

STATE OF SOUTH CAROLINA	)	<b>SERVICES AGREEMENT</b>
	)	<b>Recyclable Materials</b>
CITY OF HARTSVILLE	)	<b>Processing and Marketing</b>

**THIS AGREEMENT** (“Agreement” or “Contract”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between City of Hartsville, South Carolina, a duly organized political subdivision of the State of South Carolina (the “City”) and Sonoco Recycling, LLC a North Carolina limited liability company (“Sonoco”) (collectively the “Parties”).

**WITNESSETH**

**WHEREAS**, the City desires to engage Sonoco, to provide the sorting, processing and marketing of recyclable materials collected by the City’s recycling program; and

**WHEREAS**, Sonoco has represented to the City that it is qualified to perform the described work and based upon Sonoco’s representations, the City desires to retain the services of Sonoco to perform the work described herein; and

**WHEREAS**, the City desires to contract with Sonoco on such terms and conditions as are set forth herein.

**NOW, THEREFORE**, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each intending to be legally bound, agree as follows:

**ARTICLE 1. DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

- 1.1 “Agreement”** – This Agreement between the City and Sonoco, including the Exhibits, Schedules and any written amendments to either as modified, supplemented or restated from time to time.
- 1.2 “Weighted Average Price” or “WAP”** – A market index used monthly to account for fluctuations in the commodity markets. The WAP of Recyclable Materials delivered to Sonoco Recycling, Hartsville SC and is calculated pursuant to Exhibits B and C of this Agreement.
- 1.3 “Commencement Date”** – Except as otherwise provided for herein, the Commencement Date is the date on which Sonoco commences to accept, process, and market Recyclable Materials in accordance with this Agreement.
- 1.4 “City”** –City of Hartsville, South Carolina, including its departments, divisions, personnel and agents.

- 1.5 “Contract Manager”** – The person authorized in writing by the City to represent it in all matters relating to the interpretation, implementation or enforcement of the Contract.
- 1.6 “Contract Year”** – Twelve (12) consecutive months beginning on the Commencement Date and every consecutive twelve (12) months thereafter for the term of the Contract.
- 1.7 “Effective Date”** – The date upon which this Agreement is fully executed by both Parties. The later signature date shall be the Effective Date.
- 1.8 “Environmental Laws”** – All applicable federal, state, City or local laws, directives, rules, ordinances, codes, guidelines, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted or amended, relating to safety, preservation or protection of human health and the environment (including, without limitation, ambient air, surface water, groundwater, land, or subsurface strata) and/or relating to the handling, treatment, transportation or disposal of waste, substances or materials, including, without limitation, any matters related to Releases and threatened Releases of materials and substances.
- 1.9 “Force Majeure”** – Any event relied upon by Sonoco or the City, as applicable, as justification for delay in or excuse from complying with any obligation required of Sonoco or the City, as applicable, under this Agreement, including, without limitation: (i) an act of God, landslide, lightning, earthquake, hurricane, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, City, or local court, administrative agency or governmental office or body that stays, invalidates, or otherwise affects this Contract or any permits or licenses of the MRF and Sonoco Recycling, Hartsville SC with respect to the acceptance and/or processing of Recyclable Materials; (iii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, City, or local law, rule, permit, regulation or ordinance after the date of this Agreement, applicable to the obligations of Sonoco or the City, as applicable, under this Agreement; or (iv) the institution of a legal or administrative action, or similar proceeding, by any person or entity which delays or prevents any aspect of the acceptance and/or processing of Recyclable Materials at the MRF and Sonoco Recycling, Hartsville SC.
- 1.10 “Hazardous Waste”** – Any hazardous or toxic substances, materials or wastes including those substances, materials, and wastes listed by the Environmental Protection Agency as hazardous substances under 40 CFR part 302 and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state, or federal law or the equivalent under applicable foreign laws including without limitation, any materials, waste or substance which include petroleum, asbestos, polychlorinated biphenyls, defined as a “hazardous substance” or “hazardous waste” under applicable local, state or federal law or the equivalent under applicable foreign laws, designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, defined as “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, or defined as “hazardous substances” pursuant to

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act. Under this Contract, “Hazardous Substances” shall include what are commonly termed “Household Hazardous Wastes”, including “Universal Wastes”, as defined under the Resource Conservation and Recovery Act, including but not limited to lead-acid or other batteries, fluorescent light tubes, compact fluorescent bulbs, pesticide containers, thermostats, thermometers, paint containers, and household chemicals.

- 1.11 “Materials Recovery Facility” or “MRF”** – Sonoco’s Recyclable Materials processing facility located at 1132 Idlewilde Boulevard, Columbia, South Carolina.
- 1.12 “Sonoco Recycling, Hartsville SC”** – Sonoco’s recycling plant located 1037 Hilton Ave. Hartsville, SC 29550.
- 1.13 “Recovered Materials”** – Recyclable Materials that have been processed to market specifications.
- 1.14 “Recyclable Materials”** – Various recyclable products and packaging designated by the City for recycling collection programs, including;
  - Glass: Transparent and translucent food and beverage bottles and jars. Paper labels are acceptable as are rings and lids on glass containers.
  - Tin/Steel cans, tin plated, food and beverage containers, all sizes; paper labels are acceptable.
  - Aluminum used beverage container and foil clean of food.
  - Plastics #1-7– blow molded (bottle necked) natural and colored HDPE containers, including plastic milk jugs, water jugs, detergent bottles, and similar items; caps and labels are acceptable.
  - Newspapers and advertisement inserts loose or placed in Kraft (brown) bags. Old newspaper that contains incidental moisture from rain or snow will be acceptable.
  - Magazines containing glossy coated paper, including catalogues, glossy fillers or mailers, loose or placed in Kraft (brown) bags.
  - Corrugated containers (cardboard) that are flattened and either cut down or folded to size no more than 3 feet by 2 feet and that have liners of Kraft, jute or test liner. Staples and tape with waste soluble glues do not have to be removed. Corrugated containers may be bundled and tied with string or twine, collected loose or placed in Kraft (brown) bags. Wax-coated containers are not acceptable.
  - Kraft (brown) paper bags- all sizes of loose, bundled or bagged Kraft paper grocery sacks.
  - Junk Mail- all dry, loose or placed in Kraft (brown) bags white and colored ledger and copier paper, note pad paper (no backing), loose-leaf fillers, computer paper (continuous-form perforated white bond or green-bar paper).
  - Phone books loose or placed in Kraft (brown) bags.

- Boxboard- all non-corrugated cardboard, commonly used in dry food and cereal boxes, shoeboxes, and other similar packaging. Boxboard with wax or plastic coating and Boxboard that has been contaminated by food is not acceptable.

Recyclable Materials includes incidental amounts of Rejects and non-designated materials as can be normally expected as part of municipal recycling collection but in no case shall glass or Rejects exceed 20% by weight or Rejects, non-designated materials and glass combined exceed 35% by weight. The list of Recyclable Materials may be expanded or contracted from time to time as determined jointly by the City and Sonoco.

- 1.15 “Rejects”** – Materials other than Residue that cannot be processed into Recovered Materials that Sonoco does not accept at the MRF.
- 1.16 “Residue”** – That portion of the Recyclable Materials other than Rejects accepted by Sonoco that are not converted to Recovered Materials.
- 1.17 “Single Stream”** – A method of collecting and processing Recyclable Materials whereby all Recyclable Materials are collected and delivered to the MRF mixed together.
- 1.18 “Ton”** – A unit of weight equal to 2,000 pounds, also referred to as a “short ton.”
- 1.19 “Uncontrollable Circumstance”** – Acts of God or other causes factually beyond the control and without the fault or negligence of the City or Sonoco. Recovered Material market fluctuations or product availability will not be deemed factually beyond Sonoco’s control.

## **ARTICLE 2. TERM OF AGREEMENT**

- 2.1 Effective Date.** Except as otherwise provided for herein, the obligations of the Parties shall take effect on the Commencement Date.
- 2.2 Commencement Date.** Except as otherwise provided for herein, the Commencement Date shall be May 1, 2017.
- 2.3 Term.** The original term (“Original Term”) of this Agreement is five years beginning May 1, 2017 and ending April 30, 2022. Except as otherwise provided in Article 11, both Parties upon mutual agreement can extend the term of this Agreement for up to three (3) additional five year terms under the terms, conditions and provisions in effect at that time.

## **ARTICLE 3. SERVICES AND SCOPE TO BE PERFORMED**

Beginning on the Commencement Date and as defined in Exhibit A, Sonoco shall accept and process Single Stream and Recyclable Materials delivered by or on behalf of the City to the

recycling facility at 1037 Hilton Avenue Hartsville, SC 29550 and then transferred to the Columbia MRF by Sonoco. The City agrees that all of the Single Stream and Recyclable Materials collected by or on behalf of the City will be delivered to the Sonoco Recycling facility at 1037 Hilton Avenue Hartsville, SC 29550 and then transferred to the Columbia MRF by Sonoco. It is Sonoco's responsibility to ensure sufficient capacity is available to accept all Recyclable Materials delivered by or on behalf of the City.

#### **ARTICLE 4. COSTS AND COMPENSATION**

In the monthly report required in Article 5.2, Sonoco shall include the total revenue or charge due to the City resulting from the Recyclable Materials delivered to Sonoco during the previous month as described in Exhibit B, including the WAP. Payment of said revenue or charge shall be submitted within thirty (30) calendar days from the end of the month for which the payment is due.

#### **ARTICLE 5. REPORTING AND RECORDS**

**5.1 Recordkeeping.** Sonoco shall create, maintain and make available records as defined herein, and which may be required by applicable local, state, and federal laws, rules and regulations;

**5.1.1** Sonoco will record Recyclable Materials tonnage by date, type and source.

**5.1.2** Sonoco will record Rejects and Residue tonnage by date.

**5.1.3** Sonoco shall maintain other records, documents and reports as the City may reasonably require to verify compliance with the Agreement or to meet the City's reporting requirements with the State of South Carolina.

**5.2 Reporting.** Sonoco shall submit to the City monthly and annual reports that summarize the weights of Recyclable Materials delivered by the City to Sonoco Recycling, Hartsville SC. Weight records will be in a format as required and acceptable to the City to include details of each certified scale (refer to Exhibit A (A) (4)) entry invoiced. Typical information to be included in an Excel spreadsheet format includes, but is not limited to: date, material type, weight, and source of the recyclable material (truck number). The City would require the report and other supporting documents by the 15th of the following month. If the 15th falls on a weekend, the report shall be submitted the following business day. Annual report shall be submitted by the fifteenth (15<sup>th</sup>) day of the month following the end of the City's Fiscal Year.

#### **ARTICLE 6. TERMINATION**

**6.1 For Cause.** The City, by advance written notice, may terminate this Agreement for cause. For cause shall mean if Sonoco is in violation of any local, state, or federal law. If this Agreement is so terminated, Sonoco shall be entitled to compensation from third

party vendors for materials processed, marketed and sold under this Agreement. Sonoco will not be compensated for any other costs in connection with a termination for cause. Sonoco will not be entitled to recover any damages in connection with a termination for cause.

- 6.2 For Default.** If either Party fails to perform the Agreement or any separable part thereof in a timely or workmanlike manner in accordance with the Agreement, or otherwise fails, to comply with any of the terms and conditions of the Agreement deemed to be material (including, without limitation, the requirement that Sonoco obtain and maintain in force all necessary permits), such refusal or failure shall be deemed a default under this Agreement.

In the event of default, the non-defaulting Party may give written notice of the default to the defaulting Party. The defaulting Party shall have thirty (30) days from the receipt of the notice to cure any default. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement by providing written notice of termination to the defaulting Party. In the event of a default, Sonoco shall be entitled to compensation from third party vendors for materials processed, marketed and sold under this Agreement. Except as otherwise provided herein, Sonoco shall not be entitled to any costs or damages resulting from a termination under this section.

- 6.3 Rights Cumulative.** The rights and remedies of the City and Sonoco provided in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES.**

- 7.1 Sonoco.** Sonoco represents and warrants as follows:

**7.1.1** Sonoco is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina and is authorized to do business in South Carolina.

**7.1.2** This Agreement has been duly executed and delivered by Sonoco and constitutes a legal, valid and binding obligation of Sonoco, enforceable against Sonoco in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity.

**7.1.3** Sonoco has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Sonoco has taken all action necessary to authorize the execution and delivery of this Agreement, the

performance of its obligations hereunder and the consummation of the transactions contemplated hereby to be consummated by it.

- 7.1.4** Sonoco has and shall maintain the capacity to accept all Recyclable Materials collected daily by the City. In the event that the MRF cannot accept and process all Recyclable Materials collected daily by the City for any reason, Sonoco shall provide an alternative facility to accept and process the City's Recyclable Materials at the same cost. Any additional costs to the City for acceptance and processing of City's Recyclable Materials at an alternative location due to Sonoco's lack of capacity, including but not limited to incremental additional transportation costs, shall be paid or reimbursed by Sonoco.

**7.2 City.** The City represents and warrants as follows:

- 7.2.1** This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms.
- 7.2.2** The City has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The City has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby to be consummated by it.

## **ARTICLE 8. NOTICES**

All notices or other communications to be given hereunder shall be in writing and shall be sent by facsimile, overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

To Sonoco:  
Sonoco Recycling, LLC  
1 North 2<sup>nd</sup> Street  
Hartsville, SC  
29550  
Phone: (843) 383-7000  
Facsimile: (843) 339-6612  
Attn: President

with a copy to:

John Florence – Sonoco General Counsel  
1 North 2<sup>nd</sup> Street  
Hartsville, SC 29550  
Phone: (843) 383-7000

To the City:

City of Hartsville Solid Waste & Recycling  
Attn: Natalie Zeigler  
100 E. Carolina Ave.  
Hartsville, SC 29550

## **ARTICLE 9. GENERAL PROVISIONS**

- 9.1 Non-discrimination.** Sonoco shall not discriminate against any individuals based upon age, sex, race, disability, sexual orientation or religion and shall abide by the requirements contained in Federal Executive Order Number 11246, as amended, including specifically the provisions of the equal opportunity clause.
- 9.2 Indemnification.** Sonoco shall indemnify and save the City harmless from and against, and shall reimburse the City for, any and all claims, demands, losses, liability, expenses, or costs, of every kind and nature (including, but not limited to, attorneys' fees and court costs), for damage to or loss of property of any person or entity and for injury to, illness, disease, or death of, any person arising, in whole or in part, out of or in connection with the Sonoco's or its agent's or subcontractor's gross negligence or willful misconduct. Sonoco's liability to the City as set forth in the preceding sentence shall be limited by the extent to which the damage, loss, injury, illness, disease or death is due to any acts or omissions of the City.
- 9.3 Insurance.** Before performing any work under this Agreement, Sonoco shall procure and maintain, during the life of the Agreement, unless otherwise specified, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department in the State of South Carolina and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII."
- 9.3.1 Workers' Compensation.** Sonoco will provide Workers' Compensation insurance on behalf of all employees who are to provide a service under this Agreement, as required by the laws of South Carolina and Employers Liability insurance (including applicable occupation disease provisions and all state endorsements).
- 9.3.2 South Carolina Contractors** must provide evidence of Workers' Compensation insurance which meets the requirements of South Carolina Statutes, Chapter 440 and Employer's Liability with limits of not less than \$100,000 per employee per accident, \$500,000 disease aggregate, and \$100,000 per employee per disease.



In the event Sonoco has “leased” employees, Sonoco or the employee leasing company must provide evidence of a Workers’ Compensation policy for all personnel on the worksite.

- 9.3.3 Commercial General Liability.** Including but not limited to bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personnel injury with a \$2,000,000 general aggregate limit covering all work performed under this Agreement.
- 9.3.4 Business Automobile Liability.** Sonoco agrees to maintain Business Automobile Liability at a limit of liability not less than \$1 million combined single limit per accident for bodily injury and property damage covering all work performed under this Agreement. Sonoco further agrees coverage shall include liability for Owned, Non-Owned & Hired automobiles.
- 9.3.5 Umbrella Liability.** With limits of not less than \$5 million each occurrence covering all work performed under this Agreement.
- 9.3.6 Required policies are to contain, or be endorsed to contain, the following provisions:**

General Liability and Automobile Liability Coverage: The City, its officials, employees and volunteers are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of Sonoco; premises owned, occupied or used by Sonoco. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers. To accomplish this objective, the City shall be named as an additional insured under Sonoco’s general liability policy. Sonoco’s insurance coverage shall be primary insurance in respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be in excess of Sonoco’s insurance and shall not be required to contribute.

Any failure to comply with reporting provisions of the Company’s policies shall not affect coverage provided to the City, its officials, employees or volunteers.

Workers’ Compensation: The Company agrees to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Company for the City.

- 9.4 Transfer or Assignment of Agreement.** This Agreement and any permits required for performance of the Agreement, may not be assigned, conveyed, or otherwise disposed of without the written permission of the City, which permission will not be unreasonably withheld. No such assignment shall relieve Sonoco of its liability for any acts or

omissions that occurred while Sonoco was performing any of its duties and responsibilities under this Agreement. In the event Sonoco elects to use any subcontractors, this does not relieve Sonoco from any prime responsibility of full and complete satisfactory and acceptable performance under any awarded Agreement. Sonoco's responsibilities with respect to any such subcontract shall include, without limitation, responsibility for said subcontractor's compliance with all applicable federal, state, and local laws, rules and regulations.

- 9.5 Controlling Law.** This Agreement sets forth the entire agreement and understanding of the Parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of either Party hereto. This Agreement may not be modified, amended, supplemented, canceled, or discharged, except by written instrument executed by all of the Parties hereto. There are no restrictions, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted the waiver. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part. This Agreement is not intended to confer upon any third parties, other than the Parties hereto, any rights or remedies. This Agreement shall be governed by the laws of the State of South Carolina. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
- 9.6 Arm's Length Negotiations.** Each Party hereto expressly represents and warrants to all other Parties hereto that: (a) before executing this Agreement, said Party has fully informed itself of the terms, contents, conditions and effects of this Agreement; (b) said Party has relied solely and completely upon its own judgment in executing this Agreement; (c) said Party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) said Party has acted voluntarily and of its own free will in executing this Agreement; (e) said Party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm's length negotiations conducted by and among the Parties hereto and their respective counsel.
- 9.7 Construction.** The Parties hereto agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumptions or burdens of proof shall arise favoring any Party hereto by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. If any Party hereto has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of

the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

- 9.8 Independent Contractor.** Sonoco is an independent contractor and shall not be deemed the agent of the City for any purpose whatsoever. No Sonoco employee shall hold himself out as an employee of the City, and none shall have power or authority to bind or obligate the City in any manner, except the City shall make payment to Sonoco for services and expenses as herein provided. Sonoco shall be liable for and pay all taxes required by local, state or federal governments, included but not limited to Social Security, worker's compensation, Employment Security and any other taxes and premiums required by law. No employee benefits of any kind shall be paid by the City to or for the benefit of Sonoco or its employees, agents and servants by reason of this Agreement.
- 9.9 Permits and Licenses.** Sonoco shall, without additional expense to the City, be responsible for obtaining and maintaining in force any and all licenses and permits as may be required or necessary in connection with providing the services described herein.

## **ARTICLE 10. TAXES**

Sonoco shall pay all applicable sales, consumer, use and other similar taxes required by Federal, State and local law.

## **ARTICLE 11. FORCE MAJEURE**

- 11.1 Force Majeure.** Except for any payment obligation by either Party, if the City or Sonoco is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the City or Sonoco to correct the adverse effect of such event of Force Majeure.
- 11.2 Notification.** In order to be entitled to the benefit of this Section, a Party claiming an event of Force Majeure shall be required to give prompt written notice to the other Party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The Parties agree that, as to this Article, time is of the essence.

## **ARTICLE 12. MISCELLANEOUS**

- 12.1 Succession of Agreement.** This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- 12.2 Survival.** Any rights either Party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination.
- 12.3 Relationship.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Sonoco and City.
- 12.4 Further Assurance.** Sonoco and City agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the Parties declare their intention to cooperate with each other in effecting the terms of this Agreement.
- 12.5 Time of the Essence.** For purposes herein, the Parties agree that time shall be of the essence of this Agreement and the representations and warranties made are all material and of the essence of this Agreement.
- 12.6 Captions and Section Headings.** Captions and Section headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.
- 12.7 No Waiver.** No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the Party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- 12.8 Gender.** All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.
- 12.9 Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action remain in full force and effect.

**12.10 Schedules and Exhibits.** All schedules or exhibits attached hereto contain additional terms of this Agreement. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

**12.11 Attorney Fees.** In the event of litigation between the Parties regarding this Agreement, each Party shall be responsible for their own attorney's fees and costs.

**12.12 Third Party Rights.** The Parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.

**12.13 Modification.** Any modification to this Agreement must be in writing and signed by both Parties.

**IN WITNESS WHEREOF,** the Parties have made and executed this Agreement under their respective signatures the day and year first written above.

**SONOCO RECYCLING LLC**

\_\_\_\_\_  
by its: President

**CITY OF HARTSVILLE**

\_\_\_\_\_  
by its: \_\_\_\_\_

## **EXHIBIT A. SCOPE OF SERVICE**

### **(A) Materials Acceptance**

- (1) Beginning on the Commencement Date, Sonoco shall accept Single Stream and Recyclable Materials delivered by or on behalf of the City to Sonoco during the receiving hours.
- (2) Sonoco shall, except as otherwise specifically stated in this Contract, obtain, maintain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform services and duties as required by this Contract, without additional cost to the City. It is Sonoco's responsibility to ensure sufficient capacity is available to accept all Recyclable Materials delivered by or on behalf of the City.
- (3) With the exception of Hazardous Substances as described in Section (C)3 of Exhibit A, title and ownership of all materials passes to Sonoco upon delivery.
- (4) Sonoco shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming and outgoing delivery vehicles. Sonoco shall have the scales calibrated and inspected on a yearly basis, at a minimum. Sonoco shall ensure that the scales are legally certified by the South Carolina Department of Agriculture at all times.
- (5) Vehicles delivering by or on behalf of the City will off-load Recyclable Materials at Sonoco Recycling, Hartsville. Sonoco shall weigh all trucks, perform recordkeeping, and generate reports of incoming materials as required herein or requested by the City. Sonoco may use tare weights. If Sonoco chooses to do so, all tare weights must be recalibrated at least every sixty (60) calendar days and made available to the City on demand. Inbound loads of Recyclable Material delivered by or on behalf of the City shall be weighed, recorded and tabulated separately.
- (6) Sonoco shall have the capacity to accept all Recyclable Materials collected by the City. The operating hours of Sonoco Recycling, Hartsville shall commence no later than 7 a.m. Monday – Friday and remain open until 3 p.m. each day. The City may require additional hours to complete scheduled drop-offs. The City continues to provide services on most holidays or adjusts schedules as needed to ensure all customers are serviced weekly and Sonoco agrees to work cooperatively with the City to accommodate for these holidays or adjusted schedules.

### **(B) Right to Inspect**

Sonoco shall have the right to inspect all loads of Recyclable Materials by or on behalf of the City.

## **EXHIBIT A. SCOPE OF SERVICE CONTINUED**

### **(C) Materials Rejection**

- (1) Sonoco shall not reject any load of Recyclable Materials delivered to Sonoco by or on behalf of the City, except as described herein.
- (2) If Sonoco determines a load of Recyclable Materials contains an excessive amount of Rejects, Sonoco shall immediately inform the City of the delivery location, vehicle number, date, time, and estimated quantity and type of Rejects of such load including digital pictures. The City will work to reduce the quantity of Rejects in the future.
- (3) If Sonoco determines a load of Recyclable Materials contains more than 20% by weight of glass or Rejects or 35% by weight of Rejects, non-designated materials and glass combined then Sonoco shall notify the City and provide digital pictures. The City will have the option to pay for Sonoco to dispose of the rejected load in a landfill or pay a processing charge defined by Sonoco based on the expected costs to process the load in the MRF.
- (4) If Sonoco suspects that any Hazardous Waste is contained within a load of Recyclable Materials delivered by or on behalf of the City, Sonoco will notify the City immediately. Sonoco shall properly isolate and containerize the materials in accordance with all Applicable Laws. After notification is provided by Sonoco to the City concerning the potential presence of Hazardous Substances, it is the responsibility of the City to remove the materials and potential Hazardous Substances from Sonoco's Facility within twenty-four (24) hours and properly dispose of the materials and potential Hazardous Substances as required by Applicable Laws.

### **(D) Processing, Transporting and Marketing**

Sonoco shall bear all costs associated with processing, transporting and marketing of Recovered Materials delivered by the City. Sonoco shall not dispose of (i.e. destroy or incinerate) Recyclable Materials without written approval by the City. Sonoco shall certify, if questioned, that all Recyclable Materials delivered by the City are recycled. Sonoco shall disclose to the City if asked, the intended secondary markets for Recyclable Materials.

### **(E) Disposal**

Sonoco is responsible for all costs of transporting and disposing of only non-Recyclable Materials, including Rejects and Residue, generated at the MRF.

## **EXHIBIT A. SCOPE OF SERVICE CONTINUED**

(F) Composition Study

- (1) The City or Sonoco may request Composition Studies if both parties agree that substantial contamination is found in the Recyclable Materials or if the City makes substantive changes to its recycling program that would alter the composition of the Recyclable Materials.

The results of each Composition Study will be used to adjust the composition percentages utilized to calculate the WAP starting on the month following issuance of the study findings and continuing until another study is conducted. If the City's composition percentages are substantially similar to the total MRF output, upon mutual agreement, both Parties can agree at any time to utilize the composition associated with the total output of the MRF, which is updated quarterly. Similarly either Party can request, as noted above, a Composition Study be performed should they no longer believe that the City's composition percentages are substantially similar to the total MRF output.

- (2) Both Parties shall pay fifty percent (50%) of the cost of each Composition Study which shall not exceed \$3,000 (i.e. \$1,500 for each Party). Sonoco will provide to the City a breakdown of the cost for each Composition Study performed.

(G) Educational Assistance – Sonoco will also provide the City with the following educational assistance to increase recycling participation rates of City residents and the amount of recyclables collected:

- (1) Outline of acceptable Recyclable Materials to support the education of City residents with respect to materials that can be recycled and in turn minimize contamination of Recyclable Materials.
- (2) Provide access to the education center at the MRF for groups (i.e. students, church groups, etc.) in order to demonstrate the processes used at the MRF for processing Recyclable Materials.
- (3) Coordinate with the City for various community events to share the details of and promote the City's recycling program.
- (4) Collaborate with the City to identify sources of contamination in Recyclable Materials for focused communication with the relevant residents.



## EXHIBIT B. PAYMENTS FOR RECYCLABLE MATERIALS

### Revenue/Charge for Recyclable Materials

Sonoco shall determine the revenue or charge for the City monthly for each Ton of inbound Recyclable Materials delivered to Sonoco Recycling, Hartsville, SC. The payment per Ton shall be calculated as described below. A sample calculation is provided in Exhibit C.

- (1) Each month, Sonoco shall calculate the Weighted Average Price (WAP) of the City's Recyclable Materials, and provide this to the City, defined as the sum of the Southeast USA regional commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in PPI Pulp & Paper Week for fiber commodities and the Atlanta (Southeast) regional commodity prices posted the second week of the month for which payment is being made on RecyclingMarkets.net for plastic and metal commodities multiplied by the Composition Study as defined in Exhibit A, Section (F). If at any time during the term of the Agreement either PPI Pulp & Paper Week or RecyclingMarkets.net no longer posts, otherwise provides the applicable market indices, or either Party demonstrates that the market indices do not reflect current market conditions, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
- (2) Sonoco shall pay or charge the City for each Ton of Recyclable Materials delivered to Sonoco Recycling, Hartsville SC based on the WAP of the City's Recyclable Materials as described in (1) above and determined as follows:

Weighted Average Price	Recycled Materials Pricing
$WAP \leq \$110/\text{ton}$	Charge = \$10/ton plus the difference between \$110 and the WAP
$\$110/\text{t} < WAP \leq \$130/\text{ton}$	Charge = 50% of the difference between \$130 and the WAP
$\$130/\text{t} < WAP \leq \$150/\text{ton}$	No Rebate/No Charge
$\$150/\text{t} < WAP \leq \$190/\text{ton}$	Rebate = 50% of the difference between the WAP and \$150
$WAP > \$190/\text{ton}$	Rebate = \$20/ton plus 80% of the difference between the WAP and \$190

\*Recycled Materials pricing includes a \$50/ton fee for transportation associated with getting material to Sonoco's MRF located at 1132 Idlewilde Boulevard, Columbia SC.

## EXHIBIT C. CALCULATION OF RECYCLING REVENUE

Sonoco shall pay or charge the City for each Ton of inbound Single-Stream Recyclable Materials delivered to the Sonoco Columbia MRF with a maximum charge of \$20/ton. The payment per ton shall be calculated as described below. An example of this calculation, based on the January 2016 index, is provided.

Today, Sonoco is shipping glass at a charge of \$30 per ton. These charges are subject to change depending on market conditions. Both Parties agree to review the economic impact of glass at any time and upon mutual agreement can modify the definition of Recyclable Materials.

Similarly, the full cost for Sonoco to dispose of Residue is \$50 per ton, as detailed below, and will be revised at a minimum each Contract Year.

Residue Disposal Cost Elements

- \$17.28/ton handling/hauling costs
- \$33.89/ton tip fee

The total was rounded down to \$50 for the purpose of calculating the WAP.

### EXAMPLE Weighted Average Price (WAP) of the County's Recyclable Materials

Material	Index Description	Material %	Index Value (Jan 2016)	Market Value (\$/Ton)	WAP (\$/Ton)
Mixed paper	PS 2 baled, F.O.B. seller's dock	8.63%	45	\$45.00	\$3.88
Newspaper	PS 8 baled, F.O.B. seller's dock	36.70%	55	\$55.00	\$20.19
OCC	PS 11 baled, F.O.B. seller's dock	17.73%	80	\$80.00	\$14.18
Aluminum cans	Cents/lb., baled & picked up	0.87%	80	\$1,600.00	\$13.92
Steel cans	\$/Ton, baled & picked up	1.43%	45	\$45.00	\$0.64
PET	Cents/lb., baled & picked up	6.03%	7.75	\$155.00	\$9.35
Natural HDPE	Cents/lb., baled & picked up	1.00%	26	\$520.00	\$5.20
Colored HDPE	Cents/lb., baled & picked up	2.80%	18.5	\$370.00	\$10.36
Glass (3 Mix)	\$/Ton, delivered	14.60%	-17.5	(\$30.00)	(\$4.38)
Contamination	N/A	10.20%	-	(\$50.00)	(\$5.10)
		100%			\$68.24

<sup>1</sup>As noted above, Sonoco is paying \$30 per ton to ship glass. These charges are subject to

change depending on market conditions as mutually agreed by both parties.

Example: JANUARY 2016 CHARGE FOR RECYCABLE MATERIALS =  $\$10 + (\$110 - \$68.24) = \$51.76/\text{ton}$  = Maximum charge of \$20/ton to City of Hartsville