

SECOND AMENDATORY AGREEMENT

This **SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ALPINE DISPOSAL, INC.**, a Colorado corporation doing business at 7373 Washington Street, Denver, CO 80229 (the “Consultant”), jointly (“the Parties”).

RECITALS:

A. The Parties entered into an Agreement dated April 24, 2018 and an Amendatory Agreement dated November 27, 2018 (the “Agreement”) to provide the services outlined in the scope of work.

B. The Parties wish to amend the Agreement to increase the maximum contract amount, remove Section 14, amend Exhibit A-1, Definitions, and amend Exhibit C-1, Compensation.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 5 entitled “**COMPENSATION AND PAYMENT**,” subsection b.(4) entitled “Maximum Contract Amount,” is hereby deleted in its entirety and amended to read as follows:

“5. COMPENSATION AND PAYMENT:

...

b. City’s Payment Obligation:

...

(4) Maximum Contract Amount:

(i) “Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS AND NO CENTS (\$2,800,000.00)** (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor, beyond that specifically described in **Exhibit B**. Any services performed beyond those in Exhibit B are performed at Contractor’s risk and without authorization under the Agreement.

(ii) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purposes of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserved for payment or

performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.”

2. Section 14, entitled “**EXTREME MARKET DISRUPTION**,” is hereby deleted in its entirety.

3. All references to **Exhibits A** and **A-1** in the existing Agreement shall be amended to read “**Exhibit A-2**.” Exhibit A-2 is attached and incorporated herein by reference.

4. All references to **Exhibits C** and **C-1** in the existing Agreement shall be amended to read “**Exhibit C-2**.” Exhibit C-2 is attached and incorporated herein by reference.

5. As herein amended, the Agreement is affirmed and ratified in each and every particular.

6. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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Contract Control Number: PWADM-201952996-02 / ALF-201737957-02
Contractor Name: ALPINE DISPOSAL, INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

Attorney for the City and County of Denver

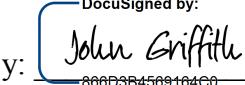
By:

REGISTERED AND COUNTERSIGNED:

By:

By:

Contract Control Number: PWADM-201952996-02 / ALF-201737957-02
Contractor Name: ALPINE DISPOSAL, INC.

By: 
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Name: John Griffith
(please print)

Title: Regional Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

**EXHIBITS
A-2 and C-2**

EXHIBIT A-2

Definitions

“Administrative Charges”: Monetary charges imposed on the Contractor by the City for Contractor’s non-compliance with Performance Standards.

“Agreement”: This contract executed by the City and the Contractor to provide all facilities, equipment, labor, and services required to receive, process, and market Recyclables collected by the City.

“Annual Report”: The Contractor’s report submitted to the City no later than January 31 following the end of each calendar year.

“Average Market Value” or “AMV”: A market index used to calculate the monthly revenue share paid by Contractor to the City based on fluctuations in the commodity market. The AMV of Program Recyclables delivered to the MRF shall be calculated pursuant to terms defined in the Agreement.

“City”: The City and County of Denver.

“City’s Representative”: The Executive Director of Denver Department of Transportation and Infrastructure, or the Executive Director’s designee(s), who shall act as the City’s representative(s) in matters relating to the implementation and enforcement of the Agreement and operation, maintenance, and management of the MRF.

“Commencement Date”: The date services pursuant to the Agreement shall commence, anticipated to be February 1, 2018.

“Compensation Form”: The standardized form completed monthly by the Contractor detailing calculations of the Contractor Fee, AMV, and Revenue Share and stating the total amount due to either the City or the Contractor.

“Consumer Price Index” or “CPI”: The measure of inflation as published by the United States Department of Labor, Bureau of Labor Statistics for All Urban Consumers (CPI-U), Midwest Urban Region; All Items, not seasonally adjusted, 1982-1984=100 reference base (Series ID – CUUR0200SA0).

“Contaminants” or “Contamination”: Materials collected along with Recyclables that are not designated by the City as Program Recyclables. Contaminants are included in the weight of inbound tonnage.

“Contractor”: Alpine Disposal, Inc.

“Contractor Fee” or “CF”: The per-Ton fee of paid to the Contractor by the City for each Ton

of Program Recyclables delivered to the MRF. The base contractor fee is \$85 per Ton of Program Recyclables (CF/Ton) delivered to the Contractor by the City. The Contractor Fee is explicitly not the Contractor's actual cost to operate the MRF, but is a form of compensation in lieu of actual operating cost. The \$85 contractor fee shall be effective upon execution by all required signatories of the Second Amendatory Agreement.

“Contractor’s Representative”: The individual designated by the Contractor to act as the Contractor’s representative in matters relating to the implementation and enforcement of the Agreement.

“Day”: One calendar day.

“Effective Date”: The date on which the Agreement is executed by both the City and Contractor.

“Facility Manager”: The individual designated in writing by Contractor to represent it in all matters relating to the operation, maintenance, and management of the MRF.

“Marketing”: The act or process of selling Recyclables for purchase in accordance with the Agreement.

“Material(s)”: Recyclables of any quality or type which may contain Contaminants.

“Materials Recovery Facility” or “MRF”: The facility where the Contractor receives and processes the City’s Program Recyclables.

“Maximum Cost” or “MC”: The maximum per-Ton cost of \$35 per-Ton that the City will pay to the Contractor regardless of any calculated Contractor Fee, AMV, and Revenue Share. The \$35 maximum per-Ton cost shall be effective retroactively beginning on June 27, 2019.

“Monthly Report”: The Contractor’s report submitted to the City no later than the 15th day following the end of each month.

“Program Recyclables” or “Recyclables”: Materials collected by the City including but not limited to: cardboard, newspaper including inserts, magazines, office paper, junk mail, paperboard, Kraft bags, telephone books, paper food and beverage cartons (including aseptic cartons), paper cups (including hot and cold cups), ferrous food and beverage containers including aerosols, aluminum food and beverage containers, aluminum foil and foil pans, #1 - #7 rigid plastic containers, and glass food and beverage containers.

“Recovered Materials”: Materials recovered from Recyclables by the Contractor that are ready for sale or distribution for beneficial use.

“Rejects”: Materials that are not converted to Recovered Materials. Rejects consist of

Contaminants and Residuals.

“Residue” or “Residuals”: Recyclables that are accepted by Contractor, processed at the MRF, and not converted into Recovered Materials by the Contractor due to breakage and/or transportation or processing limitations or inefficiencies.

“Revenue Share”: The per-Ton payment as defined in this RFP paid to the City by the Contractor for each Ton of Program Recyclables delivered to the MRF.

“Revenue Share Percent” or “RS%”: The percentage used as part of the calculations as defined in Exhibit C to determine the Revenue Share for each Ton of Program Recyclables delivered to the MRF.

“Shut Down”: Any time in which the Contractor is unable to accept or process Program Recyclables pursuant to the terms and conditions of this Agreement after the Commencement Date with the exception of force majeure.

“Single Stream”: A recycling process that mixes all Recyclables together in the same collection container.

“Solid Waste”: As defined by Colorado Revised Statutes § 30-20-101, to mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial or commercial operations or from community activities.

“Ton”: a short ton of 2,000 lbs. unless otherwise specified.

EXHIBIT C-2

Compensation

I. PAYMENT FOR PROGRAMS RECYCLABLES

Payment for Programs Recyclables shall utilize the following factors:

Contractor Fee = a base fee of \$85 per Ton of Program Recyclables (CF/Ton) delivered to the Contractor by the City. The Contractor Fee is explicitly not the Contractor's actual cost to operate the MRF, but is a form of compensation in lieu of actual operating cost. The \$85 Contractor Fee shall be effective upon execution by all required signatories of the Second Amendatory Agreement.

- Average Market Value per Ton of Program Recyclables (AMV/Ton) based on the composition of Program Recyclables and commodity index prices as calculated in accordance with the Agreement.
- Percent Revenue Share (%RS) 50% of revenue shall be shared with the City.
- Maximum Cost per Ton of Recyclables Materials (MC/Ton) delivered to the Contractor by the City as established as \$35/ton. The Maximum Cost is the maximum payment that will be made by the City to the Contractor regardless of the Contractor Fee, Average Market Value, or Percent Revenue Share. The \$35 maximum per-Ton cost shall be effective retroactively beginning on June 27, 2019.

Each month, the Contractor shall calculate the payment for Program Recyclables as follows:

- If the AMV/Ton greater than the CF/Ton, then the Contractor's payment to the City shall equal:
(AMV/Ton - CF/Ton) x %RS x Tons of Program Recyclables.
- If the CF/Ton is greater than the AMV/Ton, then the City's payment to the Contractor shall equal:
(CF/Ton - AMV/Ton) x Tons of Program Recyclables, provided that payment shall never exceed the MC/Ton x Tons of Programs Recyclables.
- If the CF/Ton is equal to the AMV/Ton, then no payment will be owed to either party for Program Recyclables.

Tons of Program Recyclables shall be equal to 100% of inbound Program Recyclables measured

at the Contractor's scales.

Administrative Charges

Each month, Contractor shall owe the City for any and all administrative charges levied by the City for violations of performance standards in accordance with the terms of the Agreement.

Timing of Payments

No later than fifteen (15) Days following the end of each month, the Contractor shall submit the Monthly Report including the calculation payment for Program Recyclables, administrative charges, interest on overdue payments, or proration, and the net payment due to either party. Said net payment shall be submitted by Contractor to the City, or the City to the Contractor, within fifteen (15) Days following submission of the Monthly Report.

Interest on Overdue Payments

All payments to be made by the Contractor to the City that are outstanding after the applicable due date, including disputed amounts, shall bear simple interest at the maximum rate permitted by State law.

Invoice or Payment Disputes

If either Party disputes an amount owing to the other Party, such Party shall: (i) within five (5) days of receiving the relevant invoice, give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and deliver such notice on or before the due date of the amount disputed; and (ii) pay all undisputed amounts on the due date. Consistent with Section 23 of the Agreement, the Parties will make a good faith effort to resolve the dispute. However, if the Parties are unable to reach a resolution, the City shall issue a final determination regarding the dispute, which determination may be resolved by an administrative hearing pursuant to D.R.M.C. § 56-106.

Proration

If any payments, rights or obligations under this Agreement (whether relating to Fees and Taxes, insurance, or to any other provision of this Agreement) relate to a period in part before the Effective Date or in part after the date of expiration or termination of the Term, the Parties hereto agree that appropriate adjustments and proration shall be made.

II. PERFORMANCE STANDARDS

It is the intent of the Agreement to ensure that the Contractor provides a high-quality level of MRF services. To this end, any performance issues identified by the City and reported to the Contractor shall be promptly resolved within twenty-four (24) hours. The City may levy administrative charges for improper and insufficient actions related to any service required by this Agreement including, but not limited to:

Performance Standard Violation	Administrative Charges
Failure to accept Program Recyclables delivered to the MRF during scheduled receiving hours.	\$500 per vehicle per occurrence
Failure to provide maximum turn-around time of thirty (30) minutes.	\$100 per vehicle per occurrence
Program Recyclables placed outside of the MRF building without prior City approval.	\$250 per Day
Failure to remove Program Recyclables from the tipping floor and process them within forty-eight (48) hours of acceptance at the MRF.	\$250 per Day
Disposal of Recyclables or Recovered Materials.	\$1,000 per occurrence plus \$25 per Ton
Failure to provide a clean, well-maintained publicly accessible drop-off at the MRF.	\$250 per Day
Failure to notify City of legal or regulatory violations.	\$500 per Day per occurrence
Failure to provide any required report within the required timeframe.	\$500 per Day

The City may assess administrative charges on a monthly basis and shall at the end of each month notify the Contractor in writing of the charges assessed and the basis for each assessment. Consistent with Section 23 of the Agreement, in the event the Contractor wishes to contest such assessment it shall, within five (5) days after receiving such monthly notice, notify the City regarding its concerns. The Parties will make a good faith effort to resolve to dispute. However, if the Parties are unable to reach a resolution, the City shall issue a final determination regarding the dispute, which determination may be resolved by an administrative hearing pursuant to D.R.M.C. § 56-106.

III. CALCULATION OF AVERAGE MARKET VALUE AND COMPENSATION

Contractor acknowledges and accepts the following:

Material Percentages: The material percentages used for calculating the AMV are based on recyclables composition studies of the City's Program Recyclables as delivered to a processing facility. The material percentages in the AMV do not attempt to estimate Residue, which includes Program Recyclables that are not recovered due to breakage and/or transportation or processing limitations or inefficiencies.

Composition of Program Recyclables: The material percentages stated in Table 1 of this Attachment shall be the basis for calculating the AMV and Revenue Share in accordance with the Agreement, unless otherwise adjusted according to the procedures stated below.

Adjustments to the Composition of Program Recyclables. The City shall conduct a recyclables composition study at City's cost once during the initial Term of the Agreement. The Contractor may request additional recyclables composition studies to be conducted at Contractor's cost, such request being subject to City approval, which shall not be unreasonably withheld. A study cannot be requested by the Contractor more than once annually. All recyclables composition studies used for calculating the AMV shall be conducted using City-approved methodology and by a City-approved entity with demonstrated experience conducting recyclables composition studies. The City and Contractor each have the right to have a representative onsite during recyclables composition studies. Study results are subject to final approval by the City, which shall not be unreasonably withheld. If approved by the City, adjustments to the composition shall be made and shall become effective on the first Day of the following month and for the remainder of this Agreement, or until further adjusted in a future composition study.

Market Index: The market index (Recyclingmarkets.net) utilized is intended to reflect the regional average value, in the Midwest United States, of each Recyclable included in the City's Program Recyclables. It is not intended to equate to the commodity revenue received by Contractor. If at any time during the term of this Agreement, Recyclingmarkets.net no longer posts or otherwise provides the applicable market indices, 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 Materials pricing information, and this selection shall be memorialized in writing.

Calculation of AMV: Contractor shall calculate the AMV of Program Recyclables each month. The AMV is defined as the sum of the RecyclingMarkets.net Midwest USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made. For illustrative purposes, Table 1 calculates the AMV based on the commodity prices first posted in April 2017.

Subtraction of Contractor Fee: Contractor will automatically deduct the Contractor Fee from revenue share. The City will not be invoiced for the Contractor fee unless a payment to the contractor is due.

Table 1: Sample Calculation of Average Market Value of Program Recyclables (April 2017)

Material	Index Descriptions	Index Value	Market Value (\$/ton)	Percent (by weight)	AMV (\$/ton)
Mixed Paper	MP Mixed Paper (PS 54) (\$/ton, baled, picked up)	\$87.50	\$87.50	23.0%	\$20.13
News #8	SRP Sorted Residential Papers (PS 56) (\$/ton, baled, picked up)	\$95.00	\$95.00	14.1%	\$13.40
OCC #11	Old Corrugated Containers (PS11) (\$/ton, baled, picked up)	\$167.50	\$167.50	17.2%	\$28.81
Glass (3-Mix)	Glass 3 Mix (\$/ton del. as Recyclable or Disposable)	(\$25.00)	(\$25.00)	20.1%	(\$5.00)
PET	Plastics PET (Baled, ¢/lb., picked up)	\$0.12	\$245.00	4.1%	\$10.05
HDPE, Natural	Plastics Natural HDPE (Baled, ¢/lb., picked up)	\$0.35	\$695.00	1.5%	\$10.43
HDPE, Colored	Plastics Colored HDPE (Baled, ¢/lb., picked up)	\$0.23	\$455.00	1.5%	\$6.83
Plastic, #3-#7	Plastics Comingled (#3-7, Baled, ¢/lb., picked up)	\$0.01	\$20.00	2.7%	\$0.54
Plastics, Mixed Rrigids		\$0.04	\$70.00	1.1%	\$0.77
Aluminum Cans	Metals Aluminum Cans (Sorted, Baled, ¢lb., picked up)	\$0.67	\$1,330.00	2.2%	\$29.26
Steel Cans	Metals Steel Cans (Sorted, Baled, \$/ton, picked up)	\$160.00	\$160.00	2.2%	\$3.52
Contamination			(\$15.00)	10.4%	(\$1.56)
Total				100.0%	\$117.16

[Note: Total HDPE containers in RCS was 3.0%, which has been split between HDPE Natural and HDPE Colored for the AMV

Mixed Paper includes Office Paper, Chip/Paperboard, Mixed Paper/Junk Mail, & Aseptic Containers including paper cups.
Contamination includes Contaminants, Styrofoam]

Sample Calculation of Compensation

Payment to the City

Assuming the following compensation terms:

- Average Market Value (AMV) = \$130 per ton of inbound Recyclables
- Revenue Share Percent (RS%) = 50%
- 3,500 Tons/month of Recyclables

\$130/Ton AMV is greater than \$85/Ton Contractor Fee (CF), therefore Contractor payment to the City is calculated as follows:

- $(AMV/\text{Ton} - CF/\text{Ton}) \times \%RS \times \text{Tons of Program Recyclables}$.
- $(\$130/\text{Ton} - \$85/\text{Ton}) \times 50\% = \$22.50/\text{Ton} \times 3,500 \text{ Tons} = \$78,750$.

Payment to the Contractor

Assuming the following compensation terms:

- Average Market Value (AMV) = \$60 per ton of inbound Recyclables.
- Revenue Share Percent (RS%) = 50%.
- 3,500 Tons/month of Recyclables.

\$85/Ton Contractor Fee (CF) is greater than \$60/Ton AMV, therefore City payment to the Contractor is calculated as follows:

- $(CF/\text{Ton} - AMV/\text{Ton}) \times \text{Tons of Program Recyclables}$.
- $(\$85/\text{Ton} - \$60/\text{Ton}) = \$25/\text{ton}$ payment to contractor.
- $\$25 \times 3,500 \text{ Tons} = \$87,500$.

Payment to the Contractor with Maximum Cost

Assuming the following compensation terms:

- Average Market Value (AMV) = \$45 per ton of inbound Recyclables.
- Revenue Share Percent (RS%) = 50%.
- 3,500 Tons/month of Recyclables.

\$85/Ton Contractor Fee (CF) is greater than \$45/Ton AMV, therefore City payment to the Contractor is calculated as follows:

- $(CF/\text{Ton} - AMV/\text{Ton}) \times \text{Tons of Program Recyclables}$.
- $(\$85/\text{Ton} - \$45/\text{Ton}) = \$40/\text{ton}$ (this exceeds the \$35 maximum)
- $\$35/\text{ton} \times 3,500 \text{ Tons} = \$122,500$.