

RIGHT OF ENTRY AGREEMENT

This **RIGHT OF ENTRY AGREEMENT** (the “**Agreement**”) is made as of _____, 2015 (the “**Effective Date**”), by and between the **CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government (the “**City**”), having its principal offices located at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602, and _____, _____ (the “**Licensee**”), having its principal offices located at _____.

RECITALS

WHEREAS, the City owns and operates the real property known as _____, Chicago, Illinois 606____, formerly known as the Medill Material Recycling and Recovery Facility, (PINs ____-____-____ the “**Property**”); and

WHEREAS, the City, through the City’s Department of Streets and Sanitation and the Department of Fleet and Facility Management, has determined that certain recyclable sorting equipment located within the Property has no further municipal use and the City has decided to publicly auction such equipment and property; and

WHEREAS, the Licensee is the successful respondent for the disposition of the equipment and property listed in the inventory attached as **Exhibit A** pursuant to separate agreement between Licensee and City; and

WHEREAS, the Licensee has requested access to the Property solely for the purpose of dismantling and removing from the Property certain equipment and property (“**Components**”) listed in **Exhibit A** and located at the Property (the “**Activity**”), and the City has agreed to grant such access upon the terms and conditions set forth herein; and

WHEREAS, the location and scope of the Activity shall be limited to the locations upon and within the Property as they are described herein and no access or Activity shall be permitted on other portions of the Property without written City consent; and

WHEREAS, the City has agreed to grant such access upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

2. **Grant.** Subject to the terms and conditions set forth herein, the City hereby grants to Licensee a right of entry to the Property for the sole purpose of allowing Licensee to perform the Activity. The right of entry granted hereunder extends to, and Licensee shall be responsible for, its agents, employees, contractors, subcontractors, consultants, invitees, guests, vendors, patrons and any other parties who enter the Property at Licensee's direction or with Licensee's consent (collectively, "**Agents**"). Licensee shall be responsible for ensuring that all Agents comply with Licensee's obligations under this Agreement, and non-compliance by any Agent shall be deemed to be non-compliance by Licensee. This right of entry is subject to all easements, encroachments, covenants, restrictions of record and not shown of record, and any other title encumbrances or defects affecting the Property. Licensee acknowledges that the City has not performed any title or survey work in connection with the negotiation and execution of this Agreement and agrees that it is Licensee's sole responsibility and obligation to confirm that the Activity occurs solely within the portions of the Property permitted by this Agreement.

3. **Term.** The term of this Agreement (the "**Term**") shall begin on the Effective Date and shall terminate upon the earlier of: (a) one hundred seventy-nine (179) days after the Effective Date for a period not to exceed one hundred eighty (180) days; or (b) the completion of the Activity and restoration of the Property in accordance with Section 10 hereof, whichever is earlier. Prior to entering the Property, Licensee shall provide proof of insurance for itself and its Agents, as required by Section 8 of this Agreement, and copies of any necessary permits and approvals, if any, as required under Section 6 of this Agreement, Licensee agrees to notify the City at least two (2) days prior to commencing the Activity unless the City provides otherwise. Licensee further agrees to notify the City promptly upon early expiration of the Term under (b) above.

4. **Cost.** Licensee shall be responsible for all costs and expenses associated with the Activity without City reimbursement.

5. **Compliance with All Laws.** Licensee and its Agents shall comply at all times with any and all applicable municipal, county, state, federal or other statutes, laws (including common law), ordinances, codes, rules and regulations (collectively, "**Laws**"). Contract provisions that are required to be included in this Agreement by any such Laws shall be deemed included.

6. **Permits.** Prior to entering the Property, Licensee must secure, or cause its Agents to secure, at its sole cost and expense, all necessary permits and governmental approvals required to perform the Activity. Licensee understands that this Agreement shall not act as a substitute for any such permits or approvals that may be required. Licensee shall provide copies of all required permits and approvals to the City prior to entering the Property.

7. **Indemnification.** Licensee shall indemnify, defend (through an attorney reasonably acceptable to the City) and hold the City, its officers, officials, employees, agents and representatives (collectively, the "**City Parties**"), harmless from and against any and all actions, claims, suits, complaints, demands, legal or administrative proceedings, losses, damages, debts, liens, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs and expenses (including, without limitation, attorneys' fees, consultants' fees and court costs) (collectively, "**Claims**"), of whatsoever kind and nature, including without limitation, any and all environmental Claims, made or asserted by any third parties for injury, including personal injury or death of any person or persons, and for loss or damage to any property, occurring in connection with, or in any way arising out of or incident to (a) any and all acts, alleged acts or omissions of Licensee, its Agents or any other person entering the Property during the Term and (b) any entry upon or use of the Property or performance of the Activity by or on behalf of Licensee, its Agents or any other person entering the Property during the Term and (c) the failure of Licensee or its Agents to pay contractors, subcontractors

or material suppliers in connection with this Agreement. The indemnification provided herein will be effective to the maximum extent permitted by Law and is not limited by any amount of insurance required under this Agreement.

Licensee shall be solely responsible for the defense of any and all Claims against the City Parties, including without limitation, claims by any Agents of Licensee, even though the claimants may allege negligence or intentional and willful misconduct on the part of the City Parties. The City shall have the right, at its sole option, to participate in the defense of any such Claims, without relieving Licensee of its obligations hereunder.

Licensee shall promptly provide, or cause to be provided, to the City of Chicago, Department of Law, at 121 N. LaSalle St., Room 600, Chicago, IL 60602, copies of such notices as Licensee may receive of any Claims for which the City Parties are entitled to indemnification hereunder and to give the City Parties authority, information, and assistance for the defense of any such Claims.

This Section 7 shall survive the expiration or termination of this Agreement (regardless of the reason for such termination).

8. **Insurance.** Licensee shall procure and maintain, and cause its Agents to procure and maintain, at Licensee's sole expense (or the expense of its Agents as applicable), during the Term, the types and amounts of insurance set forth below with insurance companies authorized to do business in the State of Illinois, covering all work under this Agreement, whether performed by or on behalf of Licensee. The Licensee and its agents agree hereby to waive any subrogation.

(a) **Worker's Compensation and Employer's Liability Insurance.** Licensee and its contractors and subcontractors shall procure and maintain Worker's Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Agreement, and Employer's Liability Insurance with limits of not less than \$100,000 for each accident or illness.

(b) **Commercial General Liability Insurance (Primary and Umbrella).** Licensee and its contractors and subcontractors shall procure and maintain Commercial General Liability Insurance, or equivalent, with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and Property damage liability. Coverage shall include, at a minimum, all premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Activity.

(c) **Automobile Liability Insurance (Primary and Umbrella).** When any motor vehicles (owned, non-owned and hired) are used in connection with the Activity, Licensee and its contractors and subcontractors shall procure and maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and Property damage. The City of Chicago shall be named as an additional insured with respect to such coverage on a primary, non-contributory basis.

(d) **Professional Liability Insurance.** When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement,

such parties shall procure and maintain Professional Liability Insurance covering acts, errors, or omissions with limits of not less than \$1,000,000, with coverage including contractual liability. When a policy is renewed or replaced, the policy retroactive date must coincide with, or precede, the start of work under this Agreement. A claims-made policy that is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago shall be named as an additional insured with respect to such coverage on a primary, non-contributory basis.

(e) All Risk Property. Licensee and its contractors and subcontractors shall be responsible for all loss or damage to personal Property (including, without limitation, vehicles, materials, equipment, tools and supplies), owned, rented or used by Licensee or its contractors and subcontractors. Licensee shall be responsible for all loss or damage to City-owned Property, improvements or facilities at replacement cost.

Licensee shall deliver, or cause its contractors or subcontractors to deliver, to the City certificates of insurance required hereunder. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements set forth herein. The failure of the City to obtain certificates or other evidence of insurance from Licensee (or its contractors or subcontractors as applicable) shall not be deemed to be a waiver by the City of the insurance requirements set forth herein. Licensee shall advise all insurers of the insurance requirements set forth herein and the nature of its use of the Property. Non-conforming insurance shall not relieve Licensee of the obligation to provide insurance as specified herein. The City may terminate this Agreement for non-fulfillment of the insurance conditions, and retains the right to order Licensee to cease all activities on the Property until proper evidence of insurance is provided.

Licensee (or its contractors or subcontractors as applicable) shall be responsible for any and all deductibles or self-insured retentions. Licensee agrees that insurers shall waive their rights of subrogation against the City Parties. Licensee expressly understands and agrees that any coverages and limits furnished by it (or its contractors or subcontractors as applicable) shall in no way limit Licensee's liabilities and responsibilities specified in this Agreement or by law. Licensee expressly understands and agrees that its insurance (or that of its contractors or subcontractors as applicable) is primary and any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by Licensee (or its contractors or subcontractors as applicable) under this Agreement. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

Licensee shall require all contractors and subcontractors to maintain the above-described coverage, or Licensee may provide such coverage for its contractors and subcontractors. If Licensee or any contractor or subcontractor wants additional coverage, such party shall be responsible for the acquisition and cost of such additional protection. The City shall have no responsibility to provide insurance or security for the Property, or any vehicles, materials, equipment, tools, supplies or other personal property (collectively, "Personal Property") to be used by Licensee or any of its contractors, subcontractors or other Agents in connection with the Activity.

The City of Chicago, Department of Finance, Office of Risk Management, maintains the rights to modify, delete, alter or change these requirements at any time during the Term.

9. **Inspection and Work.** Licensee agrees to carefully inspect, or cause its Agents to carefully inspect the Property prior to commencing any activities on the Property to ensure that such activities will not damage the Property or any surrounding property, structures, utility lines or subsurface lines or cables. Licensee and its Agents shall take all reasonable safety precautions to ensure that the Activity will not pose a danger to the public or have a negative impact on the neighboring community, including, without limitation, adequately securing the Property throughout the Term. Licensee and its Agents shall perform the Activity in a good and workmanlike manner with due care and diligence, and in accordance with all applicable Laws. Licensee and its Agents shall keep the Property and any adjoining sidewalks and streets free of debris and materials and generally in a clean and safe condition throughout the Term. Licensee and its Agents shall limit their activities to those reasonably necessary to perform the Activity. The City reserves the right to inspect the Activity throughout the Term. Neither Licensee nor its Agents shall conduct any activity on the Property that may in any manner injure the health, safety and welfare of the public, diminish the value of the Property, interfere with City operations, or violate any Laws, including, without limitation, any Environmental Laws (as hereinafter defined).

10. **Obligation to Restore the Property.**

Upon completion of the Activity, Licensee shall promptly restore the Property to the condition or better existing as of the Effective Date, and shall remove all Personal Property, trash, wastes and debris placed on the Property by Licensee or its Agents. Licensee shall remove any bolts or protrusions from the concrete slab floor that remain after the removal of the equipment. If the Activity or the removal of bolts and protrusions causes damage to the concrete slab floor, Licensee shall patch, fill and repair the concrete slab floor in order to leave it in good condition. Licensee shall dispose of all trash, wastes and debris in accordance with all applicable Laws, including without limitation, all applicable Environmental Laws (as hereinafter defined). Any Personal Property, trash, wastes or debris left by Licensee on or about the Property shall be considered abandoned and may be disposed of in the City's sole discretion.

Licensee shall be responsible for any damage to the Property or any surrounding property, structures, utility lines or subsurface lines or cables caused by the acts or omissions of Licensee or its Agents, including but not limited to, vandalism or misuse of the Property, and Licensee shall undertake any repairs necessitated by such acts or omissions. Licensee agrees to pay for any removal, disposal, or repair costs the City may incur. The City shall be reimbursed for all sums it pays in connection with this Agreement. Such reimbursement shall occur within fifteen (15) days of such City payment, with interest accruing from the date of such City payment at the rate of 12% per annum.

11. **No Liens.** Licensee shall not cause or permit any lien or encumbrance, whether created by act of Licensee or its Agents, operation of law or otherwise, to attach to or be placed upon the City's title or interest in the Property. In case of any such lien attaching, Licensee shall immediately pay and remove such lien. If Licensee fails to pay and remove any lien, the City, at the City's election, may, but is not obligated to, pay and satisfy same, and all sums so paid by the City shall be reimbursed by Licensee within fifteen (15) days of such payment with interest from the date of payment at the rate of 12% per annum.

12. **No Representations or Warranties; Release of City Parties.** The City makes no warranties or representations, express or implied, of any kind, as to the structural, physical or environmental condition of the Property or the suitability of the Property for any purpose whatsoever. Licensee, on behalf of itself and its Agents, agrees to enter upon the Property in the Property's "as is," "where is" and "with all faults" condition and at the Licensee's own risk. Licensee, on behalf of itself and its Agents, acknowledges that it is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or any of the City Parties with respect thereto. Licensee, on behalf of itself and its Agents, hereby releases, relinquishes and forever discharges the City and all

City Parties from and against any and all Claims that Licensee or any of its Agents now have or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, based upon, arising out of or in any way connected with, directly or indirectly, (a) the structural, physical or environmental condition of the Property, including, without limitation, the presence or suspected presence of Hazardous Substances (as hereafter defined) in, on, under or about the Property, (b) the condition of title to the Property, including, without limitation, any easements, encroachments, covenants, restrictions of record and not shown of record, and any other title defects; and (c) any entry upon or use of the Property by or on behalf of Licensee or its Agents.

13. **Right to Terminate.** Notwithstanding anything to the contrary contained herein, either party may terminate this Agreement for any reason upon prior written notice of at least five (5) days to the other party. In addition, in the event of any breach of this Agreement by Licensee the City shall have the right to order Licensee to immediately cease all activities on the Property and to immediately vacate the Property until such breach is cured or the City may immediately terminate this Agreement and pursue any and all remedies available at law or in equity. The City also reserves the right to terminate this Agreement at any time if Licensee's use of the Property interferes with the City's use of the Property or with any other municipal purpose or interest, as determined by the City in its sole discretion.

14. **Amendment.** This Agreement may not be amended, extended or modified without the written consent of the parties hereto.

15. **Captions.** The section headings in this Agreement are inserted for convenience of reference only and shall not in any way affect the meaning or construction of the Agreement.

16. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties and supersedes any prior oral or written agreements with respect to the matters stated herein.

17. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument. A facsimile, electronic, or photocopy signature shall have the same legal effect as an original signature.

18. **No Other Rights.** This Agreement does not give Licensee any other right with respect to the Property, including, but not limited to, closure of streets, sidewalks or other public thoroughfares. Any rights not specifically granted to Licensee by and through this Agreement are reserved exclusively to the City.

19. **No Further City Obligations.** The execution of this Agreement does not obligate the City to provide Licensee or Licensee's Agents with any other assistance. Without limiting the generality of the foregoing, the City shall not provide any security, maintenance, or custodial services to the Property.

20. **Security; Full Liability.** Licensee assumes all legal and financial responsibility and liability for any and all uses of the Property by Licensee and its Agents entering the Property during the Term or upon the expiration of the Term where Licensee continues to access the Property. Licensee shall be responsible for properly securing and safeguarding all Licensee's Personal Property during the Term, and shall be liable for failing to so secure and safeguard such Personal Property. Licensee acknowledges

that the City has no security responsibilities with respect to Licensee's Personal Property under this Agreement. This Section 20 shall survive the expiration or earlier termination of this Agreement.

21. **No Principal/Agent or Partnership Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

22. **No Alcohol or Drugs.** Licensee agrees that no alcoholic beverages or illegal drugs of any kind or nature shall be sold, given away, or consumed on the Property by Licensee or its Agents.

23. **Coordination and Oversight.** Licensee acknowledges that the City shall at all times require coordination for access to the Property through the City's Department of Fleet and Facility Management. Licensee acknowledges that any assistance or oversight provided by the City with respect to the Activity shall be provided at the City's sole and exclusive discretion and convenience.

24. **City Use Paramount.** Licensee shall refrain from undertaking any activities that interfere with the City's use of the Property as determined by the City in its sole discretion. The City reserves the right to terminate Licensee's use of the Property at any time in the event such use interferes with the City's use of the Property or with any other municipal purpose or interest in the City's sole discretion.

25. **Time is of the Essence.** Time is of the essence for all obligations and deadlines contained in this Agreement.

26. **Assignment.** This Agreement may not be assigned by Licensee.

27. **Exhibits.** All exhibits referred to herein and attached hereto shall be deemed part of the Agreement.

28. **Non-Discrimination.** Licensee shall not discriminate against any person in connection with its use of the Property based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code.

29. **Severability.** If any provision of this Agreement is deemed to be unenforceable by any court of competent jurisdiction, it shall not affect the enforceability of any other provision.

30. **Governing Law; Consent to Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois without reference to its conflicts of laws principles. Licensee waives any objection to the venue of any action filed in any court situated in the jurisdiction in which the Property is located.

31. **Licensee's Authority.** Licensee represents, warrants and covenants that it is duly organized, validly existing and qualified to do business in Illinois; that it has the right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder; that the person signing this Agreement on behalf of Licensee has the authority to do so; and that this Agreement shall be binding upon and enforceable against Licensee in accordance with its terms.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF CHICAGO,

an Illinois municipal corporation and home rule unit of government

By: _____

Commissioner
Department of Fleet and Facility Management

By: _____

Commissioner
Department of Streets and Sanitation

(Licensee Name) _____

a _____

By: _____

Print Name: _____

Title: _____

Approved as to form and legality:

Deputy Corporation Counsel
Department of Law

EXHIBIT A

INVENTORY OF EQUIPMENT TO BE REMOVED FROM PROPERTY