

12/63

MATERIAL RECOVERY FACILITY CONTRACT

THIS CONTRACT made and entered into the 13th day of August, 1992, between the City of Greensboro, North Carolina, ("City") a municipal corporation with principal offices at 300 West Washington Street, Greensboro, North Carolina and FCR Greensboro, Inc. ("FCR"), a Delaware corporation and a wholly owned subsidiary of FCR, Inc., a Delaware corporation with principal offices located at 1300 Honeyspot Road, Stratford, Connecticut, for the services of the operation of a material recovery facility to be located in Greensboro, North Carolina;

WITNESSETH:

WHEREAS the City is implementing a city-wide recycling program for the purposes of meeting the North Carolina mandates for reduction of waste by 25% and 40% with goals set for July 1, 1993, and July 1, 2001 respectively; and

WHEREAS the City presented a Request for Proposals ("RFP") on March 9, 1992, (EXHIBIT A) for the purposes of identifying an appropriate operational approach to the processing and marketing of recovered recyclables; and

WHEREAS, FCR responded to that RFP with a proposal on April 10, 1992, a copy of which is incorporated into this contract by reference (EXHIBIT B); and

WHEREAS, the City selected FCR to provide the necessary services for the operation of a material recovery facility to support of the recycling programs of the community;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

I. Initial Startup and Operational Deadline: FCR shall provide and operate a material recovery facility for the purpose of processing and marketing recyclable materials. FCR and the City hereby agree that the official date for full operation of the material recovery facility shall be April 1, 1993. On and after that date the City and/or its agents are hereby obligated and agree to deliver 2500 tons of recyclables monthly to the material recovery facility. FCR is fully responsible for the attainment of the site, as approved by the City, for the construction of the facility and for the procurement and/or lease of necessary operating equipment. This includes any necessary permits required by the North Carolina Division of Solid Waste Management, or other state or local governmental bodies or authorities. If FCR is aware of any issues that would preclude it from being in full operation on that date, such issues must be made aware to the City no later than December 1, 1992. During the period 30 days prior to the official start up date, the facility shall be operational for test purposes. Both parties shall work closely during this 30 day period to accommodate the need to fully test the equipment and train the personnel. The City is not obligated to pay the full \$35 per ton tipping fee, as referenced in Paragraph V, during this test period but will pay a fee of \$17.50 per ton of recyclables delivered to FCR during this test period. It is agreed that during the start up period the City will not participate with FCR in any sharing of revenue from the sale of recovered material.

II. Contract Term: The term of this contract shall be for a period from the date of execution to March 31, 2003. If FCR, in the opinion of the City, has performed under the terms and conditions of this contract, and is willing to continue under the same terms and conditions, FCR may elect to extend this contract for an additional five year period. Such agreement shall be based on negotiations initiated not later than March 31, 2002.

III. Default: Any breach of the negotiated terms of contract performance as set forth in this document and its attachments will result in a notice of default, in writing, from the City to FCR. Such notice shall clearly set forth the conditions of default and shall provide a period for correction of not less than thirty (30) days, unless extended by consent of the City. Should FCR be unable to correct the deficiency causing the default within the time period specified by the City, the City shall terminate this contract, in writing. The effective date of termination shall be stated in the written notice.

IV. Succession Rights to Use Site and Equipment: FCR shall require in its lease of the site and purchase or lease of the equipment for the material recovery facility, the right of succession for the City to take over the leases/loans, at the same payment schedule for the remainder of the life of such lease/loan, if and when there has been a default, failure to cure, and termination of this contract, as set forth in Paragraph III, for any of the following reasons:

- (1) Failure by FCR to pay the City the monies due under Paragraph V of this contract;
- (2) Failure by FCR to keep the facility open and operating so that it can receive and process those recyclable materials which it is required to accept under Paragraph VI D of this contract;
- (3) Failure by FCR to diligently pursue the marketing of those recyclable materials which it is required to accept under Paragraph VI D of this contract;
- (4) Operation of the facility in a manner which constitutes a public nuisance or in violation of applicable safety and health laws, ordinances and codes.

A copy of each applicable lease shall be provided to the City at the time of execution between FCR and the lessors/lenders.

V. Fees and Revenue Sharing: The City hereby agrees to pay a fixed tipping fee per ton of recyclables delivered to the materials recovery facility by City vehicles during the term of the contract. The fixed fee is \$35 per ton for every ton from 0 to 40,000 tons annually and shall be \$30 per ton for every ton over 40,000 annually. The first annual period shall begin April 1, 1993, and run to March 31, 1994. Every annual period thereafter shall be from April 1 to March 31. The City shall guarantee the delivery of 2500 tons per month at a tipping fee rate of \$35.00 per ton until the annual accumulated tonnage exceeds 30,000 tons. Once 30,000 tons are delivered within the 12 month period (April 1 - March 31) by the City or its agents, the monthly 2500 ton guarantee is no longer applicable.

FCR shall share 50% of all net collected revenues (less payments made to third parties to transport and/or accept processed recyclable materials) generated by the tonnage received from the

City. In addition, FCR agrees to pay the City \$5.00 per ton for material received (less residue) from sources other than the City. The revenues shall be paid to the City on a monthly basis. FCR shall report the total revenue by material type when submitting a revenue sharing check to the City. Annually, the City shall have the right to review FCR's financial books and records.

The monthly tipping fee invoice, including the residue disposal cost (see Paragraph VI.E., below) shall be submitted to the City by FCR by the tenth (10th) day of each month. The City shall pay on a "net 10 day" basis.

Annual Adjustment to Tipping Fee: On the Contract anniversary date, the per ton tipping fee paid to FCR by the City for materials delivered by the City shall be increased by the higher of the following factors:

- A. Five (5) percent of the previous year's annual rate.
- B. The increase in the Consumer Price Index over the prior year anniversary date CPI. For use in this calculation, the parties shall use the CPI for all Urban Consumers, U.S. City Average (1982-1984 = 100) as published by the Department of Labor.

VI. Operating Terms of Performance:

A. Operating Hours: The material recovery facility shall be operational to receive recyclable materials from City vehicles from 7:00 a.m. to 5:00 p.m. Monday through Friday. City operated vehicles or vehicles of agents of the City shall receive priority during peak delivery times to minimize the queuing time to weigh and off-load the recyclable materials.

B. Weighing Recyclables: The material recovery facility site shall have appropriate and necessary scales to weigh incoming recyclables and such scales shall meet standards of the North Carolina State Bureau of Weights and Measures. The scale shall be inspected semiannually to ensure accurate calibration. The scale operators shall hold appropriate and necessary certifications. FCR shall maintain weight records on a monthly basis for all incoming recyclables. The records shall contain identification of the incoming vehicles as well as the weight per vehicle.

All out-going material shipments, by material type, also shall be weighed, as well as all residue, and such weights shall be reported monthly. This weight report of all in-coming and out-going material shall be provided to the City by the tenth (10th) day of the following month.

C. Marketing of Recovered Material: FCR shall initiate contracts for the sale of recyclable materials from the City's programs at least thirty days prior to opening the facility. All effort shall be made by FCR throughout the term of this contract to obtain floor pricing with long-term commitments on each material. If spot-market pricing is to be used on any material, FCR shall inform the City of the choice of spot-market selling and justify its economic impact to the overall program. Any marketing strategy selected by FCR shall serve the purpose of guaranteeing a market outlet for the material that will maximize the revenue generated. FCR shall maintain records on the weight of each material processed, its market destination, buyer, price paid, revenue generated and other appropriate information that may also include written agreements with brokers or purchasers of materials.

D. Materials Accepted At Facility: The following recyclable materials shall be accepted from the City or its agents:

1. From Drop-off centers:

PET Plastic
HDPE Plastic
Old Newsprint

2. From Residential curb-side programs:

PET Plastic
HDPE Plastic
Polystyrene packaging material and egg cartons
Old newsprint
Clipboard
Aluminum cans
Bimetal and steel food and beverage cans
Old Corrugated Cardboard
Glass containers (all three colors)
Magazines

3. From Bulk container business/institution programs:

Old Corrugated cardboard
Old newsprint
Computer paper
Mixed office paper
White office bond paper
Magazines
PET plastic
HDPE plastic
Aluminum beverage cans

The City and FCR shall work jointly to develop the preparation requirements for individuals and businesses to follow when placing an item at the curb or in a drop-off center for collection and processing. Such information shall be incorporated in all educational materials utilized by the City and/or FCR in promoting the City's programs.

Annually, or more frequently as deemed necessary by either party, the list of acceptable materials shall be reviewed to ensure that the maximum reduction is being achieved, that the materials are prepared as necessary to gain greatest economic value, and that a collection process is effective in managing the materials as needed. At the time of the review, the City and FCR may jointly agree to change a process or to add a material for the recycling programs. No material can be added to the approved list nor deleted without the mutual consent of the City and FCR.

E. Disposal of Residue: FCR shall be responsible for the disposal of residue from the facility and shall bill the City directly on a monthly basis for the cost of disposal, including hauling

costs. The City shall receive a credit on the disposal bill equal to six (6) percent of the total gross weight of all in-coming non-City tonnage received at the facility for the month billed. (e.g., total monthly residue landfilled equals 100 tons and total monthly non-city tonnage received equals 500 tons, the monthly bill for residue will be 100 tons less 30 tons or a total of 70 net tons landfill disposal cost.

F. Facility Maintenance and Safety: FCR shall maintain the facility in a neat and orderly manner and shall comply with all applicable safety and health laws, ordinances and codes. FCR shall take all reasonable and practicable action to prevent littering of materials, refuse and dust and to prevent odors and other pollutants. FCR shall operate in a manner that will not create a public nuisance. Any complaint received from the public shall be recorded and the action taken shall be documented as well. The City's Solid Waste Administrator shall receive a copy of the documentation for review. Failure to correct a recurring problem shall be cause for termination for default.

G. Site Visits and Inspections: The City reserves the right to inspect the facility at any time during normal operating hours. No area of the facility will be off-limits to City staff during such a tour. Such visits or inspections can be made unannounced and unscheduled.

H. Tours: The City shall from time to time desire to have tours for third parties that are outside the normal educational tours available through the education center at the facility. Such tours shall be arranged in advance with FCR staff and shall be conducted by FCR staff on behalf of the City.

I. Load Rejection: FCR shall notify the Solid Waste Administrator or his agent if a load received from one of the City's collection programs appears to have a contamination rate higher than thirty percent (30%). Recognizing this is a subjective judgment, the load will not be refused unless an inspector from the City is present at the facility and is in agreement that the load is unacceptable. If the load is questionable, it will be unloaded at the facility, in an area that does not interfere with the normal processing operation, so that further inspection can be completed. If the load is rejected after being tipped on the floor, FCR staff shall assist the City staff in removal of the rejected load. Recognizing that the material will be delivered in normal refuse collection trucks, inspection of loads prior to tipping will be very difficult and will require a skilled assessment to determine a thirty percent (30%) or greater contamination. During the first six (6) months of operation, rejection of loads must not occur without clear agreement of contamination since all parties will be in a learning phase, including the public.

J. Education Center: The material recovery facility shall include an education center as described in the Proposal for a Material Recovery Facility, City of Greensboro, dated April 10, 1992, as submitted. Such a center shall be staffed by FCR personnel and shall be operated on an appointment basis. The education program addressing the City's collection of recyclables shall be approved by the City's Environmental Programs Director or his agent. The Education Center shall be funded by direct sponsorships obtained by FCR on behalf of the City. Should FCR be unable to secure sufficient sponsorships to fully support the operating costs, a proposal to the City shall be made by FCR to underwrite the necessary costs. The City's Environmental Programs Division shall assist FCR as appropriate in developing informational materials and education program content.

K. Hazardous Waste: Should, during the course of delivery materials to the facility provided by FCR under the terms of this contract, the City deliver materials which contain hazardous

waste (as defined under RCRA) it shall be FCR's responsibility to immediately notify the Solid Waste Management Division Administrator, record the necessary information to permit the City to follow up on the occurrence, and jointly determine the appropriate action for disposal of the materials. Should FCR dispose of the materials on behalf of the City, the City agrees to reimburse FCR for all costs associated with the disposal of such hazardous waste.

VII. Incorporation of Proposal for a Material Recovery Facility, City of Greensboro, NC, dated April 10, 1992 as submitted: FCR shall be bound by all requirements stated in the Request for Proposals for a Material Recovery Facility, dated March 9, 1992, and its Proposal submitted on April 10, 1992, copies of which are attached hereto and incorporated herein by reference. In the event of a conflict between the terms of the main body of this contract and the attached RFP and Proposal, the terms of the main body of this contract shall prevail.

VIII. Uncontrollable Circumstances: In the case of a force majeure, defined as an act of God, hurricane, tornado, epidemic, landslide, lightning, earthquake, fire or explosion not caused by the fault of FCR or the City, flood or similar occurrence, and act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, the City and FCR shall develop a plan for correcting the problem and negotiate any terms and conditions necessary to bring the facility to full operation as soon as possible.

IX. Assignment: This Contract shall not be assigned by FCR without the prior written approval of the City, provided that such consent may be withheld in the sole discretion of the City, the City having chosen FCR because of FCR's representations and warranties as to its specialized skills, knowledge and abilities. In the event that the City does consent to an assignment of FCR's duties, rights and responsibilities pursuant to this Contract, FCR shall remain principally obligated for the full performance of FCR's obligations under this contract.

X. Title to Recyclables: All recyclables and recovered materials delivered to FCR by the City or its agents shall be the property of FCR until title passes from FCR to the purchaser thereof pursuant to contracts or agreements entered into by FCR. Loss materials shall be that of FCR's and FCR shall insure against loss of the recyclables as required by this Contract.

XI. Amendment: This Contract may be amended, altered, or terminated only in writing and only if duly executed by the City Manager of the City of Greensboro and by an officer of FCR.

XII. Insurance: FCR shall secure and maintain at its sole cost and expense, the following types and amounts of insurance coverage from insurance companies of recognized financial standing licensed to do business in the State of North Carolina and acceptable to the City as follows:

A. Workers Compensation Insurance in accordance with requirements of North Carolina Law.

B. Commercial General Liability Insurance written on an occurrence basis, subject to the limits of not less than the following:

For bodily injury, \$1,000,000 per occurrence.

For property damage, \$1,000,000 per occurrence.

The City and its agents shall be included in this required commercial general liability insurance as additional insureds and a copy of the policy of coverage shall be provided to the City. In addition, the City shall be notified by the insurance company if said insurance policy is changed, modified, canceled at any time during the life of this contract.

C. **Comprehensive Automobile Liability Insurance** subject to limits of not less than \$1,000,000 for bodily injury per person and \$1,000,000 per accident and for property damage of \$5000,000 per accident.

The Insurance Coverages required pursuant to this paragraph shall be maintained by FCR in full force and effect from the first day that FCR undertakes its activities within Greensboro in fulfillment of its obligations under the Contract. The necessary Certificates of Insurance shall be delivered to the City and all notices, cancellations, intent to nonrenew, or reduction in coverage shall be provided to the City by the insurance companies by thirty day written notice.

XIII. Letter of Credit; Indemnifications:

A. **Letter of Credit:** FCR shall furnish a letter of credit and keep it or a substitute letter of credit in full force and effect during the Contract term, a copy of which initial letter of credit shall be attached hereto and incorporated herein by reference, which letter shall be in a form and with a financial institution acceptable to the City Attorney. The Letter of Credit shall provide full assurance of the performance of all obligations under the Contract, and making full payment for all revenues as may be required to be shared with the City pursuant to this contract. The Letter of Credit shall provide that the City may make one or more draws under said letter up to the total amount thereof. The sum of the Letter of Credit shall be One Hundred Thousand Dollars (\$100,000) and shall be delivered to the City on or before April 1, 1993. The Letter of Credit shall be renewed on an annual basis beginning one year after said execution date. FCR must furnish a new Letter of Credit at least thirty days prior to the expiration date of any Letter of Credit used to satisfy this Paragraph of the Contract.

B. **Indemnification of City:** FCR shall indemnify and hold the City, its Council, agents and employees harmless from all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, and fees including reasonable attorney fees, asserted against the City or imposed by law upon the City for injury or death to persons or for losses of, or damages to the property of persons as the result of FCR's acts or omissions in connection with this contract.

C. **Indemnification of FCR:** The City shall indemnify and hold FCR, its officers, agents and employees harmless from all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, and fees including reasonable attorney fees, asserted against FCR for injury or death to persons or for losses of, or damages to the property of persons as the result of the City's acts or omissions while on the FCR premises operated under the terms of this contract.

XIV. Allocation of Funds for First Operating Period: For the purposes of budgeting and appropriation of funds for the purpose of meeting its contract obligation, the City budgets an amount of \$270,000 for the initial fiscal year's authorization. As the funds are disbursed under the terms of the contract, the City and FCR shall review expenditures and revenues at the point in which ninety percent (90%) of these funds are expended. Additional funds shall be budgeted annually by the City for the completion of the terms and conditions of the contract. The City shall notify FCR if at any

time the City Council fails to appropriate sufficient funds to continue the operation of the Material Recovery Facility, but such action by City Council and such notice from the City shall not relieve the City from liability to FCR for a claim for damages, if any, sustained by FCR (and such claim being subject to the City's defenses and off-sets, if any), resulting from such failure to appropriate sufficient funds. If this occurs, the parties agree to attempt to negotiate a settlement to provide for an orderly completion of the terms and for the closure of the facility.

XV. Entire Agreement and Warranties: This Contract and its attachments constitutes the entire agreement between the City and FCR with respect to the subject matter hereof. The City has the power to enter into this contract and to undertake and consummate the transactions contemplated in this Contract. This contract as authorized, approved and executed is enforceable in accordance with its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have executed this contract agreement, as of the day and year first written above.

CITY OF GREENSBORO

FCR Greensboro, Inc.

BY: 

BY: 

NAME: W. H. Carstarphen

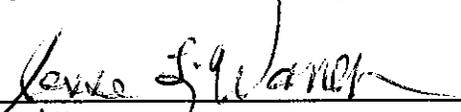
NAME: PAUL A. GARRETT

TITLE: City Manager

TITLE: PRESIDENT

Approved as to Form and Legality:

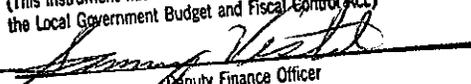
Attest:


City Attorney

Attest for City of Greensboro:


City Clerk
Dep.

(This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.)


Deputy Finance Officer

GUARANTY BY PARENT CORPORATION

FCR, Inc., in consideration for the City of Greensboro, North Carolina, entering into the attached Material Recovery Facility Contract with its wholly-owned subsidiary FCR Greensboro, Inc., agrees to guarantee the performance of said Contracts by its subsidiary.

Entered into, this 13th day of August, 1992.

FCR, INC.

By: Paul A. Garrett

Name: PAUL A. GARRETT

Title: PRESIDENT

Attest: Leanna L. Lawrence

Title: SECRETARY

CONTRACT AMENDMENT

WHEREAS, the City of Greensboro and FCR, Greensboro, Inc. (FCR) entered into a contract on August 13, 1992, for the operation of a recyclables material recovery facility; and

WHEREAS, the terms of the contract set forth a commitment on behalf of the City to FCR to deliver recyclable materials on the official start date of the facility of April 1, 1993; and

WHEREAS, FCR notified the City on December 1, 1992, as required by the terms of the contract, of a delay in the official start date; and

WHEREAS, FCR has now formally notified the City with a firm operational date for the opening of the facility;

NOW, THEREFORE, the obligation of both parties is hereby clarified and the contract dated August 13, 1992 is amended as the parties do agree:

1. That Paragraph I, Initial Start Up and Operation Deadline, second sentence now read, " FCR and the City hereby agree that the official date for full operation of the material recovery facility shall be June 15, 1993."
2. FCR shall report to the City on March 1, 1993, the progress made to date on the construction of the material recovery facility and will continue to report on the facility status by the first of each month until the facility is fully operational.
3. The effective date of this amendment shall be the date of execution by both parties.

This 9th day of March, 1993

CITY OF GREENSBORO

FCR, GREENSBORO, INC.

BY: 

BY: 

NAME: J. E. KITCHAN

NAME: PAUL A. GARRETT

TITLE: Asst. CITY MANAGER

TITLE: PRESIDENT

CONTRACT AMENDMENT
Number Two

WHEREAS, the City of Greensboro and FCR Greensboro, Inc. (FCR) entered into a contract on August 13, 1992, and amended on March 9, 1993, for the operation of a recyclables material recovery facility; and

WHEREAS, the material items to be recovered in this contract include polystyrene packaging materials and egg cartons.

NOW, THEREFORE, the obligation of both parties is hereby clarified and the contract dated August 13, 1992 is amended as the parties do agree:

1. That Article VI, Paragraph D, shall be amended to delete polystyrene packaging materials and egg cartons from the residential curb-side programs.
2. That Article VI, Paragraph D, shall be amended to delete PVC containers from the residential curb-side programs.
3. That Article VI, Paragraph D, shall be amended to add aerosol cans to the residential and business/institution programs.
4. That Article VI, Paragraph D, shall be amended to add bi-metal and steel food/beverage cans, aerosol cans, and chipboard to the bulk container business/institution programs.
5. That Article VI, Paragraph D, shall be amended to add telephone directories to both curb side and business institution programs for a 60 day period following the annual initial delivery of new directories.
6. The effective date of this amendment shall be the date of execution by both parties.

This 6th day of March, 1995.

CITY OF GREENSBORO

BY: [Signature]

NAME: Edward Kitchen

TITLE: Deputy City Manager

FCR GREENSBORO, INC.

BY: [Signature]

NAME: PAUL A. GARRETT

TITLE: PRESIDENT

APPROVED AS TO
FORM AND LEGALITY

[Signature]
City Attorney

Contract Amendment
Number Two
Page Two

Attest for the City of Greensboro:

Nancy J. McPeak
city clerk

ATTEST: FCR Greensboro, Inc.

Lawrence L. Laine

Approved as to Form and Legality:

Joe Wilmore

This instrument has been preaudited
in the manner required by the Local
Government and Fiscal Control Act.

R. Lusk

CONTRACT AMENDMENT

WHEREAS, THE CITY OF GREENSBORO AND FCR, GREENSBORO, INC. (FCR) ENTERED INTO A CONTRACT ON AUGUST 13, 1992, FOR THE OPERATION OF A RECYCLABLES MATERIAL RECOVERY FACILITY; AND

WHEREAS, THE CITY OF GREENSBORO AND FCR COMMITTED THEMSELVES TO PROVIDING PUBLIC EDUCATIONAL OPPORTUNITIES TO THE COMMUNITY THROUGH THE OPERATION OF AN EDUCATIONAL CENTER AT THE FACILITY, AND

WHEREAS, IN SECTION VI J OF THE CONTRACT THE CITY OF GREENSBORO HAS COMMITTED ITSELF TO UNDERWRITE OPERATIONAL COSTS OF THE EDUCATIONAL CENTER ABOVE THAT WHICH IS RECEIVED BY DIRECT SPONSORSHIPS OBTAINED BY FCR ON BEHALF OF THE CITY OF GREENSBORO. AND

WHEREAS, FCR HAS NOW FORMALLY NOTIFIED THE CITY OF GREENSBORO OF THE OPERATING COST FOR THE FACILITY FOR THE PERIOD OF NOVEMBER 1, 1993 THROUGH JUNE 30, 1994, AND PROVIDED A PROJECTED YEARLY OPERATING COST ESTIMATE FOR JULY 1, 1994 THROUGH JUNE 30, 1995.

NOW, THEREFORE, THE OBLIGATION OF BOTH PARTIES IS CLARIFIED, AND THE CONTRACT DATED AUGUST 13, 1992 IS AMENDED AS THE PARTIES DO AGREE:

1. THAT THE FOLLOWING VERBAGE BE ADDED TO SECTION VI J; [THAT THROUGH THE EMPLOYMENT OF A FULL TIME EDUCATIONAL DIRECTOR FOR THE FACILITY, THAT FCR WILL USE ALL POSSIBLE AVENUES IN THE RECRUITING OF DIRECT SPONSORSHIPS FOR THE FACILITY, AND

2. THE CITY OF GREENSBORO WILL UNDERWRITE COSTS INCURRED FROM THE OPERATION OF THE EDUCATIONAL CENTER NOT TO EXCEED \$24,265 THROUGH JUNE 30, 1994, AND \$67,200 THROUGH JUNE 30, 1995. THIS AMOUNT WILL BE NEGOTIATED ON AN ANNUAL BASIS BUT CAN ONLY BE ADJUSTED UPWARD IN LINE WITH THE CONSUMER PRICE INDEX FACTOR, AND

3. ALL MONEYS COLLECTED BY FCR ON BEHALF OF THE CITY OF GREENSBORO FOR THE SPONSORSHIP OF THE EDUCATIONAL CENTER BE APPLIED DIRECTLY BACK TO THE CITY OF GREENSBORO, FOR THE EDUCATIONAL CENTER, BY CREDITING SPONSORSHIP FUNDS RECEIVED BY FCR TO THE NEXT INVOICE BILLED TO THE CITY, FOR THE REDUCTION OF THE MONTHLY OPERATIONAL COST FEE].

4. THE EFFECTIVE DATE OF THIS AMENDMENT SHALL BE THE DATE OF EXECUTION BY BOTH PARTIES.

THIS 29th DAY OF August, 1994

CITY OF GREENSBORO

FCR, GREENSBORO, INC.

BY: W. H. Carstarphen
NAME: W. H. Carstarphen
TITLE: City Manager

BY: Paul A. Garrett
NAME: PAUL A. GARRETT
TITLE: PRESIDENT

ATTEST: CITY OF GREENSBORO

ATTEST: FCR_x GREENSBORO, INC.

Janece J. M. Peak
CITY CLERK

Larry L. Lawrence

APPROVED AS TO FORM AND LEGALITY:

John L. ...
CITY ATTORNEY

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT AND FISCAL CONTROL ACT BY:

R. Lusk TITLE: Finance Director

NORTH CAROLINA

CONTRACT AMENDMENT

GUILFORD COUNTY

WHEREAS, the City of Greensboro ("City") and FCR Greensboro, Inc. ("FCR") entered into a contract ("Contract") on August 13, 1992 for the operation of a recyclables material recovery facility ("the Facility"); and

WHEREAS, the Contract was amended on March 9, 1993 to provide that the official date for full operation of the Facility would be June 15, 1993; and

WHEREAS, construction of the Facility by a third party is underway but is not complete and the Facility therefore is not ready to accept material; and

WHEREAS, FCR has notified the City that the expected date by which the Facility will be ready to accept and process recyclable materials from the City is August 30, 1993;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which consideration is hereby acknowledged by both parties, the parties agree as follows:

1. That the second and third sentences of paragraph I. of the Contract ("Initial Startup and Operation Deadline"), are stricken and the following substituted in lieu thereof: "FCR and the City hereby agree that the material recovery facility shall be ready to accept material from the City on or before August 30, 1993. On and after August 30, 1993, the City and/or its agents are hereby obligated and agree to deliver 2,500 tons of recyclables monthly to the material recovery facility."

2. From June 15, 1993 until August 30, 1993, FCR shall pay the City as liquidated damages for the delay in the construction of the Facility the sum of Two Hundred Fifty Dollars (\$250) per day. FCR shall make diligent and reasonable efforts to have the Facility ready to accept material from the City before August 30, 1993 and, if the Facility is ready to accept material from the City on or before August 30, 1993, then the liquidated damages referred to in this paragraph shall be waived.

3. If the Facility is not ready to accept and process material from the City on August 30, 1993, then the liquidated damages to be paid by FCR to the City shall be increased to One Thousand Dollars (\$1,000) per day for each day after August 30, 1993 and such increased liquidated damages shall continue to accrue at such rate until the Facility is ready to receive material from the City.

4. The Facility will be complete and fully operationable by October 15, 1993.

5. If the liquidated damages referred to in paragraphs 2 and 3 are incurred, then they shall be paid to the City by FCR on the earlier of (a) the date when FCR has recovered liquidated damages or delay damages from the third party responsible for construction of the Facility or (b) March 31, 1994.

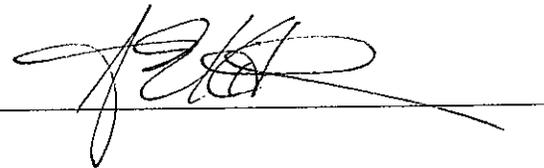
6. In addition to the liquidated damages referred to in paragraph 2 and 3, FCR shall reimburse the City for the reasonable costs, if any, incurred by the City for the storage of the recycling curbside containers and any other costs incurred by the City by reason of the delay in construction of the Facility for the

period from June 15, 1993 to the date when the Facility begins accepting and processing material from the City, provided that if the total amount for which FCR may be liable under this paragraph exceeds the sum of Five Thousand Dollars (\$5,000.00), then the amount of such excess shall be deducted from the amount of liquidated damages, if any, to be paid by FCR to the City pursuant to paragraphs 2 and 3. If liquidated damages are not due the City pursuant to this Contract Amendment, then FCR nonetheless shall pay the City the full amount of damages, if any, for which the City is entitled to a recovery under this paragraph 6, up to a maximum of \$10,000.

7. Except for the changes made by the original Contract Amendment signed on March 9, 1993 and by this Second Contract Amendment, the Material Recovery Facility Contract between the City and FCR shall remain in full force and effect.

This the 30th day of June, 1993.

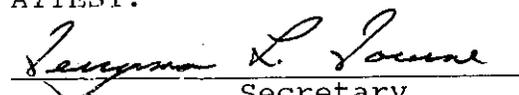
CITY OF GREENSBORO

By: 

FCR GREENSBORO, INC.

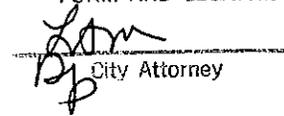
By: 
President

ATTEST:


Secretary

(Corporate Seal)

APPROVED AS TO
FORM AND LEGALITY


City Attorney