

Master Services Agreement

THIS AGREEMENT is entered into on October 15, 2010, and effective upon Bankruptcy Court approval (the "Effective Date"), by and between Energy Renewal Partners, LLC, whose address is 2705 Bee Caves Road, Suite 340, Austin, Texas 78746 (hereinafter referred to as "Contractor") and Mike Boudloche, acting solely in his capacity as Chapter 7 Trustee for Encycle/Texas, Inc., Debtor, Case No. 05-21304, whose address is 555 North Carancahua, Suite 600, Corpus, Christi, TX 78478 (hereinafter referred to as "Trustee").

WHEREAS Contractor is authorized to do business in the State of Texas and possesses the expertise and skill to perform the Services (defined herein) required by this Agreement, and is willing and able to provide such Services to Trustee; and

WHEREAS Trustee desires to have Contractor perform the services and provide all of the materials, equipment and personnel necessary to complete the work as specifically set forth on Exhibit "A" (attached hereto and incorporated herein) on the Encycle premises, comprising 63.94 acres, plus or minus, commonly known as 5500 Up River Road, Corpus Christi, TX 78407 (the "Encycle Tract"); and on the Meany Tract comprises 16.8 acres located adjacent to the Encycle Tract on Up River Road, Corpus Christi, TX 78407 (the "Meany Tract"). The Encycle Tract and the Meany Tract are sometimes collectively called the "Site".

NOW, THEREFORE, in consideration of the covenants, promises, and considerations set forth herein, effective upon Bankruptcy Court approval of this Agreement, the parties agree as follows:

1. SERVICES

The Services (as well as the furnishing of all of the materials, equipment and personnel required in connection therewith) to be performed by Contractor, its employees, subcontractors, and agents are set forth on Exhibit "A" attached hereto and incorporated herein for all purposes, hereafter called the "Services". Any modification of the Services shall be pursuant to written agreement entered into by the parties pursuant to Section 3, which shall become part of Exhibit "A" upon mutual acceptance. Contractor shall furnish all supervision and labor; materials, tools, equipment, unloading, insurance, all security necessary to secure Contractor's laborers, material, tools, and equipment, and other items necessary to fully perform and complete the Services. Contractor shall faithfully perform the Services required under this Agreement in accordance with prudent care consistent with industry practices, skill, training, diligence and judgment provided by competent contractors and professionals who perform work of a similar nature to the work described in this Agreement. Contractor warrants that all work hereunder by Contractor, its employees, agents and subcontractors shall be performed by persons who are experienced in the work and skilled in their professions, business, trade or crafts, in accordance with the best standards of workmanship and consistent with the degree of skill, care, and diligence as would be exercised by others performing the same or similar services under the same or similar circumstances.

2. COMPLIANCE WITH LAWS AND POLICIES

Contractor, on behalf of its employees, subcontractors, and agents shall provide Services in a professional and workmanlike manner and shall in all ways comply with all applicable federal, state, and local laws, rules, regulations, and ordinances that are now or may in the future become applicable

to the Services during the term of this Agreement. Contractor guarantees any supplies, equipment, materials or goods furnished as part of or in conjunction with the Services against any and all defects or deficiencies and Contractor shall promptly remedy all such defects, and/or replace the same. Contractor shall cause to assign to Trustee all guarantees and warranties from all vendors, subcontractors and suppliers of goods or services who provide machinery, equipment, materials or services for the Services.

3. CHANGES

The parties, without invalidating this Agreement, may mutually agree to changes in the nature, scope and/or extent of the Services which may result in an addition to, or a deduction from, the compensation to be paid to Contractor depending on the changes mutually agreed to. All changes shall be evidenced by a Modification Order, signed by the parties, referencing this original Agreement. If adjustments to compensation are required, they shall be described in the Modification Order. This Agreement shall continue in full force and effect except as expressly amended by the Modification Order.

4. COMPENSATION

a. Unless otherwise agreed to in a writing signed by the parties, Contractor shall provide or procure, at its sole risk and expense, the Services. Contractor's total compensation for performance of the Services shall be the Three million, six hundred forty-two thousand, two hundred and eighty-six dollars (\$3,642,286.00), and shall be paid to Contractor in accordance with the performance milestones set forth in Exhibit "B", attached hereto and made a part hereof.

b. Accompanying each of its invoices for Services, Contractor shall provide Trustee with (i) a sworn to, itemized list or description of those Exhibit "B" milestones performed; (ii) appropriate lien waivers for all Services previously performed by any subcontractor, and (iv) a request for disbursement from the Trustee equal to the amount corresponding to the milestone achieved as set forth in Exhibit "B" (the "request for disbursement"). Within forty-five (45) days after receipt of the invoice, and request for disbursement, Trustee shall sign its approval of the full amount of the disbursement request, or modify the disbursement request approving any undisputed amount requested, and include a written description of its basis for any disapproved portion, and direct payment of Contractor's invoices (or undisputed portion thereof) to Contractor. Trustee shall notify Contractor of the objection and the grounds, and the parties immediately shall make every effort to settle the disputed portion of the invoice. If the request for disbursement is not disputed, the payment shall be sent to Contractor within 14 days.

c. Trustee, in any event, shall pay every portion of the invoice that is not in dispute within the period for payment. However, Trustee may withhold from any payment any amounts in dispute because of, but not limited to the following: (i) defective work not remedied; (ii) third-party claims filed or reasonable evidence indicating probable filing of such claims; (iii) failure of the Contractor to make payment properly to subcontractor(s) or for labor, materials or equipment; (iv) damage to another contractor or other entity; (v) unsatisfactory prosecution of the Services by the Contractor; or (vi) amounts owed by Contractor to the Trustee under the Contract.

d. All of the Services required to be performed by Contractor under this Agreement shall be performed in a good and workmanlike manner and be completed on or before thirty (30) months following Bankruptcy Court approval of this Agreement (the "Completion Date"); subject to any delay

days as authorized in paragraph 10 of this Agreement. Failure of Contractor to complete by the Completion Date all of the Services required to be performed by the Contractor under this Agreement shall cause damage to the Trustee. The parties agree that reasonable liquidated damages for such failure to timely complete shall be \$500.00 for each day past the Completion Date Contractor fails to complete performance.

5. OWNERSHIP OF INFORMATION

All documents, files, and other materials developed or copied by Trustee and provided to Contractor under this Service Agreement, except for those required by a governmental entity, shall be the property of Trustee. All documents, files, and other materials developed or copied by Contractor and provided to Trustee under this Service Agreement, except for those required by a governmental entity, shall be the property of Contractor. All such documents, files, and other materials shall be returned to the recipient to the distributing party upon written request at any time and, in any event, upon completion of the Services or upon termination of this Agreement, whichever occurs first, except that, subject to the provisions of section 17, a party may retain one (1) copy of those documents it deems necessary to preserve its legal or insurance rights. Nothing in this section shall be construed to impair in any way a party's ownership of documents, files, and other materials.

6. CONTRACTOR'S WARRANTIES

Contractor warrants and represents to Trustee on behalf of itself, its employees, subcontractors, and agents the following:

a. Contractor is engaged in the business of providing those Services set forth in Exhibit "A", and possesses the requisite expertise, knowledge, skill, and ability to perform and complete those Services in a competent, professional, and workmanlike manner.

b. Contractor, in performing the Services, shall comply with the terms and provisions of Exhibit "A" and all applicable federal, state, county, municipal, and other local laws, regulations, ordinances, and rules. Contractor shall obtain, arrange and secure at its own expense, all required permits, licenses, easements, approvals, and documentation in order to provide and complete the Services in compliance with all federal, state, and local laws, regulations, ordinances, and rules. If Contractor determines that its employees, agents, or subcontractors have violated or are violating the law, Contractor shall notify the Trustee immediately, followed by notice in writing within three (3) days of such determination.

c. Contractor shall monitor the performance of its employees, agents, and subcontractors to determine compliance with all terms, conditions and contractual specifications as set forth in Exhibit "A". In the event Contractor determines that its employees, agents, or subcontractors have not complied or are not complying with the terms, conditions, or contractual specifications of Exhibit "A", then Contractor shall stop the work immediately and confirm with written notice to the Trustee, and immediately instruct its employees, agents, and subcontractors, as appropriate, to take corrective action to comply with the terms, conditions, and contractual specifications of Exhibit "A".

d. Contractor shall correct at no additional charge to Trustee any defects in the Services which are not performed in accordance with subsections a., b., and c. of this section. In addition,

Contractor shall reimburse Trustee for any damages arising out of or resulting from Contractor's failure to comply with subsections a., b., and c. of this section.

7. TRUSTEE'S WARRANTIES

Trustee warrants and represents to Contractor on behalf of itself, its employees, subcontractors and agents the following:

a. The information it supplies to Contractor upon which the Services may be based is complete, true and correct to Trustee's knowledge. Trustee shall furnish such information in its possession as Contractor may request and shall immediately transmit to Contractor any new information and any changes in plans resulting from such information.

b. Trustee shall furnish or secure the information, services or other items required to be furnished or secured by it pursuant to this Agreement promptly, and shall manage its employees, agents and other subcontractors so as not to interfere with the expeditious and orderly performance of the Services.

8. INDEMNIFICATION BY CONTRACTOR

To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and defend Trustee, his, employees, attorneys and agents, from any civil penalties, losses, claims, and causes of action of any type (including costs of defense, settlement, and reasonable legal fees) which result from or arise out of the negligence, willful misconduct, or breach of this Agreement or any of its provisions, by Contractor, its employees, subcontractors, or agents. In no event shall the Contractor be liable for any of Trustees's lost profits arising out of or in connection with its performance under this Agreement.

9. NO INDEMNIFICATION BY TRUSTEE

Trustee shall not indemnify, hold harmless, or defend Contractor, its subsidiaries, affiliates, present and future officers or directors, employees, subcontractors and agents in any manner whatsoever.

10. FORCE MAJEURE

Delays or failure of Contractor in the performance of its required obligations under this Agreement shall be excused for events beyond the reasonable control of the parties; provided that prompt notice of such event and of the anticipated delay is given and Contractor is diligent in attempting to remove or cure such cause(s) and to mitigate the delay. Notwithstanding the foregoing, the parties shall comply with any notice requirements contained in this Service Agreement with respect to *force majeure*.

11. INSURANCE AND PERFORMANCE BOND

a. Contractor, its employees, subcontractors, and agents shall not enter upon or begin Services at the project site until Contractor has obtained all required insurance, as set forth below, including insurance coverage for subcontractors or agents hired by Contractor, and has provided Trustee with all Certificates of Insurance.

b. Contractor shall take out and maintain for the period during which it provides Services, at its own expense, the following minimum insurance coverage:

<u>Coverage</u>	<u>Limits</u>
Workers' Compensation	Statutory
Employer's Liability	\$2 million each occurrence
Comprehensive General Liability (BI & PD) and completed operations	\$2 million each occurrence
Comprehensive Automobile Liability (BI & PD)	\$1,000,000 each occurrence
Contractor's Environmental Liability	\$2 million
Umbrella	\$5 million

Public liability insurance shall include coverage for all of Contractor's contractual liability under this Agreement with limits of not less than those set forth above. Trustee shall be named as an additional named insured in all policies except Workers' Compensation policies, as its interest may appear.

c. Certificates of Insurance acceptable to Trustee shall be attached hereto as Exhibit C prior to the commencement of the Services at the Site, and these shall be renewed and delivered to Trustee annually. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or modified until at least thirty (30) days' prior written notice has been given to Trustee. Compliance by the Contractor with the insurance requirements set forth in this section shall not relieve the Contractor from liability under the indemnification provisions of section 8, above. Contractor shall indemnify Trustee for any loss suffered by it for Contractor's failure to obtain or maintain, or to require any subcontractor or agent to obtain or maintain, the insurance required by this section.

d. Ten (10) days prior to commencing any Services, Contractor shall provide a performance bond in the same amount set forth in paragraph 4 a hereof as Contractors compensation and be in favor of Trustee. This performance bond must be issued by a Surety approved to do business in the State of Texas and listed on the US Department of Treasury's List of Approved Sureties. The Surety must also have an AM Best & Co rating of "A" or better.

12. ASSIGNMENT AND SUBCONTRACTORS

This Agreement shall be binding upon the parties and their respective successors and assigns. No party shall assign, subcontract, or transfer this Agreement or any part of this Agreement or any monies due hereunder without the prior written consent of the other party, approval of which will not be unreasonably withheld, conditioned or delayed. Contractor is responsible for negotiating its contracts with subcontractors and shall, to the extent applicable to the Services to be done by each subcontractor,

bind each by the terms of this Agreement, including the warranty and indemnity obligations set forth in sections 6, 7, 8, and 9. Contractor shall not make nor commit to make any advance or prepayment to any subcontractor without, in each instance, first obtaining Trustee's specific prior written consent. Contractor shall promptly pay all bills incurred by Contractor or subcontractors in performance of the Services hereunder, including, without limitation, bills for labor, services, equipment, and materials. Contractor shall not permit any lien or charge to be fixed, filed, or otherwise assessed against Trustee or the Site. Any losses due to defalcations by subcontractors in connection with any advance or prepayment made in breach of the foregoing provision shall be incurred at Contractor's sole expense.

13. BREACH OF CONTRACT

In the event the Trustee fails to pay undisputed portions of invoices when due or if the Trustee or Contractor breaches this Agreement, and either party is required to engage legal counsel for purposes of enforcing the terms of the Agreement or collecting outstanding invoices, then the prevailing party in any dispute shall be entitled to recover from the breaching party its reasonable legal fees, expenses, and court costs.

14. INDEPENDENT CONTRACTOR

Contractor is and shall be an independent Contractor in the performance of the Services set forth in this Agreement. Trustee can not and shall not exercise control over Contractor, its employees, subcontractors, or agents. Nothing in the Agreement shall be construed to designate Contractor, its subcontractors, agents, or assigns as the employees, subcontractors, partners, or agents of Trustee. Contractor, its employees, agents and Subcontractors are required to and shall perform all Services in a safe and reasonable manner.

15. AUDITS

Trustee or its duly authorized representative(s) shall have access, at all reasonable times, to all (i) permit applications and permits obtained by Contractor for Services; and (ii) all books and records (financial and otherwise) related to or pertaining to the Services performed by Contractor and/or any Subcontractor or agent hereunder. Contractor shall also provide to Trustee, upon written request, such additional information as shall reasonably be necessary to verify Contractor's ability to perform the Services required under this Agreement. Contractor agrees to include the necessary provisions in its contracts with all subcontractors or agents that will assure access by employees or representatives of Trustee to all such similar records of said subcontractors or agents. Contractor shall preserve and shall cause its subcontractors and agents to preserve all the above referenced documents and Exhibits for a period of three (3) years from the date of completion of Services.

NOTICES AND COMMUNICATIONS

All notices or communications sent to either party to this Agreement shall be in writing, sent by certified mail to the designated representative appointed by each party to receive the type of communication identified, whose name, telephone number, and address are set forth below:

a. For day-to-day communications regarding the status of the project, including any required reporting:

If to Contractor: Trisha Elizondo, COO and project manager
2705 Bee Caves Rd., Ste. 340
Austin, TX 78746
512.314.8614 or 303.434.2686
512.314.8699 (fax)
Email: _____

If to Trustee: Armando G. Avalos
555 N. Carancahua, Ste. 1540
Corpus Christi, TX 78401
361.857.2220
361.883.9949 fax
agavalos@armandoavalosrealty.com

and,

Ken Brandner, P.E., P.G.
711 N. Carancahua, Suite 1700
Corpus Christi, TX 78401
Tel 361.883.1353
Fax 361.883.7565
kenneth.brandner@arcadis-us.com

b. For communications regarding project scope and other contract terms:

If to Contractor: Trisha Elizondo, COO and project manager
2705 Bee Caves Rd., Ste. 340
Austin, TX 78746
512.314.8614 or 303.434.2686
512.314.8699 (fax)
Email: _____

If to Trustee: Mike Boudloche, Trustee
555 N. Carancahua, Ste. 1540
Corpus Christi, TX 78401
361.693.9402
361.883.4381 (fax)
mboudloche@ch13boudloche.com

c. For all legal notices:

d.

If to Contractor: Trisha Elizondo, COO and project manager
2705 Bee Caves Rd., Ste. 340
Austin, TX 78746
512.314.8614 or 303.434.2686
512.314.8699 (fax)

Email: _____

If to Trustee: Michael B. Schmidt
555 N. Carancahua, Ste. 1550
Corpus Christi, TX 78478
361.884.9949
361.884.6000 fax
m_schmid@swbell.net

16. SURVIVAL

Notwithstanding any provision in this Agreement or its Exhibits to the contrary, all warranty, indemnity, and confidentiality provisions of this Agreement and its Exhibits shall survive the termination or expiration of this Agreement.

17. AMENDMENT AND WAIVER

This Agreement may be amended only by a writing signed by the parties to the Agreement prior to the effective date of such amendment. No provision of this Agreement can be waived except by a written instrument signed by the party waiving such provision, nor shall failure to object to any breach of a provision of this Agreement waive the right to object to a subsequent breach of the same or any other provision.

18. TERM AND TERMINATION

This Agreement shall commence on the Effective Date and shall continue through the completion of Services as set forth on Exhibit "A". Notwithstanding the foregoing, this Agreement may be terminated for cause if (a) either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within five (5) days of written notice and diligently complete the corrections thereafter, or (b) if Contractor does not receive payment pursuant to Section 4. In the event this Agreement is terminated for cause by Trustee, Contractor shall evacuate the property after having secured the site in accordance with applicable law and TCEQ requirements to protect the health and safety of people and environment. Any obligations of confidentiality under this Agreement shall survive termination of this Agreement and termination of any other agreement, whether in effect prior to or after this Agreement, between Contractor and Trustee. This Agreement shall not merge with or be terminated or superseded by any future agreement between Contractor and Trustee which does not specifically so provide.

19. SEVERABILITY

This Agreement sets forth the entire understanding and agreement of the parties, and shall not be modified except by mutual agreement of the parties in writing. In the event that any of the provisions, or portions thereof, or interpretations by the parties or by either party of any provisions, or portions thereof, of the Agreement are held to be unenforceable or invalid by the Bankruptcy Court (see paragraph 21 below), Trustee and Contractor shall negotiate an equitable adjustment in the provisions of the Agreement with a view toward effecting the purpose of the Agreement.

20. HEADINGS

The headings of this Agreement are for convenience of reference only and shall not limit or be used as an aid in construing any provisions of this Agreement.

21. CHOICE OF LAW

The validity and interpretation of this Agreement shall be governed by the laws of the State of Texas and applicable Bankruptcy law. The parties agree that jurisdiction and venue over any disputes under this Agreement shall rest exclusively with the U.S. Bankruptcy Court, Southern District of Texas, Corpus Christi Division. The Parties waive the right to a jury trial.

22. MISCELLANEOUS

This Agreement supersedes any and all agreements, either written or oral, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledge that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied here, and that no other agreement shall be valid or binding. This Agreement and any modifications may be executed in any number of counterparts each of which shall be considered an original.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the day and year first set forth above, but it is effective only upon Bankruptcy Court approval.

TRUSTEE:

CONTRACTOR:

Energy Renewal Partners, LLC

Mike Boudloche, Chapter 7 Bankruptcy
Trustee for Encycle/Texas, Inc.

By _____
Trisha Elizondo, Chief Operating Officer

Exhibit "B"
(Milestones and Payments)

1.1 Overview

This Service Agreement consist of a firm fixed price paid in exchange for performance consistent with scope of work set forth on Exhibit "A" and in accordance with the milestones schedule set forth below. **Ten percent (10%) of all payments due to Contractor scheduled below shall be retained by the Trustee and shall not be paid to Contractor, unless and until the Trustee receives a release from all subcontractors of any liens provided under applicable law for mechanic and materialmen.**

1.2 Schedule of Milestone Payments

<u>Milestone Performed</u>	<u>Payment Amount</u>
Completion and submittal of required permitting and Pre-demolition activities (including demolition notification To TDSHS, Abatement Plan, HASP, SWPPP and NOI, Traffic Control Plan and QC Plan):	\$ 75,000.00
Completion of exterior asbestos abatement on the smoke stack:	\$225,000.00
Completion of waste removal and demolition of the smokestack:	\$650,000.00
Completion of asbestos abatement of the buildings and structures From the Power House building to the east fence line:	\$400,000.00
Completion of asbestos abatement of the buildings and Structure from the West Cell House to the west fence line (Excluding the smoke stack):	\$600,000.00
Completion of decontamination of the registered waste Management units in the buildings and structures:	\$250,000.00
Completion of hazardous waste removal in the buildings And structures (excluding the smokestack):	\$650,000.00
Demolition of the buildings and structures from the Power House building to the east fence line:	\$200,000.00
Demolition of the buildings and structure from the West Cell House to the west fence line:	\$200,000.00
Demolition and satisfactory complete of all work:	\$ 28,057.00
Final payment of 10% retainer upon receipt of all releases.	<u>\$364,229.00</u>
	\$3,642,286.00

CERTIFICATES OF INSURANCE