costs) arising out of or resulting from the performance of the work required under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (including the loss of use resulting therefrom), and is caused in whole or in part by any intentional or negligent act or omission of Corcoran, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified under this paragraph. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this paragraph.

20. CITY HAS RIGHT OF SET-OFF.

If the City incurs expenses and/or damages as a direct result of the Corcoran's improper performance under this Agreement or Corcoran fails to perform under this Agreement, the City has the right to reduce any monthly payment(s) by the amount of incurred expenses and/or damages or to pro rate for each day of nonperformance. The Director shall promptly notify Corcoran in writing of the specific reasons for and the amount of any such reduction, which amount shall be in the Director's sole discretion.

21. DELAYS IN SERVICE.

If in the Director's judgment, Corcoran is frequently or repeatedly experiencing delays or incomplete collection, absent unusual circumstances causing or contributing to the delay or other problem, the Director or his designee shall give notice to Corcoran, specifying the problem or issue requiring correction. Within 24 hours of receipt of the notification of the problem or issue, Corcoran will correct the problem, and shall report to the Director, the action taken. Failure to respond to the Director within 48 hours of notification shall be considered a breach of the Agreement

22. PENALTIES FOR NONPERFORMANCE.

Corcoran shall not be held responsible for failing to collect materials which were not placed at the curb by 7:00 AM on their scheduled collection day or in cases of severe weather. When notified by the Director of a missed collection, Corcoran shall return to the residence and/or remedy the matter within 24 hours of notification. Failure to do so would result in a \$100 penalty per occurrence not to exceed \$1,000 per contract day.

23 ENVIRONMENTAL RISK.

Corcoran shall bear the entire environmental risk pursuant to doing business under this Agreement. All increased costs resulting from changes in environmental laws or regulations applicable to Corcoran's activities in the performance of this Agreement shall be borne by Corcoran.

24. PERSONNEL.

- A. Corcoran shall assign a qualified person or persons to be in charge of the operations within the City and shall give the name(s) of the person(s) to the Director.
- B. Corcoran's collection employees shall wear a uniform or shirt bearing the company's name during operations.
- C. Corcoran shall provide adequate personnel to perform the services required by this Agreement. Personnel shall be courteous, shall work as quietly as circumstances permit, shall not use profane or loud language, and shall not play loud music.
- D. Each driver of a collection vehicle shall at all times carry licenses as required by the State of New Hampshire for the type of vehicle that is being drive.
- E. Corcoran shall provide operating and safety training for all personnel in accordance with industry standards.
- F. Corcoran shall use its best efforts to supply sufficient personnel, including supervisory and management personnel to perform recyclable materials collections and hauling, and other activities in accordance with the provisions of this Agreement.
- G. Corcoran agrees that whenever the Director notifies Corcoran in writing that an employee of Corcoran, while performing services under this Agreement, is incompetent, disorderly, under the influence of liquor and/or drugs, uses insolent or improper language to members of the public, or is otherwise unsatisfactory in any manner, including the operation of collection vehicles, or is not employed in accordance with the provisions of this Agreement, Corcoran shall promptly investigate such complaint, and shall take appropriate corrective measures, which may include disciplinary actions and the hiring of substitutes or replacements. Failure to take appropriate corrective measures may constitute a breach of this Agreement.

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25. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

Corcoran shall be responsible for compliance with all applicable local, state and federal laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to Corcoran, its employees, agents or subcontractors, if any, with respect to the work and services described herein, and any applicable amendments thereto.

26. TAXES.

Corcoran shall pay any and all property, federal, state and local taxes, fees and assessments related to or levied upon its earnings, income, operations, equipment, or any other thing in connection with this Agreement unless otherwise negotiated with the City and or State.

27. BOOKS, RECORDS AND REPORTS.

Corcoran shall maintain comprehensive and adequate records of services provided under this Agreement, in accordance with generally accepted accounting principles and industry standards. The City acknowledges that such information is confidential and it shall not disclose to any person, directly or indirectly, either during the term of this Agreement or at any time thereafter, any such information or use such information other than as necessary in the course of this Agreement.

Corcoran shall provide annual reports on the number of customers served and all other information required by the City. At a minimum, Corcoran shall supply the City with comprehensive data for recyclable and yard waste materials collected for the life of the Agreement. Monthly tonnage reports with dated weight slips shall be submitted with monthly bills. The City shall have the right to inspect the books and records relating to services provided under this Agreement, with 48 hour written notice to Corcoran. The City may request additional reports as necessary.

Within one hundred twenty (120) days after the close of each Fiscal Year, Corcoran shall furnish to the City a summary, signed by a principal officer of Corcoran, as of the end of such Fiscal Year, of the Expenses, Revenues, Net Revenues and Payments and an audited balance sheet, a statement of profit or loss, and a statement of changes in financial condition of Corcoran, each prepared in accordance with generally accepted accounting principles. The City acknowledges that such information is confidential and it shall not disclose to any person, directly or indirectly, either during the term of this Agreement or at any time thereafter, any such information or use such information other than as necessary in the course of this Agreement.

The City reserves the right, at any time and from time to time, to have Corcoran's books and records audited by an independent certified public accounting firm selected by the City. If the results of such audit confirm Corcoran's calculation or estimation of the revenues, Expenses, Net Revenues, or Payment to within a 3% margin of error, the City shall pay for the cost of such audit. However, if the result of such audit indicates a larger deviation, Corcoran shall pay for the cost of such audit.

Corcoran shall maintain and make available for review by the City a complaint log. Said log to include the complainant's name and address, date and time of complaint, the nature of the complaint and the nature of resolution of said complaint.

28. INDEPENDENT CONTRACTOR.

Corcoran shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. Corcoran shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same; provided, however, that all work shall be performed by Corcoran in conformance with the City's general specifications relating to coverage and timing. Nothing herein shall be construed as creating a partnership or joint venture between the City and Corcoran. No person performing any of the work of services described hereunder shall be considered an officer, agent, servant or employee of the City, and no such person shall be entitled to any of the benefits available or granted to employees of the City. The Agreement does not create an exclusive relationship between the parties, and Corcoran is free to provide services to others during the term of the Agreement.

In the event of bankruptcy, takeover or merger, outright purchase, majority stock purchase by another organization, or other change in ownership or status of Corcoran, or any assignment for the benefit of creditors, the City shall have the right to:

- A. Terminate this Agreement with all pertinent contractual conditions contained herein affected in favor of the City; or
- B. Fully obligate the newly formed organization, corporation and/or legal entity to fulfill all terms and conditions of the Agreement, and to perform or supply items in accordance with the specifications or descriptions contained herein.
Notwithstanding the City's ability to terminate this Agreement as stated in this Section, the City shall not have the ability to terminate this Agreement if a takeover, merger, outright purchase, or other change in ownership of Corcoran is merely a transaction involving affiliates of Corcoran which are wholly owned by a common parent, or between Corcoran and a wholly owned subsidiary of Corcoran, or between Corcoran and a parent corporation of which it is a wholly owned subsidiary, and such transaction does not affect Corcoran's ability to perform its obligations under this Agreement.

Failure of any subcontractor to perform shall not relieve Corcoran of its obligation to fulfill the terms and conditions of the Agreement as set forth herein.

29. FORCE MAJEURE.

The City's obligations and Corcoran's obligations under this Agreement may be suspended by either party upon the occurrence of the following events: act of God, war, riot, fire, explosion, accident, flood, sabotage; national defense requirements; labor trouble, strike, lockout, or injunction (provided that neither party shall be required to settle a labor dispute against its own

best judgment); provided such event is beyond the reasonable control of such party or any subcontractor, agent, or person in privity therewith, which event prevents practicable performance of this Agreement. As soon as practicable after any such event, Corcoran shall resume complete performance of its obligations under the Agreement. The City shall be entitled to a pro-rata reduction in payments made under this Agreement for any periods during which Corcoran fails to perform its obligations under this Agreement, regardless of whether due to a force majeure event or otherwise.

30. WAIVER.

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or any other provision.

31. LAW TO GOVERN.

City and Corcoran agree that the laws of the State of New Hampshire shall govern the rights obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

32. RANDOM INSPECTIONS.

The City shall have the right to conduct random inspections of vehicles carrying yard waste or recyclables collected under the terms of this Agreement, without prior notice to Corcoran, for the purpose of determining compliance with the requirements of this Agreement.

33. QUALITY ASSURANCE.

Corcoran shall establish and maintain effective procedures to receive and provide prompt responses to service complaints or any communications from the City, including the establishment of a telephone line as stated above.

34. ASSIGNMENT.

Corcoran shall notify the Director in writing fourteen (14) days in advance of entering into any subcontract for any services covered by this Agreement, identifying the name of the proposed subcontractor and the work which the subcontractor will perform. Neither Corcoran nor the City shall assign, transfer, convey, or otherwise hypothecate this Agreement or their rights, duties or obligations hereunder, or sublet it in whole or in part, or delegate any of the work to be performed to any other person, firm, company, corporation, or organization without the prior written consent of the other party, and so such assignment, subletting or delegations shall be effective without such consent; provided however, that Corcoran may enter into subcontract provided that Corcoran shall not assign any monies due, or to become due to Contractor under the Agreement, without written consent of the City. Neither party to the Corcoran shall assign the Agreement without the written consent of the other party.

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35. DISPUTES.

Except as otherwise agreed by the parties in writing, all disputes, claims, counterclaims and other matters in question between Corcoran and the City arising out of or relating to this Agreement shall be decided by a New Hampshire court of competent jurisdiction. This Agreement is made and shall be construed under the laws of the State of New Hampshire.

36. DISPUTE RESOLUTION.

A. Dispute Resolution.

Any controversy or claim between the City and Corcoran arising from or in connection with this Agreement or the relationship of the parties under this Agreement whether based on contract, tort, common law, equity, statute, regulation, order or otherwise ("Dispute") shall be resolved as follows:

- i. Upon written request of either City on the one hand, or Corcoran on the other hand, the parties will each appoint a designated representative whose task it will be to meet for the purpose of endeavoring to resolve such Dispute.
- ii. The designated representative shall meet as often as the parties reasonably deem necessary to discuss the problem in an effort to resolve the Dispute without the necessity of any formal proceeding.
- iii. Formal proceedings for the resolution of a Dispute may not be commenced until the earlier of:
 - a. the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or
 - b. the expiration of the 30-day period immediately following the initial request to negotiate the dispute, provided, however, that the section above (a.) will not be construed to prevent a party from instituting formal proceeding earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors or seek temporary or preliminary injunctive relief pursuant to the section C.

B. Arbitration.

If the parties are unable to resolve any Dispute as contemplated by Section A, then, such Dispute shall be submitted to mandatory and binding arbitration at the election of either the City, or Corcoran (the "Disputing Party") unless the Dispute is subject to Section C., in which case such section shall control. Except as otherwise provided in this Section B, the arbitration shall be pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA").

- i. To initiate arbitration, the Disputing Party shall notify the other party in writing (the "Arbitration Demand"), which shall (i) answer the claims set forth in the Arbitration Demand and include any affirmative defenses of such party; and (ii) assert any counterclaim, which shall (A) describe in reasonable detail the nature of the Dispute relation to the counterclaim, (B) state the amount of the counterclaim (if known), and (C) specify the requested relief. The arbitration will be heard by a single arbitrator who is mutually acceptable to the parties and who is chosen according to the rules of AAA and has no past or present relationships with the parties or their counsel, except a otherwise disclosed in writing to and approved by the parties (the "Arbitrator"). The Arbitrator shall convene the arbitration promptly no later than 15 business days following the giving of the response to the Arbitration Demand. Decisions of the Arbitrator shall be determinative.
- ii. The Arbitration hearing shall be held in such neutral location as the parties may mutually agree. The Arbitrator is specifically authorized to render parties of full summary judgment as provided for the Federal Rules of Civil Procedure. The Federal Rules of Evidence shall apply to the arbitration proceeding. The party bringing a particular claim or asserting an affirmative defense will have the burden of proof with respect thereto. The Arbitrator will have no power or authority, under the Commercial Arbitration Rules of the AAA or otherwise, to relieve the parties from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this Agreement, including, without limitation, the Provision of Section B.
- iii. Within 15 days after the closing of the arbitration proceeding, the Arbitrator shall prepare and distribute to the parties a writing setting forth the Arbitrator's finding of fact and conclusions of law relating to the Dispute, including the reasons for the giving or denial of any award.
- iv. The Arbitrator is instructed to schedule promptly all discovery and other procedural steps and otherwise to assume case management initiative and control too effect an efficient and expeditious resolution of the Dispute.
- v. Any award rendered by the Arbitrator will be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.
- vi. Each party will bear a pro rata share of all fees, costs and expenses of the Arbitrator, and notwithstanding any law to the contrary, each party will bear all the fees, costs and expenses of its own attorneys, experts and witnesses; provided, however, that in connection with any judicial proceeding to compel arbitration the prevailing party in such a proceeding will be entitled to recover reasonable attorneys; fees and expenses incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

C. Judicial Procedure.

Nothing in Section A or B shall be construed to prevent any party from seeking from a court a temporary restraining order or other temporary or preliminary injunctive relief pending final resolution Dispute pursuant to Section A or B.

37. TERMINATION FOR CAUSE.

Without prejudice to any other right or remedy, the City may terminate this Agreement at any time for cause by providing Corcoran with sixty (60) days' written notice of termination. For purposes of this Agreement, cause shall be defined as the adjudication of either Corcoran as a bankrupt, the making of a general assignment by Corcoran for the benefit of its creditors; the appointment of a receiver because of Corcoran's insolvency; Corcoran's persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly skilled workers or proper materials, vehicles or equipment to perform the work required under this Agreement; Corcoran's persistent failure to meet standards of performance required under the terms of this Agreement; Corcoran's failure to comply with federal, state or local statutes, laws, codes, rules, regulations, orders or ordinances; and Corcoran's substantial violation of the provisions of this Agreement.

38. ENTIRE AGREEMENT; AMENDMENTS; CONFLICTS.

This Agreement and its Exhibits represent and contain the entire agreement between the parties. Any amendments to this Agreement shall be in writing and shall be signed by each party hereto. Where there is a conflict between any provision of this Agreement and any of the Exhibits, this Agreement shall prevail. Any and all costs not specified in this Agreement shall be the responsibility of Corcoran.

39. NON-WAIVER.

Failure of a party to this Agreement to enforce a provision of this Agreement shall not constitute a waiver of the right to enforce any subsequent breach of that provision or any other provision of the Agreement.

40. NOTICES.

Any notices required under the terms of this Agreement shall be sent via United States mail, first class, return receipt requested, to the following:

CITY: City of Manchester Department of Highways
227 Maple Street
Manchester, NH 03103

CORCORAN: Corcoran Environmental Services, Inc.
P.O. Box 536
West Kennebunk, Maine 04094

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IN WITNESS WHEREOF, the said CITY OF MANCHESTER has caused this Agreement to be signed and sealed by _____, its _____ hereunto duly authorized and CORCORAN ENVIRONMENTAL SERVICES, INC. has caused this Agreement to be signed and sealed by Patrick Corcoran, its President, the day and date first above written.

WITNESS:

CITY Of MANCHESTER

By: _____

BY: _____
ITS: _____

WITNESS

CORCORAN ENVIRONMENTAL SERVICES,
INC.

By: _____

BY: Patrick Corcoran
ITS: President

DUNBARTON ROAD FACILITY

GROUND LEASE

THIS LEASE (“this Lease” or “the Lease”) made and entered into this ____ day of _____, 2005, by and between City of Manchester (hereinafter referred to as “City” and/or “Lessor” and/or “Landlord”) and Corcoran Environmental Services, Inc. (hereinafter referred to as “CES” and/or “Lessee”).

WHEREAS, the Lessee agrees to shared use of the property with the Lessor under the terms of this Ground Lease. See Figure 1. The site shall be used for the purpose of constructing a Materials Recovery Facility for use in connection with processing recyclable material;

WHEREAS, Lessor and Lessee recognize the special nature of the terms and conditions of this Lease, and each of them, with the independent and informed advice of legal counsel, freely accepts these terms and conditions, including those terms and conditions that may affect the marketing and resale price of any Improvements on the Leased Premises; and

WHEREAS, it is mutually understood and accepted by Lessor and Lessee that the terms and conditions of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

Paragraph 1: Leased Area.

Corcoran agrees to a shared use of the City property located at 500 Dunbarton Road.

Paragraph 2: Term/Payments.

This agreement shall be for a period of thirty (30) years commencing on January 1, 2006 and terminating on December 31, 2035. It may be renewed at the sole discretion of the city for two (2) additional ten (10) year periods under the same terms as the Lease herein.

The rent shall be as follows:

Twenty Six Thousand Dollars (\$26,000.00) per year, for the first two (2) years, and

Thirty Nine Thousand Dollars (\$39,000.00) per year for years three through five. This rent shall be increased at the rate of three (3%) percent every three years, beginning on January 1, after completion of the MRF.

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Paragraph 3: Inspections.

The City and their authorized representatives, shall have full rights of inspection during the construction, fabrication, equipping, and installation of the Project.

Paragraph 4: Ingress and Egress.

Corcoran and its officers, employees, invitees, guests, and suppliers of materials and furnishers of services, shall have the right of ingress and egress between the leased land and any public street or roadway outside of the Dunbarton Road site by means of roadways leading to and from the site, and such other points as may be designated by the Director.

Paragraph 5: Utilities.

During the Lease Term, CES covenants and agrees to pay the cost of all utility service provided to or for the Leased Premises, and all costs for cleaning and janitorial services.

Paragraph 6: Renovations.

CES shall, at its own expense, finance, design and construct a regional Materials Recovery Facility (MRF) pursuant to the specifications as set forth in the Recycling Agreement dated _____, 2005.

Paragraph 7: Maintenance.

CES shall bear the cost of all maintenance and service in the MRF and upon the leased premises. Corcoran shall be responsible for snow removal, ice control, and sweeping of paved areas.

Paragraph 8: Construction Bond.

CES shall provide to the City a construction bond for the estimated full value of the MRF.

Paragraph 9: Change of Ownership.

If the City transfers ownership, by sale or otherwise, of the land comprising the leased premises, this Lease shall remain binding and unaffected. ~~Further, CES shall have the right of first refusal to the land.~~

Paragraph 10: Hazard Insurance.

CES agrees to maintain during the term hereof a policy of insurance insuring the Leased Premises against loss or damage by fire and other perils under extended coverage in a sum not less than eighty percent (80%) 100% of the insurable value of the Leased Premises. CES agrees to provide to City, on the date hereof and annually thereafter, a copy of each such insurance policy designating City's interest, as such policy is then in effect. The City shall be named as additional insured.

Paragraph 11: Repair and Maintenance.

CES agrees that from and after the date that possession of the Leased Premises is delivered to CES, and until the end of the Lease Term, it will keep neat and clean and maintain in good order, condition and repair, and in compliance with all federal, state and local statutes, ordinances, rules and regulations currently in effect or hereinafter enacted, all portions of the Leased Premises and any and all alterations or improvements made by CES.

Paragraph 12: Alterations, Renovations and Improvements.

CES shall have the right to make such alterations, renovations and improvements to the Lease Premises as are necessary or desirable for its use of the Lease Premises as authorized herein, provided however, that CES shall perform such alterations, renovations and improvements in a good, workmanlike and reasonable manner, and provided further that CES shall indemnify and hold City harmless from and against all claims, demands, costs and mechanic's liens which may arise as a direct or indirect result of or in connection with such alterations, renovations and improvements.

Paragraph 13: Subletting and Assignment.

CES's leased premises may not be sublet or this lease assigned, without prior consent of the City, which consent shall not be unreasonably withheld.

Paragraph 14: Indemnification and Liability Insurance.

(a) CES agrees to indemnify, protect and hold City harmless from and against all liabilities, injuries, claims, losses, or damages to person occurring or arising on or about the Leased Premises, during the Lease Term, which liabilities, losses or damages arise as a result of CES's use, misuse or occupation of the Leased Premises or any part thereof, except to the extent that said liabilities, losses or damages are the result of the negligence of the City, its agents or employees.

(b) CES agrees to maintain in full force during the term hereof a policy of public liability and property damage insurance under with City and CES are named as insureds.

Paragraph 15: Environmental Compliance.

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Corcoran will be solely responsible for the investigation and/or remediation of any environmental contamination that may result from their future use of the leasehold and/or any such contamination that may result from operations conducted for them by contractors, consultants, etc. The City also reserves the right to enter the property, following appropriate notice to Corcoran, to collect environmental samples, conduct site compliance visits, etc.

Paragraph 16: Use and Business Operation.

The hours during which the Building entrance door shall be open and available for use by CES clients, invitees, customers, agents or employees are from 7:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, and such other times as are agreed upon by the parties hereto.

Corcoran shall have the right to install on the leased premises, signs or other corporate or trade name identification. The size, type, design and location of such signs or other identification shall, however, be subject to the prior written approval of the Director.

Paragraph 17: Permits and Licenses.

CES agrees to maintain in full force and effect, during the Lease Term, at its cost and expense, any and all federal, state and local permits, licenses and registrations necessary for the use of the Lease Premises by CES.

Paragraph 18: Taxes.

Corcoran agrees to pay all property taxes and assessments, ordinary or extraordinary, by whomsoever levied or assessed which may be levied or assessed on the Lease Premises. CES agrees to pay any and all other taxes and assessments associated with CES's use of the Leased Premises, including but not limited to personal property taxes and assessments and all federal, state and local of withholding and FICA taxes and assessments.

Paragraph 19: Right to Enter.

CES agrees to permit City or its duly authorized agents to enter on the Leased Premises during CES's normal business hours, without any prior notice, to examine the condition of said Leased Premises and to show the same to prospective CES's or purchasers, provided such access to the Leased Premises shall not unnecessarily interfere with CES's use of the Leased Premises or the conduct of CES's business activities thereon. In the event that City wishes to enter the Leased Premises at any time other than CES's normal business hours, City shall give CES such prior notice as is reasonable under the circumstances except that in case of an emergency, City shall be relieved of said notice obligation.

~~Paragraph 16. Total or Partial Destruction:~~

~~LEFT BLANK LANGUAGE TO BE DISCUSSED AND AGREED UPON.~~

Paragraph 20: Eminent Domain.

In the whole of the leased premises shall be taken or condemned as aforesaid, or if such a substantial part thereof is taken as shall result in the portion of the leased premises remaining being no longer operable as an economically useful unit to the conduct of Corcoran's business, than this lease shall terminate as of the effective date of the condemnation.

Paragraph 21: Waiver of Subrogation.

Insofar as and to the extent that such agreement may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the State of New Hampshire, City and CES agree that with respect to any loss covered by insurance then carried by them, respectively, the one carrying such insurance and suffering that loss releases the other of and from any and all claims with respect to such loss; and they further agree that their respective insurance companies shall have no right of subrogation against one another on account of such agreement even though extra premiums may result therefrom. If an extra premium is payable by CES as a result of these provisions, City shall not reimburse CES for any such extra premium.

Paragraph 22: City's Remedies.

(a) It is covenanted and agreed that if CES shall neglect or fail to perform or observe, or fail to neglect diligently to attempt to so perform or observe, any of the covenants, terms, provisions or conditions contained in this Lease and on its part to be performed or observed within fifteen (15) days after notice of default, or if the estate hereby created shall be taken on execution or by other process of law, or if a petition in bankruptcy shall be filed by or against CES, or if any assignment shall be made of the property of CES, or if any assignment shall be made of the property of CES for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any substantial part of CES's property, or if a petition shall be filed for the reorganization of CES under any provisions of the Federal Bankruptcy Code now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or if CES shall file a petition for such reorganization, or for arrangement under any provisions of the Federal Bankruptcy Code now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts, then, and in any of said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), City lawfully may, immediately or at any time thereafter, in accordance with ~~Maine~~ New Hampshire law, enter into and upon the Leased premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel CES and those claiming through or under it and remove it or

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their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for collection of damages for breach of covenant, and upon entry as aforesaid, this Lease shall terminate.

(b) City shall in no event be in default in the performance of any of its obligations hereunder unless and until City shall have failed to perform, or failed diligently to attempt to perform, such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by CES to City properly specifying wherein City has failed to perform any such obligation.

Paragraph 23: Notices.

All notice required to be given pursuant to this Lease, to be effective, shall be in writing and shall be delivered by hand or by certified mail, postage prepaid, return receipt requested, to the following addresses:

(i) **To Lessee at:** Corcoran Environmental Services, Inc.
P.O. Box 536
West Kennebunk, Maine 04094

(ii) **To Lessor at:** City of Manchester Department of Highways
227 Maple Street
Manchester, New Hampshire 03103

Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

Paragraph 24: Miscellaneous Provisions.

(a) **Invalidity of Particular Provisions.** If any term or provision of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) **Governing Law.** This Lease shall be governed exclusively by the provisions hereof and by the laws in effect in the State of New Hampshire as those laws may be amended from time to time.

(c) **Recording.** City and CES agree that this lease need not be recorded.

(d) **Interpretation.** Whenever in this Lease provision is made for the doing of any act by any party, it is understood and agreed that said act shall be done by such party at its own cost and expense, unless a contrary intent is expressed.

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(e) **Entire Agreement; Binding Effect.** All negotiations, consideration, representations, and understandings between City and CES are incorporated herein and may be modified or altered only by agreement in writing between City and CES, and no act or omission of any employee or agent of City shall alter, change, or modify any of the provisions hereof. All rights, obligations and liabilities contained herein given to, or imposed upon, City and CES shall extend to and bind the several respective administrators, trustees, receivers, legal representative, successors, heirs and permitted assigns of City and CES, and if there shall be more than one CES, they shall all be bound jointly and severally by the terms, covenants and agreements herein.

(f) **Compliance with Laws.** CES agrees to abide by and comply with all federal, state and local statues, ordinances, rules and regulations applicable to CES's use of the Leased Premises.

IN WITNESS WHEREOF, City and CES have executed this Lease Agreement as an instrument under seal as of the day and year first above-written.

In Witness Whereof, City and CES have executed this Lease Agreement on the day and year first above written.

Lessor:

By: _____
Print Name: _____
Title: _____

Lessee:

By: _____
Print Name: _____
Title: _____

Population Growth Rate = 2.25%

Assumptions
 MSW Cost per Ton: \$60.67
 Annual CPI Adjustment: 3.00%
Program Targets
 Curbside Diversion: 50.00%
 Household Participation: 75.00%

Additional Information: Program Cost Adjustments

Adjustments to the base cost of single stream collection are made on the basis of population growth projections and participation in the program. Vehicle and crew utilization per route is not to exceed 95%; the cost per additional collection vehicle and crew is \$200,200 with annual CPI increases estimated @ 3%. Revenue sharing is determined by taking the average mean price of all commodities managed from the single stream facility (estimated here @ \$65/ton), less operations costs (approximately \$40/ton) and allocated to the City according to the scale at right.

Fiscal Year >>	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	10-Year Totals
Program Base Costs											
Dual Stream Collection	\$889,800.00	\$916,494.00	n/a	\$1,806,294.00							
Single Stream Collection	n/a	n/a	\$1,075,106.00	\$1,107,359.18	\$1,140,579.96	\$1,174,797.35	\$1,210,041.27	\$1,246,342.51	\$1,283,732.79	\$1,322,244.77	\$9,560,203.84
Toner Acquisition (Estimated Cost)**	\$889,800.00	\$916,494.00	\$392,700.00	\$392,700.00	\$392,700.00	\$392,700.00	\$392,700.00	\$392,700.00	\$392,700.00	\$392,700.00	\$3,927,000.00
Total >>	\$889,800.00	\$916,494.00	\$1,467,806.00	\$1,500,059.18	\$1,533,279.96	\$1,567,497.35	\$1,602,741.27	\$1,638,042.51	\$1,673,432.79	\$1,708,944.77	\$13,329,997.84
Revenue and Offsets											
DBS Lease Payments	\$26,000.00	\$26,000.00	\$39,000.00	\$39,000.00	\$39,000.00	\$39,000.00	\$39,000.00	\$39,000.00	\$39,000.00	\$39,000.00	\$364,000.00
Est. Base Regional Recycling Host Reven	n/a	n/a	\$17,500.00	\$37,187.50	\$56,875.00	\$76,562.50	\$96,250.00	\$115,937.50	\$135,625.00	\$155,312.50	\$691,250.00
Est. Base Commercial Host Revenue	n/a	n/a	\$6,250.00	\$12,500.00	\$18,750.00	\$25,000.00	\$31,250.00	\$37,500.00	\$43,750.00	\$50,000.00	\$237,500.00
Est.'s Disposal Offset	\$30,335.00	\$27,141.12	\$317,068.33	\$512,711.72	\$743,684.77	\$1,017,227.13	\$1,237,154.16	\$1,398,222.69	\$1,386,898.61	\$1,465,203.59	\$8,021,220.11
Total >>	\$56,335.00	\$54,282.12	\$379,818.33	\$601,399.22	\$858,309.77	\$1,157,889.63	\$1,404,904.16	\$1,503,160.19	\$1,609,023.61	\$1,714,516.09	\$9,313,970.11
Adjustments (est. diversion / participation)											
Participation Impact Costs: Equipment	n/a	n/a	\$43,000.00	\$90,000.00	\$84,000.00	\$137,000.00	\$141,000.00	\$94,000.00	\$47,000.00	\$47,000.00	\$693,000.00
Labor			\$55,000.00	\$110,000.00	\$110,000.00	\$165,000.00	\$165,000.00	\$165,000.00	\$165,000.00	\$165,000.00	\$1,100,000.00
Maintenance / Fuel / Overhead			\$50,000.00	\$104,400.00	\$104,400.00	\$156,600.00	\$156,600.00	\$156,600.00	\$156,600.00	\$156,600.00	\$1,044,000.00
Profit			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Revenue Sharing - \$2.50 (10%)			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Revenue Sharing - \$5.00 (20%)			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Net Cost >>	n/a	n/a	200,200.00	345,160.00	315,307.50	473,055.00	414,250.00	306,840.00	207,045.00	144,580.00	\$2,404,437.50

NET COST TO THE CITY

\$833,465.00	\$887,779.88	\$1,288,187.67	\$1,243,819.96	\$90,277.69	\$88,762.72	\$609,087.12	\$50,022.32	(123,245.82)	(247,691.32)	\$6,420,465.22
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Truck Added

15710	18821	21987	25284	28770	29377	30061	30679	30679	30679	30679	30679
7000	14875	22750	30625	38500	46375	54250	62125	62125	62125	62125	62125
2500	5000	7500	10000	13000	16000	19000	22000	22000	22000	22000	22000

TOTAL TONNAGE ESTIMATED

25210	38696	52237	65909	80270	91752	103311	114804	114804	114804	114804	114804
-15000	-15000	-15000	-15000	-15000	-15000	-15000	-15000	-15000	-15000	-15000	-15000
23696	37237	50909	65909	76752	88311	99804	99804	99804	99804	99804	99804
2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
59240	93092.5	90925	90925	15,270 @ 5	26,752 @ 5	38,311 @ 5	49,804 @ 5	49,804 @ 5	49,804 @ 5	49,804 @ 5	49,804 @ 5

Truck Amortization schedule

43,000	47000	47000	47000	47000	47000	47000	47000	47000	47000	47000	47000
43,000	43000	47000	47000	47000	47000	47000	47000	47000	47000	47000	47000
43,000	90000	94000	137000	141000	94000	47000	47000	47000	47000	47000	47000

**Toner Acquisition Cost plus additional 10% for assembly & distribution.

Exhibit D

July 23, 2005

Alderman Mark Roy, Chairman, Special Committee on Solid Waste Activities

Dear Mr. Chairman and Committee Members,

Several years ago, the City of Manchester mandated its citizens to put their yard waste on the curb, to be picked-up according to a schedule set by the contractor responsible for the collection of this yard waste. I don't think it's necessary to go into the details of what easily falls under the heading of "Breach of Contract". I simply want to state that the ONLY way I can get my yard waste picked-up, is to make several frustrating phone calls. I no longer want to be responsible for having my yard waste collected in a *timely fashion*. I ask that **you** please see to it that the person responsible for this task, recognizes that responsibility and fulfills his or her DUTY to the taxpayers of the city.

Respectfully,



Arline Parent
206 No. Gate Rd.
Manchester, N.H. 03014

RECEIVED
JUL 27 2005
CITY CLERK'S OFFICE



**City of Manchester
Department of Highways**

227 Maple Street
Manchester, New Hampshire 03103-5596
(603) 624-6444 Fax # (603) 624-6487

Commission
Edward J. Beleski
- Chairman
Henry R. Bourgeois
William F. Kelley
Michael W. Lowry
William A. Varkas

Frank C. Thomas, P.E.
Public Works Director

Kevin A. Sheppard, P.E.
Deputy Public Works Director

August 1, 2005

Ms. Arline Parent
206 No. Gate Rd.
Manchester, NH 03104

Dear Ms. Parent,

I am in receipt of your letter dated July 23, 2005, and addressed to Alderman Mark Roy, Chairman of the Special Committee on Solid Waste Activities. I am writing you a response because I have been unable to identify a phone number for you.

I regret that you have been having problems getting your yard waste collected on its scheduled day. As you know, the City has contracted with Waste Management for the collection of yard waste and recyclables, and there have been times when they have fallen behind schedule, and/or have missed pickups.

Please call me directly at 624-6444, if this problem continues, and I will work with Waste Management toward a solution.

Sincerely,

Joanne McLaughlin
Recycling Coordinator

cc: Frank C. Thomas, P.E., Public Works Director
Kevin Sheppard, P.E., Deputy Public Works Director
Mark Roy, Alderman Ward 1