

AMENDMENT TO CONTRACT

This Amendment is made this ____ July, 2019 by and between the Borough of Red Bank and its principle place of business at 90 Monmouth Street, Red Bank, New Jersey, 07701, hereinafter called "The Owner," and DeLisa Demolition, Incorporated, 101 Commerce Drive, NJ 07753 hereinafter called "The Contractor."

WHEREAS the Owner and Contractor entered into a Contract for a term of three (3) years, commencing on September 1st, 2015 and continuing until August 31st, 2018. Said Contract and Extension to Contract was for solid waste and recycling collection, and

WHEREAS said Contract was extended by the Owner by Resolution Number 18-188 of the Borough of Red Bank adopted on July 18, 2018, exercising its right to extend the contract for an additional two (2) years, or until August 31st, 2020.

WHEREAS prior to the adoption of the extension of the Contract, the Contractor placed the Owner on notice that the tipping fees relative to recycling had gone up considerably from what the tipping fees were at the time the Contract was bid and ultimately granted, and requested owner to pay the differential and tipping fees or a portion thereof, and

WHEREAS at the time of the Notice to the Borough of Red Bank the tipping fees were \$90.65 per ton, retroactive to June 1st, 2018. The tipping fees have now reached as high as \$95.00 per ton. When the Contract was initially bid and subsequently awarded, tipping fees were \$15 per ton, to dispose of material collected under the single stream recycling.

WHEREAS as of June 1, 2018 the tipping fees for single stream recycling had increased to \$90.65 a ton, which represented a sum of \$75.65 per ton above what the tipping fees were at the time the Contract was bid, and \$80.00 per ton as the high rate, as of 2019.

WHEREAS pursuant to N.J.S.A. 40A:11-16.5 Renegotiation of Contract to reflect increase in solid waste disposal costs:

Any person entering into a contract with a contracting unit pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.), which contract requires the Contractor to provide for the disposal of solid waste, shall have the right to renegotiate the contract to reflect any increase in solid waste disposal costs whenever:

a. the increase occurred as a result of compliance with an order issued by the Department of Environmental Protection, in conjunction with the Board of Public Utilities, directing the solid waste be disposed at a solid waste facility other than the facility previously utilized by the person to whom the contract has been awarded; or

b. the increase in solid waste disposal costs occurred as a result of lawful increases in the rates, fees or charges imposed on the disposal of solid waste at the solid waste facility utilized by the person to whom the contract has been awarded.

Furthermore, under Section 40A:11-2. Definitions:

(11) "Recyclable material" means those materials which would otherwise become municipal solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(12) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(14) "Municipal solid waste" means, as appropriate to the circumstances, all residential, commercial and institutional solid waste generated within the boundaries of a municipality; or the formal collection of such solid wastes or recyclable material in any combination thereof when collected through a system of routes by local government unit employees or under a contract administered by a local government unit."

(21) "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.

WHEREAS the Borough of Red Bank is desirous of continuing with the Contractor as their recycling contractor, and is cognizant of the increase in the tipping fees and, as such, does agree as follows:

- (a) Owner has agreed to and will pay to Contractor 50% of the differential between \$15.00 a ton, which was the cost at the time the contract was bid, and whatever the actual tonnage charges were and are, for the contract year September 1, 2018 – August 31, 2019, as the same may fluctuate from time to time during the year, not to exceed a maximum of \$100 per ton.
- (b) For the contract year September 1, 2019 – August 31, 2020, Owner will pay 75% of the difference between \$15 a ton and a maximum of \$100 per ton, as same may fluctuate from time to time.

(c) Said payments shall be based on invoices submitted to Owner by Contractor, showing the tipping fee paid per ton, as of the date of each disposal.

IN WITNESS WHEREOF, the parties have set their hand and seal in the dates set forth next to their signatures, with the latest date being the date of this agreement.

WITNESS OR ATTEST:

BOROUGH OF RED BANK,

Owner

By:

Pasquale Menna – Mayor

DELISA DEMOLITION, INC.

Contractor

By:

Donald Laing

Thomas DeLisa

NAME: Thomas DeLisa

TITLE: President, on behalf of Contractor

