CITY OF SAN DIEGO  
ENVIRONMENTAL SERVICES DEPARTMENT  
SEVENTH AMENDMENT TO THE  
AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND IMS RECYCLING SERVICES  
AND ALLAN COMPANY FOR PROCESSING, TRANSPORTING AND MARKETING  
COMMINGLED CURBSIDE RECYCLABLES  

This Seventh Amendment to the Agreement Between the City of San Diego and IMS Recycling Services and Allan Company for Processing, Transporting, and Marketing Commingled Curbside Recyclables [SEVENTH AMENDMENT] is entered into by and between the City of San Diego [CITY] and IMS Recycling Services, Inc., and Allan Company [collectively CONTRACTOR] and is to take effect May 1, 2018.  

RECITALS  

WHEREAS, the CITY is required by California state law to reduce the amount of solid waste disposed in landfills by 50% and to make a good faith effort to implement programs as described in CITY’S Source Reduction and Recycling Element; and  

WHEREAS, Assembly Bill 341 (AB 341), adopted in 2011, declares that it is the policy goal of the State that not less than 75% of solid waste generated be source reduced, recycled, or composted by the year 2020; and  

WHEREAS, on July 28, 2015, the City Council adopted a Zero Waste Plan that targets 75% waste diversion by the year 2020, 90% waste diversion by the year 2035, and Zero Waste by the year 2040; and  

WHEREAS, the CITY’S Environmental Services Department (ESD) provides a comprehensive residential curbside recycling program to divert household RECYCLABLES from the CITY’S wastestream; and  

WHEREAS, for fiscal year 2017, this program diverted 58,000 tons of material from the landfill saving the General Fund $2.3 million in disposal costs, and bringing in $4.0 million in revenue to offset the cost of the collection of the RECYCLABLES; and  

WHEREAS, the CITY’S curbside recycling program services 255,000 households and currently collects NEWSPAPER, MIXED WASTEPAPER, CARDBOARD, GLASS CONTAINERS, ALUMINUM CONTAINERS, TIN and METAL CONTAINERS, and PLASTIC CONTAINERS, rigid plastic items, cartons and drink boxes, and expanded polystyrene (EPS) dimensional packaging material and food service containers; and  

WHEREAS, ESD requires a CONTRACTOR to process, transport and market the materials collected in the curbside recycling program; and  

WHEREAS, on October 19, 1998 the CITY entered into the Agreement Between the City of San Diego and IMS Recycling Services and Allan Company for Processing, Transporting and
Marketing Commingled Curbside Recyclables [AGREEMENT], which is on file in the Office of the City Clerk as Document No. RR-290886. A true and correct copy of the AGREEMENT is attached hereto as Exhibit "A"; and

WHEREAS, the original AGREEMENT had a five-year base term through December 13, 2003, with up to five one-year options to extend the AGREEMENT term, the first of which was exercised through December 13, 2004 (FIRST AMENDMENT, attached hereto as Exhibit "B"); and

WHEREAS, the SECOND AMENDMENT (attached hereto as Exhibit "C") modified the AGREEMENT term and extended it to six (6) years, ending June 30, 2009, with up to two (2) two-year options to extend the AGREEMENT; and

WHEREAS, the THIRD AMENDMENT (attached hereto as Exhibit "D") modified the AGREEMENT term by exercising both extension options, and extended the AGREEMENT through June 30, 2013; and

WHEREAS, the FOURTH AMENDMENT (attached hereto as Exhibit "E") modified the AGREEMENT term by adding six (6) years and extended the AGREEMENT through June 30, 2019; and

WHEREAS the FIFTH AMENDMENT (attached hereto as Exhibit "F") modified the AGREEMENT to expand the materials collected in the curbside recycling program to include RESIDUAL PLASTICS including expanded EPS food service containers; and

WHEREAS the SIXTH AMENDMENT (attached hereto as Exhibit "G") modified the AGREEMENT to adjust revenue sharing provisions, in order to address Contractor’s material and adverse processing or operational cost increases, in accordance with Section 3.0, subsection 3.15 of the AGREEMENT, due to mandatory State and local minimum wage increases;

WHEREAS, in 2002 and 2007, a third-party consultant retained by the City found the AGREEMENT to be above average in comparison to other, similar curbside processing contracts in reference to the revenue received, secure market pricing, low risk-sharing, state of the art technology, location of the facilities and good working relationship with the CONTRACTOR; and

WHEREAS, in 2011, a third-party consultant retained by the City found the AGREEMENT to provide the most value, as measured by the net processing revenue per recycled ton, for the RECYCLABLES delivered in comparison to similar curbside processing contracts; and

WHEREAS, the CONTRACTOR’S professionalism, responsiveness, and marketing abilities have contributed to make the CITY’S curbside recycling program one of the premier programs in the nation; and

WHEREAS the CITY and CONTRACTOR have negotiated certain amendments to sections of the AGREEMENT, as reflected herein, in order to address Contractor’s material and adverse
processing or operational cost increases, in accordance with Section 3.0, subsection 3.15 of the AGREEMENT, due to China's implementation of its National Sword policy, which banned the importation of certain recyclable commodities, particularly mixed paper, plastics and metals; imposed unprecedented lower allowances for contaminants that are much stricter than international standards; significantly cut back on the import volume; and increased inspections of recyclable commodity imports; and

NOW THEREFORE, the CITY and CONTRACTOR do hereby agree to amend the following sections of the AGREEMENT:

1. Section 1.0 is amended by adding the following paragraph at end of Section 1.0:

   CONTRACTOR shall prioritize marketing of CITY'S RECYCLABLES over other recyclable materials marketed by CONTRACTOR, to ensure CITY'S RECYCLABLES are successfully marketed and diverted from landfill disposal.

2. Subsection 3.1.1 is amended by adding the following paragraph at the end of Section 3.1.1:

   This Section 3.1.1. shall be suspended for the period beginning May 1, 2018.

3. Subsection 3.1.2 is amended by adding the following paragraph at the end of Section 3.1:

   The guaranteed revenue sharing payment described in the paragraph directly above shall be suspended for the period beginning May 1, 2018.

4. Subsection 3.1.4 is amended to read as follows:

   CONTRACTOR shall pay the CITY the per ton flat rate for RECYCLABLES and the CITY'S portion of the revenue sharing arrangement described in this subsection 3.1 by no later than the 15th day of each month for the RECYCLABLES delivered to CONTRACTOR'S SITES by, or on behalf of, the CITY during the preceding month. A 10% late fee will be assessed against CONTRACTOR for each payment received by CITY after the 15th day of the month in which such payment is due.

   There shall never be a physical monthly net cost to, or payment due by, CITY to CONTRACTOR; instead, costs and credits will be determined in accordance with Subsection 3.1.5, Residual Plastics and Cost Deductions.

   On behalf of CONTRACTOR, Allan Company will deliver payments to CITY.

5. Subsection 3.1.5 is amended to read as follows:

   CONTRACTOR shall transport, process and market RESIDUAL PLASTICS delivered by the CITY under this AGREEMENT if RESIDUAL PLASTICS are accepted in the CITY's curbside recycling program and a secondary processing facility (SPF) in San
Diego, Orange, or Los Angeles counties (Local Area) is willing and able to receive, process, and recycle the CITY’s RESIDUAL PLASTICS. At the present time, CONTRACTOR has identified Titus Services Materials Recovery Facility (MRF) as its SPF. In the event that this facility cannot receive, process, and recycle the CITY’s RESIDUAL PLASTICS, CONTRACTOR shall promptly notify the CITY and use commercially reasonable efforts to identify an alternative SPF in the Local Area that is willing and able to receive, process, and recycle the CITY’s RESIDUAL PLASTICS. If CONTRACTOR cannot identify such an alternative SPF, CONTRACTOR may submit a request to the CITY for RESIDUAL PLASTICS to be treated as RESIDUE under this AGREEMENT. CITY shall respond to CONTRACTOR’s request within two (2) business days and the CITY’s approval shall not be unreasonably withheld. If CITY approves CONTRACTOR’s request, CONTRACTOR shall have the right to treat the RESIDUAL PLASTICS as RESIDUE under this AGREEMENT, effective upon the date of the CITY’s approval.

CONTRACTOR shall deduct the charges incurred for transportation and processing of CITY’s RESIDUAL PLASTICS from the monthly payment required under subsection 3.1.4 of this AGREEMENT.

“Residual Plastics Tonnage” means the total monthly tonnage of RESIDUAL PLASTICS, which is calculated by multiplying the percentage for RESIDUAL PLASTICS, as identified in CONTRACTOR’s most recent Material Composition Study that was performed in accordance with Section 3.3, by the monthly total of RECYCLABLES tonnage delivered by CITY to CONTRACTOR.

“Residual Plastics Transportation Cost” means the CONTRACTOR’s monthly costs for transporting the CITY’s RESIDUAL PLASTICS to the SPF, which is calculated by multiplying the percentage of monthly tonnage transported by or for CONTRACTOR to the SPF that is comprised of Residual Plastics Tonnage, by the actual monthly total charges incurred by CONTRACTOR for transporting all tonnage to the SPF.

“Residual Plastics Processing Cost” means the CONTRACTOR’s monthly costs for tipping, processing, and recycling the CITY’s RESIDUAL PLASTICS at the SPF, which is calculated by multiplying the percentage of monthly tonnage transported by or for CONTRACTOR to the SPF that is comprised of Residual Plastic Tonnage, by the actual monthly total charges incurred by CONTRACTOR for tipping, processing, and recycling of all tonnage at the SPF.

CONTRACTOR shall use the following to calculate the RESIDUAL PLASTICS cost deductions and the monthly net payment due to CITY under subsection 3.1.4 of this AGREEMENT. In the event the cost deductions exceed monthly Payments Due per Subsection 3.1.1 and 3.1.2 of AGREEMENT (Gross) for any given month during the term of the Agreement, the CONTRACTOR will be entitled to a credit in the amount the cost deductions for Residual Plastics Transportation Cost and Residual Plastics Processing Cost exceed Payments Due (Gross) for said month. The credit may be applied against amounts due the CITY in subsequent months, and only to the extent of
the CITY’s share of that excess amount; provided that, if a credit exists in CONTRACTOR’s favor upon termination of the AGREEMENT, CONTRACTOR agrees not to seek payment from CITY for the credit amount and CITY will not be responsible to pay that credit amount. There shall never be a physical monthly net cost to, or payment due by, CITY to CONTRACTOR.

Per Ton Payment
Profit Sharing Payment

**Payments Due per Subsections 3.1.1 and 3.1.2 of AGREEMENT (Gross)**
- Residual Plastics Transportation Cost
- Residual Plastics Processing Cost

**Payment Due CITY (Net)**

As an example only, and using the assumptions below for purposes of illustration only, the Residual Plastics Transportation Cost and Residual Plastics Processing Cost, and Net Payment due to CITY, for a hypothetical month for one of CONTRACTOR’s facilities would be calculated as follows:

Assumptions:

a. Delivered tonnage of RECYCLABLES to CONTRACTOR: 5,500 tons
b. Residual Plastics Tonnage: 5,500 tons * 2.69% (percentage identified in most recent Material Composition Study) = 147.95 tons
c. Residual Plastics Transportation Cost: \( \lfloor 147.95 \div 200 \rfloor \times 5,614.70 \) (CONTRACTOR’s actual total monthly costs for transporting all tonnage to SPF) = $4,153.47
d. Residual Plastics Processing Cost: \( \lfloor 147.95 \div 200 \rfloor \times 3,729.08 \) (CONTRACTOR’s actual total monthly costs for tipping, processing, and recycling all tonnage at SPF) = $2,758.59

Calculations:

- $100,000.00 Per Ton Payment
- $190,000.00 Profit Sharing Payment
- **$290,000.00 Payment Due CITY (Gross)**
  - $4,153.47 Residual Plastics Transportation Cost
  - $2,758.59 Residual Plastics Processing Cost
- **$283,087.94 Payment Due CITY (Net)**

CITY may not accept RESIDUAL PLASTICS in its curbside recycling program in the event of the following: (i) CONTRACTOR cannot identify a SPF that is willing and able to receive, process, and recycle the CITY’s RESIDUAL PLASTICS; or (ii) the Residual Plastics Processing Cost and Residual Plastics Transportation Cost, combined, exceed $8,500 per month. Prior to removal of RESIDUAL PLASTICS from the curbside recycling program under criteria (ii), CITY and CONTRACTOR shall meet in good faith to consider alternative options to manage this material. If CITY removes RESIDUAL
PLASTICS from its curbside recycling program, then CONTRACTOR may immediately treat RESIDUAL PLASTICS as RESIDUE and the foregoing provisions of subsection 3.1.5, and paragraphs 5 and 6 of Section 3.2 shall no longer be in effect.

THIS SEVENTH AMENDMENT to the AGREEMENT shall affect only the terms and/or conditions referred to herein. All other terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, the CITY and CONTRACTOR each have caused their duly authorized representatives to execute this SEVENTH AMENDMENT to the AGREEMENT.

Date: August 2, 2018

IMS Recycling Services, Inc.

By: [Signature]
Name: [Redacted]
Title: [Redacted]

Date: July 20, 2018

Allan Company

By: [Signature]
Name: [Redacted]
Title: [Redacted]

Date: ______________________

City of San Diego,
A Municipal Corporation

By: ______________________
Name: ______________________
Title: ______________________

I HEREBY APPROVE the form of the foregoing SEVENTH AMENDMENT to the AGREEMENT this ___ day of _________________, 2018.

Mara W. Elliott, CITY ATTORNEY

By: ______________________
Shannon M. Thomas
Deputy City Attorney