

ATTACHMENT A
DEFINITIONS

1. Definitions

Words that are used herein as defined terms shall, unless the context clearly requires otherwise, have the meanings set forth below.

“Act” means Act No. 179 of the Michigan Public Acts of 1947 (MCL 123.305 et.seq.).

“Affiliate” means any parent, subsidiary, or any other entity controlling, controlled by, or under common control of the Contractor.

“Applicable Laws” means any Permits, licenses and approvals issued for or with respect to the Facilities (or any component or operation thereof) and/or issued for or with respect to the performance of obligations in this Contract, and any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation or standards, which in any case, shall be enacted, adopted, promulgated, issued or enforced by a governmental body, regulatory agency and/or court of competent jurisdiction that relates to or affects the City, the Contractor and/or the Facilities (or any portion thereof, or the performance by a party of its obligations hereunder.

“Basic Services” means basic services described in Contractor Service Specifications.

“Billing Period” shall be a standard calendar 3-month period or quarter of a year.

“Billing Year” means a twelve-month period.

“Bulky Waste/White Goods” shall include, but not be limited to, fixtures and furniture, storm doors and windows, bicycles, bed frames, exercise equipment, grills, metal, lawn mowers, shelving, metal fencing, plumbing pipe, garage doors, garage door runners, metal desks, file cabinets, barbells, metal playground equipment, audio/visual carts, aluminum siding, screen doors, car doors, small metal sheds, furnaces, toilets, wheelbarrows, tubs, ladders, sinks, carpets and pads, small quantities of building debris resulting from repair or remodeling personally done by the home occupant, and white goods, such as water heaters, water softeners, water tanks, washers, dryers, stoves, air conditioners, refrigerators and freezers. Exceptions include 8’ metal fence posts and railroad ties.

“Change in Law” means any act, statute, rule, ordinance or legislative action promulgated after the Contract Date whose compliance therewith materially increases the costs of performing the services required under the Contract.

“City” means the City of Rochester Hills, Oakland County, Michigan.

“City Designated Disposal Capacity” means the primary and backup landfills identified by the Contractor.

“Compost Facility” means Environmental Wood Solutions.

“Contract” – The agreement covering the performance of the work hereinafter defined, and payments therefore including Request for Proposal documents, Executed Contract, Contract Bond, Insurance and Specifications; all of which are to be treated as one instrument whether or not set forth at length in the form of contract.

“Contract Date” means the date that is embodied in the preamble to this Contract.

“Contract Documents” means this Contract and supplementary documents:

- Request for Proposals
- Addendums
- Contractor’s Complete Proposal and supplementary documents
- Bonds
- Insurance Certificates

“Contract Waste” means the materials that Contractor is responsible to collect under this Contract; namely Trash (including Bulky Waste/White Goods), Recyclables and Yard Waste.

“Contract Year” means a Billing Year, the twelve-month period commencing on _____ and ending on _____.

“Contractor” - the party herein contracting to perform the work covered by this Contract; or any part of it, the successors or assigns, or duly authorized agents or legal representatives.

“Contractor Fault” means any breach, failure, non-performance or non-compliance by the Contractor with the terms and conditions of this Contract or the terms of any Permits, licenses or approvals applicable to the Facility, or any negligence or willful act or omission of any officer, agent, employee, contractor, subcontractor or independent consultant or contractor of the Contractor which prevents or delays the Contractor from performing its obligations under the terms of this Contract or which increases the cost of such performance or limits or impairs the ability of the City to receive any

benefits or any right under this Contract.

“County” means Oakland County, Michigan, and its successors and assigns.

“Default” means the non-performance or mal-performance of the Contractor under the terms of this Contract.

“Designated Services” means any Basic Service or Optional Service that the Contractor is authorized by the City to provide under the terms of this Contract.

“Designated Service Area” means the geographic area that the Contractor is authorized by the City to provide Basic Service or Optional Service within under the terms of this Contract.

“DEQ” or “the Department” means the Michigan Department of Environmental Quality, or any successor thereof, including any agency or Department to which the powers of the Department of Environmental quality shall be transferred.

“Disposal” means the burial of Trash at a Disposal Facility.

“Disposal Facility (ies)” means the sanitary landfill or other solid waste facility that will ultimately be utilized for the disposal of Trash, licensed by the State of Michigan Department of Environmental Quality provided by the Contractor and designated by the City as their City Designated Disposal Capacity.

“Disposal Services” means the services required to be performed by a Contractor pursuant to another Contract and the specifications in connection with the final disposal of the Trash handled at the Facility.

“Effective Date” means _____ 1, 2009.

“Excluded Waste” means any hazardous materials, wastes or substances; toxic substances, wastes or pollutants; contaminants; pollutants; infectious wastes; medical wastes; or radioactive wastes, each as defined by applicable federal, state or local laws or regulations.

“Dispute” [NOT IN ALPHABETICAL ORDER] means any controversy between the parties with respect to the interpretation or application of any provision of the Contract or the performance by Contractor of the City of their respective obligations hereunder, or otherwise arising out of the Contract.

“Environmental Laws” [NOT IN ALPHABETICAL ORDER] means all applicable laws, directives, rules, ordinances, codes, guidelines, regulations,

governmental, administrative or judicial orders or decrees or other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted or amended, relating to safety, preservation or protection of human health and the environment (including without limitation, ambient air, surface water, ground water, land or subsurface strata) and/or relating to the handling, treatment, transportation or disposal of waste, substances or materials.

“Facilities” means transfer stations, disposal or compost facilities and/or any other building or site that is mutually-agreed on for the provision of services under this contract.

“Facility” means a transfer station.

“Government Approvals” means all licenses, permits and approvals required from any Government Body for the performance of the Contractor under this Contract.

“Governmental Body” means, as appropriate, any one or several of any Court of competent jurisdiction, the United States of America, the State of Michigan and/or any state in which the Facilities are located or which validly exerts appropriate jurisdiction over the Contractor or its activities relating to the Facilities; or any agency, authority, regulatory body or subdivision or any of the above as may have jurisdiction over or power and authority to regulate the Contractor and/or the transfer, transportation and disposal/processing of Contract Waste, including any local or county unit of government.

“Guarantor” means either a joint venture partner or other similar entity, who expressly assumes joint and several liability for the Contractor, or other entity serving as Guarantor and which in each case guarantees performance of the obligations of the contractor under the terms of this Contract.

“Hazardous Waste” means a hazardous waste as defined in RCRA.

“Household Hazardous Waste” means any Solid Waste generated in Single-Family and Multi-Family dwellings by a consumer, which except for the exclusion provided in 40 CFR 261.4(b)(1), would be classified as a Hazardous Waste under 40 CFR, Part 261.

“Initial Term” means the initial five-year (5) period of the Contract from the Start Date.

“Landfill” or “Landfills” means any and all portions of the landfill(s) that are designated as a Disposal Facility.

“MDEQ” means the Michigan Department of Environmental Quality, which is the State of Michigan’s designated regulatory authority concerning solid waste regulations.

“MRF” means the Materials Recovery Facility.

“Monthly Service Charge” means an amount equal to the compensation to be charged under the Contract during a month.

“Most Favored Nation” means the adjustment to Contractor’s pricing described in Attachment B ____.

“Operator” means any Person owning or operating a transfer station, landfill, processing or recycling center, incinerator or any similar solid waste disposal facility.

“Optional Services” means the optional services specified in Attachment B ____, contractor Service Specifications.

“Permits” means the applicable approvals, authorizations, certifications, licenses and Permits issued by federal, State or local governmental authorities required for the operation and maintenance of the Facility.

“Person” means any and all persons, natural or artificial, including any individual, firm or association, business trust, partnership, joint venture (provided, however, that as to any business trust, partnership or joint venture in which any federal government corporation has direct, equitable or beneficial ownership, such business trust, partnership or joint venture shall not be included in the definition of “person”), municipality, and public, municipal, nonprofit or private corporation organized or existing under the laws of this State or any state, and any governmental agency or county of this State and any Department, agency or instrumentality of the executive, legislative and judicial branches of the federal government.

“Plan” means the Solid Waste Management Plan approved June 15, 2000 by the Oakland County Board of Commissioners pursuant to the provisions of the Solid Waste Act, relating to the collection and disposal of solid waste generated within the geographic boundaries of the County, as the same has been previously amended and supplemented and as may be further amended and/or supplemented from time to time.

“RCRA” means Resource Conservation and Recovery Act of 1976, 42 USC, 6901 et seq, as amended.

“Recyclables Materials” or “Recyclables” means those materials which would otherwise become Trash and which may be collected, separated or processed

and returned to the economic mainstream in the form of raw materials or products that are acceptable materials at the MRF.

“Request for Proposals” means City of Rochester Hills June 12, 2008 solicitation.

“Residential Unit” Any individual living unit in a single family dwelling intended for or capable of being utilized for residential living. Residential Unit does not include an individual living unit in a hotel or motel, guesthouse, residential care facility, extended care facility, sorority or fraternity house, school, dormitory, residential service facility, emergency residential shelter, hospital, convent or monastery that would be defined as a commercial establishment as defined by municipal code.

“Schedule” means any exhibit, attachment, form, schedule or annex, which is attached to, incorporated in, or made apart of this Contract.

“Senior” means at least one homeowner and resident of a Residential Unit over the age of 65 years old.

“Service District” or “Service Area” means any geographic area that the Contractor is authorized by the City to provide service within the terms of this contract.

“Service Unit” or “Service Recipient” means any Residential Unit in the Service District eligible to received the Designated Services under the terms of this Contract.

“Service Unit Count” means the number of Service Units eligible to receive a specific Designated Service to be used for billing purposes by the Contractor as determined by the Service Unit Count audit.

“Solid Waste Act” means Public Act 641 of 1978 (Act 641) of the State of Michigan and the acts amendatory thereof and supplemental thereto.

“Solid Waste Management Plan” means Oakland County Solid Waste Management Plan approved June 15, 2000 and future amendments.

“Start Date” means the date that the Contractor shall commence provision of the Combined Services. Unless otherwise notified in writing by the City, the start Date is expected to occur on February 1, 2009.

“State” mean the State of Michigan.

“Subcontractor” means a person, firm or corporation other than a Contractor, supplying labor and equipment for work covered by this Contract.

“Supervisor” means the manager responsible for the Contractor as set forth in Attachment B_____ of this Contract.

“Surety” means any person, firm or corporation that has executed as Surety, the Contractor’s performance and payment bonds security the Contract.

“Term” means the length of the Contract, which is intended to be one five-year (5) increment followed by an additional five-year (5) increment upon the mutual agreement of the City and the Contractor.

“Ton” means a short ton of 2,000 pounds.

“Trash” or “Refuse” means those solid waste as set forth in Michigan Public Act 641 which are acceptable for disposal in a Type II sanitary landfill and shall not include any waste, or portion thereof, which is liquid, radioactive, volatile, highly flammable, explosive, infectious or pathological, asbestos, special waste (including but not limited to, municipal solid waste incinerator ash) or Hazardous Waste.

“Unacceptable Waste” means any material that is not Contract Waste.

“Uncontrollable Circumstance” means any act, event or condition occurring on or after the Contract Date that has had, or may reasonably be expected to have, a material and adverse effect (for this purpose, any act, event or condition or the costs of which are the result of the willful or negligent action or inaction of a party shall not be deemed to have a material and adverse effect) on a right or an obligation of either or both of the City or the Contractor under this Contract if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing under this Contract. Uncontrollable Circumstances shall include the following:

- a. An act of God, landslide, lightning, earthquake, fire, explosion, flood, nuclear radiation, acts of public enemy, war, blockade, insurrection, riot or civil disturbance or any similar occurrence, or a condemnation or other taking by or on behalf of any public, quasi-public or private entity, but not including reasonably anticipated weather conditions for the geographic area of the Facilities;
- b. The suspension, termination, interruption, denial or failure of renewal or continuation of any permit, license, consent, authorization or approval required for the provision of services; provided however, that such event shall not be the result of the willful or negligent action or inaction of the party relying thereon;

- c. The loss of or inability to obtain any utility services, including water, sewerage, fuel oil, gasoline and electric power other than that generated by the Facilities, necessary for operation of the Facilities if such loss or inability is not the result of the willful or negligent action or inaction of the Contractor; and
- d. A public or private labor dispute relating to the collection of Contract Waste which involves persons other than those working for (or on behalf of) the Contractor or any affiliate or subcontractor hired by the Contractor, which prevents the delivery of Contract Waste to the Facilities.

The occurrence of an Uncontrollable Circumstance shall only suspend the obligations of the parties hereto to perform their respective obligations hereunder to the extent that such performance is impaired or prevented as a direct result of such occurrence.

“Unit” means any dwelling that is to be provided service under this Contract, i.e. Service Unit.

“White Goods” means metal residential appliances, including but not limited to, water heaters, washers, dryers, stoves, air conditioners and refrigerators.

“Yard Waste” means compostable materials such as leaves, grass clippings, vegetable or other garden debris, shrubbery, brush or tree trimmings less than 4 feet in length and 3 inches in diameter, that can be converted to compost humus. The term excludes agricultural waste, animal waste, roots, sewage sludge, stumps and treated wood.

Terms Generally

Whenever the context may require, any pronoun which is used in this Contract shall include the corresponding masculine, feminine and neuter forms and the singular shall include the plural and vice versa. Unless otherwise noted, the words “include,” “includes,” and “including” which are used in this Contract shall be deemed to be followed by the phrase “without limitation.” The words “agree,” “Contracts,” “approval,” and “consent” which are used in this Contract shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed” except as may otherwise be specified.