

County of Santa Cruz 0177

DEPARTMENT OF PUBLIC WORKS

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JOHN J. PRESLEIGH
DIRECTOR OF PUBLIC WORKS

AGENDA: OCTOBER 1, 2013

September 19, 2013

SANTA CRUZ COUNTY BOARD OF SUPERVISORS
701 Ocean Street
Santa Cruz, California 95060

SUBJECT: NON-EXCLUSIVE FRANCHISE AGREEMENT FOR ROLL-OFF BOX WASTE COLLECTION AND HAULING SERVICES

Members of the Board:

On February 26, 2013, your Board accepted a report on the subject services and directed Public Works to move forward with the franchising of commercial waste haulers. On June 11, 2013, your Board approved a draft Non-Exclusive Roll-Off (NERO) Franchise Agreement, directed Public Works to continue working with waste haulers and others to further develop the agreement, and also directed Public Works to return to your Board with a final proposal no later than September 24, 2013. On that date your Board deferred this item until October 1, 2013.

The County's existing franchise agreement authorizes GreenWaste Recovery the exclusive right to collect and haul waste in containers of less than 10 cubic yards. This new proposed agreement would govern waste hauling only in containers of 10 cubic yards or more, including roll-off or drop boxes, trailers, compactors, or other containers.

Public Works has met twice with local waste haulers to discuss the proposed agreement to franchise roll-off waste hauling, and has made adjustments to both the NERO franchise agreement and the administrative process to simplify the requirements for waste haulers while also fulfilling the County's obligation to properly regulate waste hauling. For example, trailers were added to regulated containers to address the haulers' concern about loopholes in the agreement (see definitions of "Roll-off Container" and "Trailer," Pages 7-8), a simple reporting form (attached) was created for use by all haulers, and a commitment was made to continue meetings between staff and haulers after implementation of the agreement to resolve any emerging issues.

After approval of the revised NERO Franchise Agreement by your Board, Public Works will work with waste haulers to prepare a franchise agreement for each hauler and to begin the process for collection of the recycling and diversion data required for the County's waste disposal reporting. Green Waste Recovery will also be signing a NERO Franchise Agreement. We anticipate returning to your Board no later than December 17, 2013, for approval of the signed agreements. These new agreements will become effective January 1, 2014. After this date, waste haulers without a franchise agreement will be prohibited from hauling waste in containers of 10 cubic yards or more within the unincorporated areas of the County of Santa Cruz.

A revised copy of the Non-Exclusive Franchise Agreement for waste hauling companies is attached for your Board's approval. Important elements of this agreement include requirements to bring all waste to the County's Buena Vista Landfill, fees comparable with those paid by the County's franchise waste hauler, GreenWaste Recovery, to provide recycling containers to all customers and to eliminate recyclable materials from the trash, and to abide by the County's Living Wage policies. The agreements will expire at the end of 2017, at the same time as the County's franchise agreement with GreenWaste Recovery. Your Board will have the opportunity prior to that time to assess whether to continue franchising multiple waste haulers, to consider changing to an exclusive waste hauling agreement, or other possible options.

It is therefore recommended that the Board of Supervisors take the following actions:

1. Accept and file this report on the Non-Exclusive Franchise Agreement for roll-off box waste collection and hauling services.
2. Approve the attached revised Non-Exclusive Franchise Agreement.
3. Direct Public Works to return with signed franchise agreements for your Board's approval on or before December 17, 2013.
4. Direct Public Works to implement franchise agreements with large waste haulers in the County no later than January 1, 2014.
5. Direct Public Works to return with a progress report and additional options for consideration by your Board in May 2014.

Yours truly,

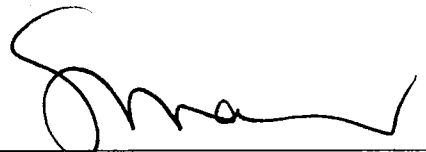


JOHN J. PRESLEIGH
Director of Public Works

JJP:TAG:sh

Attachments

RECOMMENDED FOR APPROVAL:



SUSAN A. MAURIELLO
County Administrative Officer

Copy to: Public Works
 General Services
 Planning
 Integrated Waste Management Local Task Force

NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE COUNTY OF SANTA CRUZ

AND

FOR

ROLL-OFF COLLECTION SERVICES

_____, 2013

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List of Exhibits

- A Schedule for Liquidated Damages
- B Secretary’s Certification
- C Statement of Applicant’s Understanding and Representations
- D Approved Processing Facilities

NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE COUNTY OF SANTA CRUZ

AND

FOR ROLL-OFF COLLECTION SERVICES

This non-exclusive franchise agreement (Agreement) is made and entered into this _____ day of _____, 20____, by and between the County of Santa Cruz County, (County) and _____ (hereinafter referred to as the Contractor).

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, codified at California Public Resources Code Section 40000 et seq. ("Act"), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and,

WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and,

WHEREAS, the State of California ("State") has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible State agency and all local agencies, to promote Diversion at the Designated Disposal Site and to maximize the use of feasible Solid Waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of Solid Waste that must be Disposed of; and,

WHEREAS, the County is obligated to protect the public health and safety of the residents of the unincorporated areas of the County and has determined that arrangements by waste haulers for the collection of Solid Waste should be made in a manner consistent with the protection of public health and safety; and,

WHEREAS, the Act requires local agencies to divert fifty percent (50%) of Discarded Materials from landfills; and,

WHEREAS, the County Board of Supervisors established goals of achieving seventy-five percent (75%) diversion by 2010 and toward zero waste status for the future on August 2, 2006; and

WHEREAS, the County finds that reusing, Recycling, and Composting Recyclable Materials, Organic Materials, and Construction and Demolition Debris (C&D) and beneficial use or Composting of Organic Materials is essential to further the County's efforts to reduce Solid Waste Disposal and comply with the Act and the County's zero waste goals; and

WHEREAS, the County requires all haulers providing Roll-Off Collection services for Permitted Materials in the County to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation, achieve its diversion goals, and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, the County Board of Supervisors has determined through an application process that the Contractor, by demonstrated experience, reputation, and capacity, is qualified to provide for the Roll-Off Container Collection of Permitted Materials within the corporate limits of the County and the Transportation of such material to appropriate places of Recycling, Processing, and/or Disposal, and can provide insurance consistent with the County's requirements. The County Board of Supervisors desires that Contractor be engaged to perform such services on the basis set forth in this Agreement; and

WHEREAS, Chapter 7.20 of the County Code requires among other things that a commercial collector or transporter of solid waste be properly licensed or franchised to do so by the County of Santa Cruz, and

WHEREAS, Contractor intends to use the County's streets, other public rights-of way, and infrastructure to provide Roll-Off Collection services to the County's residents and businesses; and

WHEREAS, the County intends to receive just and reasonable fees from the Contractor for County's administration of the Agreement and for Contractor's use of the County streets, other public rights-of-way, and infrastructure which the County may lawfully impose and the companies are obligated to pay; and,

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

"Agreement" means this Agreement between the County and Contractor for Roll-Off Container Collection, Processing, and Disposal of Permitted Materials including all exhibits, and any future amendments hereto.

“Applicable Law” means all federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over the Roll-Off Container Collection, Transportation, Recycling, Processing, and Disposal of Permitted Materials that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

“Approved C&D Processing Site” means the C&D processing site at Buena Vista Landfill at 1231 Buena Vista Drive, Watsonville, CA 95076. Change in facility designation shall require written authorization of County.

“Approved Disposal Site” means any Disposal site selected by the Contractor or its Subcontractor(s) and approved by the County for Disposal of residue from an Approved Processing Site(s) that is not the Designated Disposal Site. Approved Disposal Site(s) are listed in Exhibit D. Change in facility designation shall require written authorization of County.

“Approved Organics Processing Site” means the processing site specified in Exhibit D, which was selected by Contractor and approved by the County. Change in facility designation shall require written authorization of County.

“Approved Processing Site(s)” means the Approved C&D Processing Site, Designated Disposal Site, Approved Disposal Site, Approved Organics Processing Site, and/or Approved Recyclables Processing Site.

“Approved Processor” means the operator of an Approved Processing Site.

“Approved Recyclables Processing Site” means the processing site specified in Exhibit D, which was selected by Contractor and approved by the County. Change in facility designation shall require written authorization of County.

“Bin” means a container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels, that is typically serviced by a front end-loading Collection vehicle.

“Business Days” mean days during which County offices are open to do business with the public.

“Cart” means a plastic container with a hinged lid and wheels that is typically serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20-, 35-, 64-, or 96 gallons (or similar volumes).

“C&D” means Construction and Demolition Debris.

“Change in Law” means any of the following events or conditions that have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent

such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the County or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

“Collection Franchise Agreement” refers to the Agreement to collect Solid Waste, Recyclable Materials, and Organic Materials in the County.

“Container(s)” means Carts or Bins.

“County” means the County of Santa Cruz, a political subdivision of the state of California, and all the territory lying within the unincorporated area of the County as presently existing or as such boundaries may be modified during the Term.

“County Code” means the Santa Cruz County Code, as the same may be amended, supplemented, or modified from time to time.

“County Facility” means any building, park, beach access, rights of way or other site owned, leased, or used regularly and significantly by employees or contractors of the County.

“Collect” or **“Collection”** means the act of Collecting Permitted Materials and other material at the place of generation in the County.

“Commercial” shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Compactor” means a mechanical apparatus that compresses materials into a container, which container may be detachable. For the purposes of this Agreement, Compactors shall include only Compactors with container capacities of ten (10) to fifty (50) cubic yards that are serviced by Roll-Off Collection Trucks.

“Compost” or **“Composting”** includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost Product.

“Compost Product” means the product resulting from the controlled biological decomposition of Organic Materials that are Source Separated from the Solid Waste stream, or which are separated at a centralized facility.

“Construction and Demolition Debris (C&D)” means materials resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations, Title 22 Section 66261.3. This term includes any and all materials accepted at the Buena Vista Landfill for C&D Recycling. Construction and Demolition Debris excludes putrescible wastes.

“Contract Manager” means County’s Department of Public Works, Senior Civil Engineer assigned to Recycling and Solid Waster Services.

“Contractor” means _____ (insert contractor’s name), a _____ (insert corporation, sole proprietorship, partnership as appropriate) organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies, and Subcontractors.

“Contractor Party(ies)” shall mean Contractor, officers, directors, management employees, or fiscal employees (where “management employee” means any employee with direct or indirect responsibility for direction and control over the Contractor’s activities under this Agreement and “fiscal employee” means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement).

“Criminal Activity” means those activities described in Section 12.12.1.

“Customer” means the Person whom Contractor submits billing invoice to and collects payment from for Collection services provided.

“Designated Disposal Site” means the County-owned Buena Vista Landfill at 1231 Buena Vista Drive, Watsonville, CA 95076,. Change in facility designation shall require written authorization of the County.

“Designated Waste” means non-Hazardous Wastes that may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II disposal sites or Class III disposal sites pursuant to a variance issued by the California Department of Health Services.

“Discarded Materials” means Solid Waste, Recyclable Materials, Organic Materials, or C&D placed by a Generator in a receptacle and/or at a location that is designated for Collection pursuant to the County Code.

“Disposal or Dispose (or variation thereof)” means the final disposition of Solid Waste at an Approved Disposal Site.

“Diversion” means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling, and Composting.

“Drop Box” means an open-top container with capacity from ten (10) to fifty (50) cubic yards that is used for Collection of Permitted Materials and that is serviced by a Roll-Off Collection Truck. A Drop Box, which is also known as a roll-off box and/or debris box, is a type of Roll-Off Container.

“Effective Date” means the date set forth in the introductory paragraph of this Agreement.

“Federal” means belonging to or pertaining to the national general government of the United States.

“Food Scraps” means those discarded materials that will decompose and/or putrefy including (i) all kitchen and table food waste, (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs, (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

“Franchise Fee” means the fee paid by Contractor to County for the privilege to hold the non-exclusive rights granted by this Agreement.

“Generator” means any Person whose act or process produces Permitted Materials, or whose act first causes Permitted Materials to become subject to regulation.

“Green Waste Material” means any materials generated from the maintenance or alteration of public, commercial, or residential landscapes that will decompose and/or putrefy including, but not limited to, yard clippings, grass, leaves, shrub/tree trimmings or prunings (less than 4" in diameter), brush, flowers, weeds, dead plants, small pieces of unpainted and untreated wood, and other types of organic waste. For the purposes of this Agreement, such materials shall be Source Separated and placed by a Generator in a receptacle and/or at a location that is designated for Collection. Green Waste Material is a subset of Organic Materials.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

“Holidays” are defined as New Year’s Day, Thanksgiving Day, half-day Christmas Eve and Christmas Day.

“Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments, as defined in Health and Safety Code Section 25117.5.

“Liquidated Damages” means the amounts due by Contractor to County for failure to meet specific quantifiable standards of performance as described in Section 11.4 and Exhibit A.

“Non-Exclusive Franchise Agreement” means, with the exception of this Agreement, any other contract(s) to Collect Roll-Off Containers between the County and Contractor for Roll-Off Container Collection, Processing, and Disposal of Permitted Materials by other franchisees including all exhibits, and any future amendments hereto

“Organic Materials” means those discarded materials that will decompose and/or putrefy including Green Waste Material and Food Scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scraps and pieces of unpainted and untreated wood.. No discarded material shall be considered to be Organic Materials, unless such material is Source Separated from Solid Waste, Recyclable Materials, C&D, or other materials.

“Parent Company” refers to a company owning more than fifty percent (50%) of the shares of another company (subsidiary) or a company that has management control over such subsidiary.

“Party or Parties” refers to the County and Contractor, individually or together.

“Permitted Materials” refers to Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and, Source Separated and mixed Food Scraps.

"Person(s)" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Santa Cruz, and special purpose districts.

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"Premises" means any land or building in the County where Permitted Materials are generated or accumulated.

"Processing" means to prepare, treat, or convert through some special method.

"Putrescible Waste" means Solid Wastes originated from living organisms and their metabolic waste products, which contains naturally produced organic compounds and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide and other simpler organic compounds.

"Rates" means the charges and fees Contractor bills and collects from each Customer receiving service pursuant to this Agreement.

"Recyclable Materials" means those Discarded Materials that the County Code permits, directs and/or requires Generators to set out in Recyclables Materials containers for Collection for the purpose of Recycling. No Discarded Materials shall be considered properly recycled unless such material is separated from Solid Waste and Organic Materials. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, soap boxes, cereal and other similar food boxes); chipboard; cardboard; paper milk cartons; glass containers of any color (including glass bottles and jars all colors); aluminum cans; fabric softener containers; steel, tin or bi-metal cans; plastic containers (clear or green plastic soda and water bottles, plastic containers and bottles and plastic bags with no. 1, 2 or 3 on the bottom); and food containers from potato salad, pasta salad, whipped cream, etc.

"Recycle or Recycling" means the process of Collecting, sorting, cleansing, treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, or thermally destroying Solid Waste.

"Residential" shall mean of, from, or pertaining to a single-family Premises, multiplex, or multi-family Premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

"Roll-Off Container" means a Drop Box or Compactor used for Collection of Permitted Materials and serviced by a Roll-off Collection Truck. Roll-Off Containers shall also include Trailers. Roll-Off Containers with capacities of less than ten (10) cubic yards are excluded from the scope of this Agreement.

"Roll-Off Collection Truck" means a Collection vehicle with a mechanical device such as a winch that pulls or loads a Roll-Off Container onto the truck bed or attached trailer and separately transports each Roll-Off Container to an Approved Processing Site.

"Self-Hauled Waste" means Solid Waste collected and hauled by Self-Haulers.

"Self-Hauler" means any person not engaged commercially in waste haulage that collects and hauls

Solid Waste generated from residential, commercial or industrial activities conducted solely by such person.

“Solid Waste” means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder and those Discarded Materials that the County Code requires Generators within the County to set out for Collection. Excluded from the definition of Solid Waste are C&D, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Processing, Composting, recovery, or reuse.

“State” means the State of California.

“Subcontractor” means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this Agreement.

“Surcharge” means fee imposed by County to recover cost(s) of transport and handling.

“Term” means the Term of this Agreement, including extension periods if granted, as provided for in Article 3.

“Ton” means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

“Tonnage” means the total weight in Tons Collected, Recycled, Composted, Diverted, or Disposed of, as the context requires.

“Trailer” means any unpowered vehicle which is designed to be detached from another, powered, vehicle and is used for the purposes of holding and/or transporting Discarded Materials.

“Transportation” means the act of Transporting or state of being transported.

“Unpermitted Waste” means wastes or other materials that the Designated Disposal Site may not receive under their Permits, including:

- (1) all materials that the Designated Disposal Site are not permitted to accept, *excluding* white goods with chlorinated fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely handles, Recycles, or Disposes;
- (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be Hazardous Materials if it contains more than one percent (1%) asbestos;
- (3) Ash residue from the incineration of solid wastes, including Solid Waste, Infectious Waste described in Item (8) below, wood waste, sludge not meeting at a minimum Class B standards as

defined by Title 40 of the Code of Federal Regulations, Part 503 (The Standards for the Use or Disposal of Sewage Sludge) and agricultural wastes;

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- (4) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances, which remain after the shredding of automobiles;
- (5) Dead animals larger than one hundred (100) pounds;
- (6) Hazardous Materials;
- (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the Designated Disposal Site, including cement kiln dust, or Process residues;
- (8) Infectious Wastes that have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items that as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases, where "Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in the California Health and Safety Code Section 25117.5;
- (9) Liquid wastes that are not spadeable, usually containing less than fifty percent (50%) solids, including cannery and food Processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e., unclassified sludge less than B), and those liquid wastes that may be Hazardous Wastes;
- (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or Disposal of which is subject to any other State or federal regulation;
- (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain quality criteria (i.e., unclassified sludge less than "B"); and/or
- (12) Designated Waste if not permitted at the Designated Disposal Site under Applicable Law, including Permits.

This definition will be promptly amended to reflect any applicable changes in permits or Applicable Law.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 REPRESENTATIONS AND WARRANTIES

The Contractor, by execution of this Agreement, represents and warrants the following to the County, for the purpose of inducing County to enter into this Agreement and to consummate the transactions contemplated hereby:

- A. **Corporate Status.** Contractor is duly organized, validly existing and in good standing under the

laws of the State. It is qualified to transact business in the County and State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

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B. **Authorization.** Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Council of Contractor (or the shareholders, if necessary), sole proprietor, or partners have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so and the corporate secretary's certificate in Exhibit B confirms this. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

C. **Agreement Will Not Cause Breach.** To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority; or, (iii) any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.

D. **No Litigation.** To the best of Contractor's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

1. Materially adversely affect the performance by Contractor of its obligations hereunder;
2. Adversely affect the validity or enforceability of this Agreement; or,
3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

E. **No Adverse Judicial Decisions.** To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

F. **No Legal Prohibition.** To the best of Contractor's knowledge after reasonable investigation, there is no Applicable Law in effect on the date Contractor signed this Agreement that would prohibit the Contractor's performance of its obligations under this Agreement and the transactions contemplated hereby.

G. **Contractor's Statements.** The Contractor's Application and any other supplementary information submitted to the County, which the County has relied on in entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

H. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to

it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has considered such matters in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

I. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Collect, Transport, Recycle, Process, and Dispose Permitted Materials generated in the County. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

ARTICLE 3 TERM OF AGREEMENT

3.1 EFFECTIVE DATE

Contractor may provide the Roll-Off Container Collection, Transportation, Recycling, Processing, Composting, and Disposal services authorized by this Agreement commencing on the Effective Date of January 1, 2014.

3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

The obligation of County to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may be waived, in written form, in whole or in part by County.

A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this Agreement are true and correct on and as of the Effective Date.

B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

C. **Furnishings of Insurance.** Contractor has furnished evidence of the insurance required by Article 10 that is satisfactory to the County.

D. **Effectiveness of County Board of Supervisors Action.** The County's Board of Supervisors action approving this Agreement shall have become effective and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

3.3 INITIAL TERM

The initial Term of this Agreement shall commence on the Effective Date and continue in full force for four (4) years, until December 31, 2017. The expiration date of this Agreement coincides with the expiration date of the Collection Franchise Agreement. The Term may be extended pursuant to Section 3.4 or terminated early in accordance with Section 11.2.

3.4 OPTION TO EXTEND

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Subject to the approval of the County Board of Supervisors, the County and shall have the option to extend this Agreement for an additional term of up to five (5) years. If the County extends the Agreement, it shall give written notice to Contractor at least ninety (90) calendar days prior to expiration of the Initial Term. The County's written notice shall specify the number of years by which it elects to extend the Term of this Agreement and the revised expiration date of the Agreement. Any such extension shall not become effective unless Contractor agrees to the extension, in writing, at least thirty (30) calendar days prior to expiration of the Initial Term.

ARTICLE 4 SCOPE OF AGREEMENT

4.1 SCOPE OF AGREEMENT

This Agreement, granted to the Contractor, authorizes Contractor to Collect, Transport, Recycle, Process, Compost, and Dispose of Permitted Materials placed by Generators in Roll-Off Containers for Collection, provided that the Customer has voluntarily arranged for Contractor to provide Collection services.

The Contractor shall be responsible for the following services:

- A. Collecting Permitted Materials placed by Customers in Roll-Off Containers for permanent or temporary Collection of Solid Waste, Recyclable Materials, Organic Materials, or C&D materials as requested by Customer consistent with Section 5.3.
- B. Documenting the types of materials to be included in the Roll-Off Container(s) upon taking the Customer's request and notifying Customer of the availability of Recyclable Materials, Organic Materials, and/or C&D services upon Customer request of Solid Waste Collection services provided under this Agreement.
- C. Providing each Customer, upon delivery of Roll-Off Container, a printed list that specifies the Permitted Materials allowed in the Roll-Off Container and Unpermitted Waste that cannot be placed in the Roll-Off Container (i.e., Hazardous Wastes). Such list shall be reviewed and approved by the County Contract Manager.
- D. Providing Customers with public education and outreach materials that includes a comprehensive list of the Recyclable Materials, Organic Materials, and C&D services available through Contractor as required by Section 5.7.
- E. Transporting Collected Solid Waste to the Designated Disposal Site and Transporting other materials to the Approved Processing Site.
- F. Furnishing all labor, supervision, vehicles, Roll-Off Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- G. Paying all expenses related to provision of services required by this Agreement including, but

