



CITY OF ANN ARBOR, MICHIGAN

Public Services Area
301 East Huron Street, P.O. Box 8647
Ann Arbor, Michigan 48107-8647
Phone: (734) 794-6310 Fax: (734) 994-1816
www.a2gov.org

June 10, 2016

Mike Brennan
Secretary and General Counsel
ReCommunity Holdings II, Inc.
809 West Hill Street
Charlotte, NC 28208

Sent via email and U.S. Mail

Notice of Default and of Opportunity to Cure; Safety Deficiencies

Dear Mr. Brennan:

This letter is sent to you in reference to the contract between the City of Ann Arbor (“City”) and ReCommunity Holdings II, Inc. (“ReCommunity”) for Operating and Management of the City of Ann Arbor Material Recovery Facility/Transfer Station (“MRF” and/or “TS”). As set out in more detail below, this letter is the City’s notice to ReCommunity of serious safety breaches that the City has found to occur repeatedly. Because ReCommunity seems not to be able to prevent or correct these safety issues effectively, the City is taking steps to make sure ReCommunity maintains and operates the MRF and TS so that they are safe.

As set out in prior emails, in conversations with ReCommunity personnel, and in the reports prepared and provided to ReCommunity after the City’s monthly (and now more frequent) inspections of the MRF, ReCommunity has repeatedly been given notice of and required to correct numerous, serious safety violations and/or deficiencies (violations and deficiencies may be referred to herein collectively or alternatively as “deficiencies”) at the MRF, as well as at the TS. Other safety deficiencies have been noted in fire inspection reports. These safety deficiencies have persisted and/or recurred on a regular basis despite the repeated notices and opportunities to correct them. A recent report described the findings of the May 31, 2016, inspection. Just after that report, ReCommunity experienced another fire at the MRF. The City believes the fire could have been prevented through proper maintenance of equipment, and proper attention to and awareness of operations, and that the failures to do so resulted in the fire and created a serious threat to safety.

Correction of and prevention of recurrences of the safety issues that have been identified are required both as a matter of law and to honor ReCommunity’s contractual obligations. Section 2.02 of the contract provides:

Contractor agrees that it will (a) take all steps necessary to prevent damage, injury or loss by reason of or related to the operation and maintenance of the MRF/TS, to all persons

and to any property on or adjacent to the MRF/TS Site or adjacent thereto, including but not necessarily limited to trees, shrubs, lawns, walks, pavements, roadways, equipment, structures, and utilities; (b) establish and maintain safety procedures for protection of Contractor employees and all other persons at the facility in compliance with all applicable laws, custom industry standards, and OSHA requirements; (c) enforce necessary safeguards at the facility for the safety and protection of any other person present at the MRF/TS; (d) comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority relating to the safety of persons or property at the MRF/TS or their protection at the MRF/TS from damage, injury, loss; and (e) designate a qualified and responsible member of our organization stationed at the facility who shall be responsible for the facility safety and shall work with Federal, State, local, and municipal officials involved with matters of safety.

The safety inspections done on June 4, 6 and 7, 2016, again found serious safety concerns. All three reports have been provided to Ron Griswold. In addition, the water-misting system is still not operational. Although all safety deficiencies are of concern, the most serious are those in the following categories, each of which poses a risk of immediate danger to life and health (IDLH) should be grounds for ReCommunity to shut down its operations until they are corrected:

1. Fire Egress Violations
2. Electrical System Deficiencies
3. Machine Guarding Deficiencies
4. Confined Space Violations
5. Lockout/Tagout Violations
6. Fall Protection Violations

If any of the foregoing is identified by personnel in the City's Safety Unit, or by any other representative or agent of the City, and ReCommunity does not shut down its operations while the violation or deficiency is being corrected, the City's representative has authority to and will require operations at the MRF to be shut down.

Every inspection that has identified safety deficiencies has required ReCommunity to make corrections. Although ReCommunity sometimes has corrected the deficiencies in a particular report, corrections have not always been prompt. After correction, appropriate preventive measures apparently have not been put in place; the corrections made after a safety inspection report do not last and the same deficiencies are found again and again.

Each failure of ReCommunity's obligations under Section 2.02 has constituted and constitutes a substantial breach of the contract by ReCommunity. Based on the numerous and repeated safety deficiencies found by the City, and ReCommunity's breach of its obligations under Section 2.02, the City could conclude that ReCommunity is unwilling or unable to make the necessary corrections to how it operates the MRF/TS to prevent and avoid safety violations and deficiencies, and could invoke its right under Subsection 12.02(c) of the contract to terminate the contract without having to give ReCommunity any further opportunity to cure the safety

deficiencies outlined in the May 31, June 4, 6, and 7, 2016, reports and in the report of the fire inspection done on June 6, 2016.

Notwithstanding the foregoing, the City is willing to give ReCommunity an opportunity to correct the identified safety deficiencies, to implement an appropriate mode of operation to prevent recurring safety problems, including implementation of proper procedures to prevent injuries, and to continue operations. ReCommunity must, on a sustained basis, maintain the MRF and TS premises in safe conditions and operate both facilities in a safe manner.

The City will implement procedures to help ReCommunity honor its safety obligations.

Therefore, ReCommunity shall continue to operate and manage the MRF/TS per its contract with the City, provided ReCommunity shall:

- (1) Address promptly and to the City's satisfaction, all the safety deficiencies noted in the May 31, June 4, 6, and 7, 2016, reports;
- (2) Address promptly and to the City's satisfaction all safety deficiencies noted in subsequent reports;
- (3) Address to the City's satisfaction, all the fire safety deficiencies noted in the report for the June 6, 2016, fire inspection;
- (4) Address promptly and to the City's satisfaction all fire safety deficiencies noted in subsequent fire inspection reports; and
- (5) Continue to operate the MRF and TS, including maintenance the equipment, in a manner that is safe and prevents safety violations and deficiencies such as those that have been identified repeatedly in past monthly reports. To that end, ReCommunity must shut down operations if any IDLH deficiency occurs or is observed, and remain shut down until the deficiency is corrected. If ReCommunity does not shut down operations, the City or its agent has the right to shut down operations for IDLH deficiencies that occur and/or that they observe.
- (6) In anticipation of possible shut downs of operations under (5), and to prevent MDEQ permit violations by allowing materials to accumulate outside the MRF structure and/or fire and/or operational safety issues by allowing materials that exceed the structure's capacity from accumulating inside the structure, ReCommunity must provide the City on or before June 17, 2016, a written plan that:
 - a. Identifies the maximum period of time for which operations of the MRF can stop without disrupting the safe flow and storage of materials;
 - b. What ReCommunity will do to handle flow, including but not limited to possible non-acceptance of materials (including different categories of materials if appropriate), diversion of materials to other material recycling facilities, diversion of materials to landfills, and/or other procedures ReCommunity would implement.

With respect to requirement (5), starting the week of June 13, 2016, the City is retaining a firm that will have a safety inspector on site at all times that the MRF and/or TS is in operation. This individual will communicate to ReCommunity all safety issues, both physical and operational,

Mike Brennan
ReCommunity Holdings II, Inc.
June 10, 2016
Page 4

that they observe, and will report to the City both what they have observed and ReCommunity's response when safety issues have been brought to ReCommunity's attention. The City trusts ReCommunity staff at the MRF/TS will take advantage of having an additional set of eyes and ears on site so that it will maintain and operate the MRF/TS safely. In addition, as stated above, representatives and agents of the City, including both City personnel and contracted agents, will have authority to require operations at the MRF to stop if there is an observed IDLH issue. Compliance with requirement (5) should eliminate, or at worst minimize, the need to make corrections as required by (2) and (4).

Under Section 13.02(b) of the contract, the City will bill ReCommunity the cost of the contracted safety inspectors.

If ReCommunity meets the requirements in (1) through (6) to the City's satisfaction, including abatement of safety deficiencies that are found during safety inspections, and abatement of fire safety deficiencies found during fire inspections, the City will consider whether it needs to continue to have a safety inspector on site.

If ReCommunity does not meet one or more of the requirements in (1) through (6) to the City's satisfaction and/or if safety problems remain uncorrected and/or continue to reoccur, the City reserves its right under Subsection 12.02(c) of the contract to terminate the contract without having to give ReCommunity any further opportunity to cure either ongoing or recurring safety violations and/or deficiencies.

Sincerely,



Craig A. Hupy,
Public Services Area Administrator

cc: Tom Crawford, Interim City Administrator
Steven Schantz, Safety Manager
Christina Gomes, Solid Waste and Recycling Program Coordinator
Cresson Slotten, Systems Planning Unit Manager
Abigail Elias, Chief Assistant City Attorney
Berkeley Insurance Company