CH
10/08/2015
Item No. 11

AN ORDINANCE 2015-10-08-0865

**AMENDING THE ORGANIC COMPOSTING CONTRACT WITH NEW EARTH, INC., TO INCREASE THE CONTRACT VALUE BY $720,000.00 PER YEAR AND TO ADD PROVISIONS FOR NEW EARTH, INC. TO REIMBURSE THE CITY FOR FEEDSTOCK**

* * * * *

**WHEREAS**, City Council approved Ordinance 2013-01-31-0077 to establish a subscription based program for Organics Recycling, after the conclusion of a pilot program, consisting of a third collection cart that is used by residents to dispose of organic materials such as grass clippings, leaves, shredded paper, kitchen scraps, food-soiled paper and soiled pizza boxes; and

**WHEREAS,** City Council approved Ordinance 2014-02-20-0088, which selected New Earth, Inc., and awarded a contract for organic material processing services, at a cost of $16.50 per ton of organic material, in an amount estimated at 10,000 tons annually after the first year, for an initial term of five years with five renewal options, with the organic materials collected by Solid Waste Management Department crews using automated equipment and delivered to New Earth, Inc. for processing into compost, which is marketed and sold by the contractor; and

**WHEREAS,** as part of the FY2016 Budget, Council approved the Pay As You Throw Program which will provide organics collection containers to all residential customers which will substantially increase the volume of organic material collected by the SWMD and requires the increased contract value with New Earth, Inc.; and

**WHEREAS,** the amendment to the contract for organic material processing services with New Earth, Inc. increases the total contract value by $720,000.00 per year, with a new contract amount not to exceed $1,320,000.00 per year for the remainder of the initial five year term through February 28, 2019, and authorizes New Earth, Inc., to reimburse the City $0.50 per ton of coarse mulch when collected from the Bitters Brush Recycling Center, and $0.25 per ton of coarse mulch when collected from the Nelson Gardens Brush Recycling Center; and

**WHEREAS**, this Ordinance authorizes and approves the amendment to the organic material processing services contract with New Earth, Inc., by an additional $720,000.00 per year and adding provisions for New Earth, Inc., to reimburse the City for feedstock; **NOW THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The current contract for organic material processing services with New Earth, Inc., is amended to increase the contract value by an additional amount not to exceed $720,000.00 a year, for a new total contract value not to exceed $1,320,000.00 per year for the remainder of the initial five year term through February 28, 2019, and to authorize the Solid Waste Management Department to accept reimbursement from New Earth, Inc. for feedstock provided from the City brush sites. A copy of the contract Amendment is attached as **Exhibit "A"** and made a part hereof and incorporated herein for all purposes.

**SECTION 2.** Additional annual funding for the duration of this contract in the amount of $720,000.00 per year for this ordinance is available in Fund 55001000, Cost Center 5501010001 and General Ledger 5201041, as part of the Fiscal Year 2016 Budget and contingent upon City Council approval of subsequent fiscal years.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to New Earth, Inc., and should be encumbered with a purchase order. This ordinance also authorizes New Earth, Inc., to reimburse the City $0.50 per ton of coarse mulch when collected from the Bitters Brush Recycling Center and $0.25 per ton of coarse mulch when collected from the Nelson Gardens Brush Recycling Center.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes or, if passed by fewer than eight (8) affirmative votes, shall be effective ten (10) days after passage.

**PASSED and APPROVED** this 8th day of October, 2015.

**M A Y O R**
Ivy R. Taylor

**ATTEST:**

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

Martha G. Sepeda, Acting City Attorney

| | |
|---|---|
| **Agenda Item:** | **11 ( in consent vote: 4, 5, 6, 7, 8, 9, 11 )** |
| **Date:** | 10/08/2015 |
| **Time:** | 09:38:57 AM |
| **Vote Type:** | Motion to Approve |
| **Description:** | An Ordinance amending the organic composting contract with New Earth, Inc. to increase the contract value by $720,000.00 annually for a new contract amount not to exceed $1,320,000.00 annually and to add provisions for New Earth, Inc. to reimburse the City for the sale of mulch and other organic material. [Peter Zanoni, Deputy City Manager; David W. McCary, Director, Solid Waste Management] |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Ivy R. Taylor | Mayor | x | | | | | |
| Roberto C. Treviño | District 1 | x | | | | | |
| Alan Warrick | District 2 | | x | | | | x |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | x | |
| Joe Krier | District 9 | | x | | | | |
| Michael Gallagher | District 10 | | x | | | | |

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**AMENDMENT ONE**
**AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND NEW EARTH, INC.**
**FOR**
**ORGANIC MATERIAL PROCESSING SERVICES (RFP 013-049)**

On February 20, 2014, the City Council approved Ordinance 2014-02-20-0088, which selected New Earth, Inc. and awarded a contract for organic material processing services, in an amount estimated at $82,500.00 for the first year processing an estimated 5,000 tons of material and $165,000.00 processing an estimated 10,000 tons annually thereafter for an initial term of five years with five additional renewal options.

Due to Council approval of the Pay As You Throw initiative in FY 2015 that will incorporate organics recycling collection into the Solid Waste Management's base service and the anticipated increase in volume to be processed, the parties have agreed to amend the Contract to add provisions for New Earth to reimburse the City for feedstock and to increase the estimated annual payment as the annual volume increases.

This **Amendment One** to the Contract ("Amendment One") is entered into by and between the City, acting by and through its designated representative, and the Contractor. The undersigned hereby agree to amend said Contract as follows:

1. The Agreement, page 1, Compensation section, is amended by deleting the ~~strikethrough~~ and inserting the underlined text to now read:

**Compensation:** As authorized by the Ordinance, City will pay Contractor a $16.50 cost per ton of Organic Material delivered to the Contractor, less any credits received by the City. The estimated total annual budget sum, during the initial term of the Agreement, shall not exceed ~~$600,000.00~~ $1,320,000.00, unless City Council action is taken to amend the enabling Ordinance.

If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director Solid Waste Management Department (hereinafter "Director"), of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount estimated not to exceed ~~six hundred~~ one million three hundred twenty thousand dollars ($1,320,000.00 ~~600,000.00~~) per year during the initial term of the Agreement as total compensation. Contractor shall provide compost to the City, as specified in RFP Attachment A, Part Three, Proposed Plan, to promote the Program.

It is understood and agreed by the Parties that the City does not guarantee any minimum volume of work, and that Contractor will be paid for actual work performed and for allowable expenses, provided that Contractor shall present City with an invoice for all expenses and services monthly



**Exhibit A**

within 14 days of the end of the month. Payment shall be made no more than 30 calendar days following receipt and approval of each invoice.

2. The Request for Proposal (RFP), page 5, section 004. Scope of Services, is amended by deleting the ~~strikethrough~~ and inserting the underlined text to now read:

**B. Feedstock**

The selected Respondent may collect coarse mulch contingent upon availability ~~at no charge~~ on a ton per ton basis (based on the number of tons program materials accepted by the selected Respondent) from the City's brush processing facility at Bitters Road or Nelson Road facility to use as additional feedstock in its composting operations. Respondent shall pay the City $0.50 per ton of coarse mulch from the Bitters Brush Recycling Center and $0.25 per ton of coarse mulch from the Nelson Gardens Brush Recycling Center. The City shall provide an invoice monthly to the Respondent who shall pay the amount due to the City within 15 days of receipt. The selected Respondent is responsible for picking up the mulch at its sole cost and expense. The City agrees to load the selected Respondent's vehicle(s) with mulch, but bears no transportation costs associated with the load. Under no circumstance will the City provide transportation for this mulch.

3. This Amendment One to the Contract shall not prejudice any present or future rights, remedies, benefits, or powers belonging to or accruing to the City under the terms of the Contract herein amended.

4. Except as provided otherwise herein, the Contract shall remain unaffected, unchanged, and unimpaired by reason of the foregoing Amendment One.

Amendment One AGREED to this 18 day of August, 2015.

**CITY OF SAN ANTONIO**
**A TEXAS MUNICIPAL CORPORATION**

By:_____
David W. McCary, CPM
Director, Solid Waste Management Department

**NEW EARTH, INC.**

By:_____
John Kalmbach
Vice President, San Antonio

**APPROVED AS TO FORM:**
Martha G. Sepeda
Acting City Attorney

_____
By: Assistant City Attorney