

DEL REY COMMUNITY SERVICES DISTRICT

DEL REY, CALIFORNIA

SAMPLE SOLID WASTE HAULING SERVICES AGREEMENT

DISTRICT RESERVES THE RIGHT TO MAKE CHANGES TO THIS SAMPLE AGREEMENT

This Agreement is made and entered into on _____, 2020, between _____ (hereinafter referred to as (“**Contractor**”)) and the Del Rey Community Services District, a California Community Service District operating under California Government Code Section 61000 et seq. (“**District**”) for solid waste hauling services. The effective date of this Agreement is June 1, 2020.

RECITALS

WHEREAS, Contractor is engaged in the business of hauling, disposal, and recycling solid waste and recyclable materials in Fresno County, specifically the area covered by District; and

WHEREAS, Contractor warrants that it has the experience and ability to perform the services set forth below; and

WHEREAS, Contractor and District desire to enter into this Agreement to set forth in the terms and conditions by which Contractor shall provide solid waste (trash) pick up, hauling, disposal, and recycling services as more particularly set forth below.

NOW THEREFORE, in consideration of the respective covenants herein contained, the parties agree as follows:

1.0 SERVICES OF CONTRACTOR.

1.1 SCOPE OF SERVICES. In compliance with the terms and conditions of this Agreement, Contractor shall perform the work or services set forth in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by reference.

Contractor warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

The above Recitals are true and correct. .

2.0 TERM OF CONTRACT. This agreement will become effective on **JUNE 1**, 2020, and will continue; in effect for a term of five (5) years until _____, 2025. Upon agreement by Contractor and District this Agreement may be extended at any time for an additional five (5) year period terminating on _____, 202____. This contract may be terminated by giving ninety (90) days’ written notice by either party.

3.0 SCOPE OF SERVICE.

3.1 SERVICES. Commencing on the effective date, Contractor agrees to provide solid waste, green waste, and recyclable material (collectively hereinafter referred to as “waste”) containment,

hauling, disposal, and recycling services, and all of the equipment necessary for such services as set forth in Exhibit "A" for and on behalf of the District during the term of this agreement. Contractor agrees to accept all waste pursuant to the terms of the Agreement, and shall haul such waste to a disposal, transfer, or recycling facility of its choosing. Upon deposit of materials into waste receptacles Contractor will take sole ownership of all such materials. This Agreement shall be exclusive as to residential services.

3.2 RECYCLING EDUCATION. Contractor agrees to hold bilingual educational forums twice a year at a venue agreed to by Contractor and the District. The intention of the forums is to promote recycling efforts within the community. Contractor will provide all educational materials for these events and will actively promote the events within the community.

3.3 COMMUNITY CLEAN UP. Contractor agrees to conduct a community clean up, once per year, for at least five hours at the District Park or other named location, and will prepare a flier listing materials that may be accepted for hauling. This clean up shall be held on a day and time mutually agreed upon between the parties that will have maximum benefit to the community.

4.0 COMPENSATION & TERMS OF PAYMENT.

4.1 COMPENSATION. District shall pay Contractor according to the terms and rates set forth in Exhibit C, attached hereto and made a part hereof.

4.2 CONSUMER PRICE INDEX ADJUSTMENT ("C.P.I."). Beginning two (2) years after the commencement of this Agreement, hauling and disposal fees may be adjusted annually on the effective date each year by the actual change in the C.P.I. (as hereinafter defined) for the previous twelve (12) month period. Contractor will notify District thirty (30) days in advance of the C.P.I. adjustment, of the expected amount of any adjustment allowed under this section with respect to such period. "C.P.I." means the consumer price index for All Urban Wage Earners and Clerical Workers, Los Angeles-Riverside-Orange County, CA, published by the United States Department of Labor Bureau of Labor Statistics ("BLS") or its successor.

5.0 FEES, TAXES, AND OTHER ADJUSTMENTS. If during the term of the Agreement any state, federal, or local law, rule, regulation, or ordinance imposes any new or increased fees (including landfill Disposal Fees) or taxes on Contractor, or should Contractor incur unforeseen or uncontrollable increases in cost, it shall provide District with reasonable documentation of the increase in costs. District shall have ninety (90) days to accept or reject a compensatory price increase. If District rejects the price increase, then Contractor may elect to terminate this Agreement by providing District with ninety (90) days' written notice.

5.1 TERMS OF PAYMENT. Each month, Contractor shall furnish to District an original invoice in a form approved by District for all work actually performed during the preceding month. Submission of an invoice for payment under this Agreement, certifies that Contractor is in compliance with all provisions of the Agreement. The invoice shall detail charges for all solid waste hauling and any related and approved charges.

District shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed which are disputed by District, District will use its best efforts to cause Contractor to be paid within thirty to forty five (30 to 45) days of receipt of Contractor's correct and undisputed invoice. District will make every effort to pay invoices within thirty (30) days; however, Contractor acknowledges and agrees that due to District's publicly-run

warrant procedures, the District cannot guarantee that payment will occur exactly within this time period. In the event any charges or expenses are disputed by District, the invoice shall be returned by District to Contractor for correction and resubmission. Review and payment by the District of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

5.2 AUDIT PROCEDURE. District and Contractor will, at the end of each quarter, reconcile service addresses to avoid any confusion in billing amounts. Upon discovery of any billing discrepancy Contractor shall, with due diligence, correct the records in a timely manner.

6.0 ADDITIONAL SERVICES. District shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the District Manager to the Contractor, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation over the Contract Sum shall not exceed the amount of Five Thousand Dollars (\$5,000). Any greater increases, taken either separately or cumulatively, must be approved by the District Board. No claims for amounts due above the contracted price shall be valid unless the procedures established in this agreement are followed.

7.0 COMMERCIAL RECYCLING. District recognizes the importance of recycling. In an effort to increase diversion rates Contractor will draft and submit to the District Manager a proposed mandatory recycling ordinance for commercial accounts. District Manager may utilize such draft to develop a final ordinance to be presented to the District Board.

8.0 REPRESENTATIONS AND WARRANTIES.

8.1 CAPACITY TO CONTRACT. Contractor has full power, authority and legal right to enter into and to perform according to the terms of this Agreement.

8.2 COMPLIANCE WITH ALL APPLICABLE LAWS. Contractor shall at all times procure and maintain in effect all licenses and permits and conditions thereto for the hauling, disposal and generation of waste covered by this Agreement required by any and all agencies that may have jurisdiction over its operations. Contractor warrants that it is, and at all times during the Term will be, in compliance with all state and federal laws, permits, and licenses concerning the acceptable waste covered by this Agreement. Contractor is an independent contractor under the terms of this Agreement.

All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the District and any Federal, State or local governmental agency of competent jurisdiction.

8.3 LICENSES, PERMITS, FEES AND ASSESSMENTS. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

8.4 RIGHT TO REFUSE UNACCEPTABLE WASTE. District acknowledges and agrees that Contractor will only accept acceptable waste and Contractor has the right to reject any waste or load of waste defined as unacceptable under common usage of that term under state and federal law..

9.0 INSURANCE. During the terms of the Agreement, Contractor agrees to carry Worker's Compensation Insurance in a form and coverage approved under the State law.

Contractor further agrees to carry a broad form comprehensive public liability and property damage insurance with an aggregate loss limit of not less than \$1,000,000 per occurrence and at least \$2,000,000 aggregate. Contractor shall name District as a named insured on said insurance policy and shall provide an endorsement to that effect from the insurance company or companies to District within ten (10) days of approval of this Agreement. Contractor shall deliver to District copies of policies of insurance evidencing the insurance procured by Contractor or deliver in lieu thereof certificates of coverage from the issuing insurance company or companies. The certificates shall bear the company underwriting the policy, the policy number, the amount and required provisions set forth above. Said policies of insurance shall contain a provision that the policy shall not be canceled or terminated without thirty (30) days' prior written notice from the insurance company to be given to the District. Contractor agrees that on or before thirty (30) days prior to expiration of any insurance policy, Contractor will deliver to District written notification in the form of a receipt or other similar documents from the insurance company that said policy or policies had been renewed, or shall deliver certificates of coverage from another good and solvent insurance company for such coverage.

10.0 INDEMNIFICATION.

10.1 GENERAL INDEMNITY. To the furthest extent allowed by law, Contractor shall indemnify, hold harmless, and defend District and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to, personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of Contractor, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

The indemnity obligation under this paragraph is in addition to and is not limited by any insurance which Contractor is otherwise required to maintain under this Agreement.

10.3 DEFENSE. Immediately upon commencement of any lawsuits, claims, complaints, causes of actions, or other demands brought against District for liabilities arising out of or in any way connected to this Agreement, Contractor shall: (1) defend District with attorney or counsel approved by District, and; (2) reimburse District for any out of pocket costs of defense. District may retain co-counsel at its own cost and expense and Contractor shall direct its counsel to assist and cooperate with District co-counsel.

11.0 BREACH, DEFAULT; SUSPENSION; TERMINATION.

11.1 NOTICE OF BREACH; CURE. "Breach" means any failure by Contractor to meet one or more of its obligations under this Agreement. If the District Manager determines that Contractor is in breach, the District may give notice identifying and describing the breach. Contractor may request to confer with District Manager within thirty (30) days of notice. Contractor shall cure the breach within: (1) thirty (30) days from the receipt of District's notice; or (2) a shorter period of time determined by District if District determines that the public health and safety so requires. Contractor may request additional time to correct the breach, but District may accept or reject that request in its sole discretion.

11.2 DEFAULTS, NOTICE, SUSPENSION AND TERMINATION.

a. Defaults. "Default" giving rise to a breach means any of the acts described below.

(i) Uncured or repeated breach :Contractor does not cure any breach of this Agreement within thirty (30) days of District's notice of such breach, unless due to uncontrollable circumstances, and Contractor has previously cured a specific instance of failure or refusal.

(ii) Failure to collect solid waste for seven (7) days unless due to uncontrollable circumstances, Contractor fails to provide services (other than Roll-off Boxes) for a period of: 1) seven (7) consecutive days following any scheduled collection date; or 2) seven (7) days in the aggregate from the date of this Agreement.

(iii) Failure to collect for more than seven (7) days -Contractor fails to provide services for more than seven (7) consecutive days, whether or not due to uncontrollable circumstances.

(iv) Failure to meet insurance / bond obligations with respect to insurance and other assurances of its performance under this Agreement.

(v) Bankruptcy or Insolvency: Contractor may be deemed to be "insolvent" if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not it has committed an act of bankruptcy and whether or not Contractor is insolvent within the meaning of the federal bankruptcy law. The filing of a Bankruptcy or receivership whether caused or instituted by Contractor or other creditor shall be deemed a default and/or a breach of this Agreement.

(vi) Fraud or Misrepresentation: During the procurement of this Agreement or after the date of this Agreement, Contractor does any of the following with respect to this Agreement : 1) committed (or commits or attempts to commit) any fraud or deceit; 2) made (or makes) any intentional or material misrepresentations; 3) breaches any warranties; or 4) made (or makes) any materially false or misleading statement, representation, or warranty.

b. Suspension of Agreement. Together with any other rights or remedies District may exercise under this Agreement, the District Manager may suspend this Agreement and give immediate notice when default as set forth above has occurred, in whole or in part. The suspension shall continue only until Contractor demonstrates to District it can once again fully perform its obligations under this Agreement.

c. Termination. Together with any other rights or remedies that District has under this Agreement, the District Manager may terminate this Agreement effective on the "Termination Date" in whole or in part, upon the occurrence of any defaults listed above for more than ten (10) days regardless of the circumstances and whether or not the District Manager determines that the public health and safety has been negatively affected. District Manager in his or her sole discretion may choose any longer or shorter "Termination Date" following notice to Contractor upon determination that the public health and safety so require.

12.0 ASSIGNMENT. This Agreement shall not be assigned to any third party operator without the written consent of both parties.

13.0 AMENDMENTS. This Agreement constitutes the entire agreement between the parties and may not be amended without written notice and the written consent of the Board of Directors unless specifically authorized.

14.0 WAIVER. Waiver or default of any one provision herein shall not be deemed to be a waiver of any other provision herein, and shall not constitute a continuing waiver or default. No provision of this Agreement may be waived unless approved in writing by all parties and submitted to the Board of Directors for approval.

15.0 GOVERNING LAW AND VENUE. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

16.0 ATTORNEY'S FEES. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover reasonable attorney's fees and costs, whether or not the matter proceeds to judgment.

17.0 INTERPRETATION. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

18.0 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

19.0 WARRANTY & REPRESENTATION OF NON-COLLUSION. No official, officer, or employee of District has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of District participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any District official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any District official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

20.0 ENTIRE AGREEMENT. This Agreement and the attached Exhibits constitute the entire Agreement between the District and Contractor and supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**DEL REY COMMUNITY SERVICES
DISTRICT**

CONTRACTOR

By: _____
Rumaldo Reyna, President

By: _____
[name]
[title]

ATTEST:

By: _____
Carlos Arias, Secretary

APPROVED AS TO FORM:

By: _____
Tommi R. Saghatelian
Aleshire & Wynder, LLP
District Counsel

Attachments: Exhibit A
 Exhibit B
 Exhibit C

EXHIBIT A

SCOPE OF SERVICES

SOLID WASTE HAULING BINS AND SERVICE REQUIREMENTS

A. Bins : Available for Residential and Commercial Customers

1. Approximately 292 - full sets of 96 gallon cans (residential & commercial) consisting of 1 Trash, 1 Recycle, and 1 Green Waste.
2. Approximately 24 – 96 gallon trash cans (residential and commercial accounts needing more than 1 can)
3. Approximately 5 - Commercial Sets – 1 Trash, 1 Recycle or 1 Green Waste – Depending on customer needs.
4. Approximately 1 - Commercial Recycling Service (Apartments)
5. Approximately 5 - 3 yard bins (commercial)
6. Approximately 4 - 5 yard bins (commercial)

B. Service & Pickup; Once Per Year Clean Up, Educational Forum

1. Weekly Residential and Commercial solid waste service for all customers sets: Example: Solid waste pickup every Wednesday.
2. Every other week: Recycle Waste pickup: Example: Trash and Recycle, alternating Wednesdays.
3. Every other week: Green Waste pickup: Example: Trash and Green Waste, alternating Wednesdays.
4. Hauling of remainder of bins: once a week on Wednesdays except for the 3-yard and 5-yard bins, which are picked up once per week on Fridays.
5. Once per year minimum 5 hour community clean-up. Prepare and distribute a flier explaining types of waste that may be accepted and conduct a "Clean up at the Park" for the community including disposal of all trash and waste.
6. Missed pickup as needed.
7. Educational forums twice per year, in English & Spanish, with written materials for community members to learn about trash hauling, recycling, green waste & environmental issues.

EXHIBIT B

EXTRAS

DEFINITIONS:

1. “Waste” means any disposable solid waste including trash, green waste and recyclable materials. Waste delivered to a transfer station or the landfill, as applicable, shall have the required permits to receive such waste. Waste does not include hazardous or unacceptable waste and special waste.
2. “Recyclable Materials” means discarded materials intended for and capable of being returned to the economy in the form of raw materials for reuse including cardboard as defined by the California Public Resources Code, Division 30, Part 1, Chapter 2.
3. “Clean” means the material is reasonably free of contamination.
4. “Equipment” means any receptacle for waste provided and owned by Contractor for the purpose of storage or movement of materials and solid waste.
5. “Unacceptable Waste” means any special waste or hazardous waste that is not permitted to be transferred to any state licensed landfill or transfer station, any waste that contains free flowing liquids or waste that may pose harm to the public, and/or that Contractor deems, in its reasonable discretion, to be unacceptable.

EXHIBIT C

COMPENSATION & SCHEDULE OF PAYMENT

1. Compensation.
2. Schedule Of Payment.
3. Terms Of Payment.

Each month, Contractor shall furnish to District an original invoice in a form approved by District for all work actually performed during the preceding month. Submission of an invoice for payment under this Agreement, certifies that Contractor is in compliance with all provisions of the Agreement.

Each invoice shall detail charges for all solid waste hauling and any related and approved charges. District shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement.

Except as to any charges for work performed which are disputed by District, District will use its best efforts to cause Contractor to be paid within thirty to forty five (30 to 45) days of receipt of Contractor's correct and undisputed invoice. District will make every effort to pay invoices within thirty (30) days; however, Contractor acknowledges and agrees that due to District's publicly-run warrant procedures, the District cannot guarantee that payment will occur exactly within this time period. In the event any charges or expenses are disputed by District, the invoice shall be returned by District to Contractor for correction and resubmission.

Review and payment by the District of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.