




Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by:  Date: 10/16/2020
General Manager

DATE: October 16, 2020
TO: Board of Directors
FROM: Director of Operations
SUBJECT: Merced County Regional Waste Management Authority

RECOMMENDATION: That the Board authorize staff to enter into an agreement with the Merced County Regional Waste Management Authority (MCRWMA) to transport and process Single Stream Recyclables (SSR) from their Billy Wright Landfill operations for a duration of approximately 12 months, through September 2021.

BACKGROUND

MCRWMA has approached the Monterey Regional Waste Management District (the District) to process the SSR materials that are collected in the City of Los Banos on a temporary basis, or approximately 12 months. MCRWA is transitioning the franchise agreement in Los Banos and could not reach an agreement with the previous services provider, Republic Services, for a temporary continuation of the processing of these materials. MCRWA will be bidding out the remainder of the SSR materials collected throughout Merced County and the materials from the City of Los Banos in 2021, so they are seeking an interim agreement to bridge the gap to align all of their recycling processing needs.

DISCUSSION

MCRWMA has approximately 3,500-4,000 tons a year of SSR materials that are collected in Los Banos and delivered to their Billy Wright Landfill facility. The District has arranged for the transportation of these materials via walking floor transfer trailers to be delivered to our MRF on a daily basis. Under the proposed agreement, the District will invoice MCRWMA for the transportation costs, in addition to a set processing fee of \$45/ton, which is the processing fee set for our own member agencies. The District will also be keeping all revenues generated by the sale of the SSR materials recovered. Processing these materials over the next year will provide the District with the opportunity to examine and process these materials to determine if the volumes and quality of the SSR is such that the District would consider providing a response to any future SSR Requests for Proposals in the upcoming year.

District staff has discussed the attached agreement with our legal counsel and will be offering the following modifications to the language regarding the insurance requirements:

“MCRWMA acknowledges that, wholly or in large part, CONTRACTOR will satisfy these insurance requirements via its membership in a public agency risk sharing authority named the Special District Risk Management Agency. Further, MCRWMA acknowledges that because these insurance requirements evidently assume use of commercial insurance, some of the required submittals, verifications, endorsements, etc., may be in a form and numbering system atypical of commercial insurance, and MCRWMA agrees to accept them if they substantially approximate those listed in these insurance requirements.”

FINANCIAL IMPACT

The District estimates it will receive approximately \$46,000/mo in processing fee and material sales revenues per month, in addition to the direct pass through cost/revenues for the transportation of the materials from Merced County to our MRF. These revenues will exceed the District's additional costs required to process these materials.

CONCLUSION

Staff recommends that the Board authorize staff to move forward with entering into a month to month contractual agreement with MCRWMA for the transport and processing of SSR materials for up to 12 months.



Tim Brownell
Director of Operations



PH: 209.723.4481
FAX: 209.384.3109
7040 N. Highway 59
Merced, CA 95348

AGREEMENT: 20200902KL

**AGREEMENT BETWEEN
MERCED COUNTY REGIONAL WASTE MANAGEMENT AUTHORITY
AND
MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT
FOR
PROCESSING AND TRANSPORTATION OF RECYCLABLE MATERIALS**

THIS AGREEMENT is made and entered into this 1st day of September 2020 by and between Merced County Regional Waste Management Authority, a California joint powers authority within the meaning of Government Code § 6500 et seq (hereinafter referred to as "MCRWMA"), and Monterey Regional Waste Management District, (hereinafter referred to as "CONTRACTOR").

It is agreed between the parties that:

Section One – Scope of Services

CONTRACTOR agrees to perform all work necessary to complete, in a manner satisfactory to MCRWMA, those items described below and incorporated herein by this reference as if set forth in full.

- CONTRACTOR shall provide recycling transportation and processing services from the Billy Wright Landfill located on 17173 S. Billy Wright Road, Los Banos, CA 93635.

Section Two – Notice to Proceed

MCRWMA shall serve an email notice to proceed upon full execution of this Agreement. Upon receipt of such notice, CONTRACTOR shall diligently proceed with the work authorized and complete it within the agreed time period.

Section Three – Term

CONTRACTOR shall commence work immediately following execution of this Agreement. CONTRACTOR shall complete the performance of its obligations under this Agreement on a month-to-month basis through June 30, 2021, but in no event shall this agreement exceed 12 months. All work is contingent upon available funding and successful performance. The contract may be extended by MCRWMA and shall be based on available funding and successful performance. The contract will be a fixed price contract for the full-term including options.

Section Four – Compensation

For services performed pursuant to this Agreement, MCRWMA agrees to pay and CONTRACTOR agrees to accept as payment in full, the amounts as identified on the cost summary provided in Exhibit A.

CONTRACTOR shall be reimbursed no later than thirty (30) days following submission of a written, acceptable billing to MCRWMA. Written billing must include details of tasks and/or work completed relevant to the billing payment request.

In the event MCRWMA disputes all or any part of a bill submitted by CONTRACTOR pursuant to this Agreement, MCRWMA shall pay the undisputed portion of the invoice when due and shall notify CONTRACTOR of the disputed amount in writing at least ten (10) days prior to the due date of the disputed invoice. The Parties shall use best efforts to resolve the dispute amicably and promptly. Upon determination of the correct billing amount, MCRWMA shall pay such amount within ten (10) days of such determination.

Section Five – Insurance

CONTRACTOR shall, for the duration of this Agreement, purchase and maintain insurance to protect against loss resulting from the performance of its duties under this Agreement. Said insurance coverage shall comply with the following minimum requirements:

- A. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or any other policy with a general aggregate limit is used, either the aggregate limit shall be endorsed to apply separately to this project or the aggregate limit shall be twice the above occurrence limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Professional Liability or Errors and Omissions Insurance: \$1,000,000.

Original certificates of such insurance shall be filed with MCRWMA. Said certificates shall evidence coverage through the term of this Agreement, reference the agreement number, and shall name MCRWMA as an additional insured, with the exception of Professional Liability or Worker's Compensation. Modifications to insurance requirements must be approved by MCRWMA in writing. CONTRACTOR is responsible for providing MCRWMA updated insurance documents annually.

CONTRACTOR shall maintain worker's compensation coverage sufficient to comply with statutory requirements and limits as required by the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident.

All policies shall be endorsed to waive the insurer's subrogation rights against MCRWMA.

Section Six – Changes to Scope

MCRWMA may at any time, and upon a minimum of ten (10) days written notice, modify the scope of basic services to be provided under this Agreement. CONTRACTOR shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify MCRWMA in writing. Upon agreement between MCRWMA and CONTRACTOR as to the extent of said impacts on time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by MCRWMA and CONTRACTOR shall constitute the CONTRACTOR's notice to proceed with the changed scope.

Section Seven – Compliance with Laws, Rules, and Regulations

All services performed by CONTRACTOR pursuant to this Agreement shall be undertaken with usual and customary professional care to be performed in accordance and full compliance with all applicable federal, state or city statutes, and any rules or regulations promulgated thereunder.

Section Eight – Responsibility of CONTRACTOR

By executing this Agreement, CONTRACTOR warrants to MCRWMA that it possesses, or will arrange to secure from others, all of the necessary professional services and resources and facilities to provide MCRWMA with the services contemplated under this Agreement. CONTRACTOR further warrants that it will follow the best current, generally accepted practice of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this Agreement.

Section Nine – Responsibility of MCRWMA

To the extent appropriate to the Project contemplated by this Agreement, MCRWMA shall:

- A. Assist CONTRACTOR by placing at its disposal all available information pertinent to the project.
- B. Examine all studies, reports, proposals and other documents presented by CONTRACTOR, and render verbally or in writing, as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of CONTRACTOR.
- C. The Diversion Program Manager, or designee, will act as MCRWMA's representative with respect to all work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define MCRWMA's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONTRACTOR's services.

Section 10 – Termination for Convenience of MCRWMA

MCRWMA may terminate this Agreement, with or without cause, at any time by giving CONTRACTOR ten (10) days written notice of such termination. If this Agreement is terminated by MCRWMA as provided herein, CONTRACTOR shall be paid a total amount that is the ratio of completed tasks to total services as determined by MCRWMA, less payments already made under this Agreement. This proration shall be extended to cover any fixed fee charged for a fully completed product. Upon termination, CONTRACTOR will give MCRWMA all of its work product.

Section 11 – Termination of Agreement for Cause

- A. MCRWMA, may, by written notice to CONTRACTOR, terminate the whole or any part of this Agreement in any one of the following circumstances:
 1. If CONTRACTOR fails to perform the services called for by this Agreement within the time(s) specified herein, or any extension thereof; or
 2. If CONTRACTOR fails to perform the services called for by this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms and in either of these two circumstances does not correct such failure within a period of twenty-one (21) days (or such longer period as MCRWMA may authorize in writing) after receipt of notice from MCRWMA specifying such failure.

- B. In the event MCRWMA terminates this Agreement in whole or in part as provided in Paragraph A above, MCRWMA may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. CONTRACTOR shall be responsible for any increased cost to MCRWMA for the unfulfilled term of this Agreement caused by CONTRACTOR's failure to perform and MCRWMA's resulting need to re-procure such services.
- C. Except with respect to defaults of subcontractors, CONTRACTOR shall not be liable for any excess costs if the failure to perform arises out of causes beyond the control and without the fault or negligence of CONTRACTOR. Such causes include, but are not limited to, acts of God or of the public enemy, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather. In the event the failure to timely perform is caused by the default of a subcontractor that is mandated, required, or otherwise imposed on CONTRACTOR by MCRWMA, CONTRACTOR shall not be liable for failure to perform the services.
- D. Should the Agreement be terminated as provided in Paragraph A above, CONTRACTOR shall provide MCRWMA with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by CONTRACTOR pursuant to this Agreement. Upon termination as provided in Paragraph A above, CONTRACTOR shall be paid the value of the work performed, as determined by MCRWMA less payments of compensation previously made. Payments previously made by MCRWMA to CONTRACTOR shall be credited to the amount payable to CONTRACTOR for allowable costs as provided herein, except, however, CONTRACTOR shall be entitled to a proportionate fixed fee, if any, which, in the opinion of MCRWMA, it has legitimately earned and was not related to the cause for which this Agreement was terminated.
- E. If after notice of termination of this Agreement as provided for in this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section or that the default was excusable under the provisions of this Section, then the rights and obligations of the parties shall be the same as if the Agreement had been terminated for the convenience of MCRWMA.
- F. Any failure to pay subcontractors may, at the discretion of MCRWMA, constitute a material breach of this agreement.

Section 12 – Interest of Officials and CONTRACTOR

- A. No member of or delegate to the Congress of the United States of America nor any Resident Commissioner shall be admitted to any share or part hereof or to any benefits to arise herefrom.
- B. CONTRACTOR hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. CONTRACTOR further covenants that in the performance of this work, no person having any such interest shall be employed.

Section 13 – Subcontracting

- A. CONTRACTOR shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of MCRWMA.
- B. All subcontracts shall be subject to the provisions contained in this Agreement between MCRWMA and CONTRACTOR.
- C. If the subcontractor is a Disadvantaged Business Enterprise, prompt payment and return of retainage requirements apply, as referenced in 49 CFR 26.29. CONTRACTOR will provide payment

records upon MCRWMA's request.

- D. CONTRACTOR cannot terminate a subcontractor, including a DBE subcontractor, for convenience if CONTRACTOR listed the subcontractor in response to the RFP, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without MCRWMA's prior written consent.

Section 14 – Negotiated Agreement

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

Section 15 – Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of any successors or assigns.

Section 16 – Independent Contractor

MCRWMA and CONTRACTOR agree that CONTRACTOR is an independent contractor and that no employer-employee relationship exists between MCRWMA and CONTRACTOR or any of its subcontractors. CONTRACTOR shall be solely responsible for the conduct and control of the work performed under this Agreement. CONTRACTOR shall be free to render services to others during the term of this Agreement so long as such activities do not interfere with or diminish CONTRACTOR 's ability to fulfill the obligations established herein to MCRWMA.

Section 17 – Dispute Resolution, Attorney Fees, Jurisdiction, and Venue

In any action, suit or proceeding arising out of or in any way connected with the performance of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law relating to this Agreement or any litigation or arbitration arising out of this Agreement shall be interpreted pursuant to California law, subject to the jurisdiction of the Superior Court of California, and venued in the County of Merced. CONTRACTOR expressly waives federal jurisdiction.

Section 18 – Publication

No reports relating to this work shall be published by CONTRACTOR without written permission of MCRWMA.

Section 19 – Indemnification

CONTRACTOR shall indemnify and defend MCRWMA and hold it harmless from and against any and all claims, demands, or liability arising out of or in any way connected with the performance of this Agreement. Indemnity shall apply to any acts, omissions, willful misconduct, or negligent conduct,

whether active or passive, unless liability is caused solely by the negligent or willful misconduct of MCRWMA. CONTRACTOR will, on request and at its own expense, defend any action, suit, or proceeding arising hereunder and shall reimburse and pay MCRWMA for any loss, cost, damage, or expense, including attorney's fees suffered by it hereunder.

Section 20 – Ownership of Documents

All documents, methodological explanations, computer programs, drawings, designs and reports generated as a result of work on this Agreement shall be the property of MCRWMA.

Section 21 – Documentation/Access to Records

CONTRACTOR shall document the results of the work with each billing, to the satisfaction of MCRWMA. Such documentation shall include a progress summary, listing attainment of Agreement objectives. CONTRACTOR shall work with MCRWMA to ensure that all paperwork requirements are met.

CONTRACTOR shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment to CONTRACTOR. Such materials shall be available for inspection by authorized representatives of MCRWMA, or the copies thereof shall be furnished if requested. The FTA, FHWA, Comptroller General of the United States, or any authorized representative, shall have access to any books, documents, papers and records of the CONTRACTOR, which are directly pertinent to that specific Agreement, for the purpose of making audit, examination, excerpt and transcriptions.

Section 22 – Waiver

No waiver by either party of any default, breach, or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach, or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent, or any other right hereunder.

In no event shall the making, by MCRWMA, of any payment to CONTRACTOR constitute, or be construed as, a waiver by MCRWMA of any breach of covenant, or any default which may then exist, on the part of CONTRACTOR. The making of any such payment by MCRWMA while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving CONTRACTOR from its full obligations under this Agreement.

Section 23 – Notices

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

A. To MCRWMA:	MCRWMA Diversion Program Manager Merced County Regional Waste Management Authority 7040 N. Highway 59 Merced, CA 95348
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B. To CONTRACTOR:

Contact Name, Title
Monterey Regional Waste Management District
PO Box 1670
Marina, CA 93933-1670

Nothing hereinabove shall prevent either MCRWMA or CONTRACTOR from personally delivering any such notices to the other.

Section 24 – Integration

This Agreement, and Exhibit A represent the entire understanding of MCRWMA and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by MCRWMA and CONTRACTOR.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

Regional Waste Management Authority:

Monterey Regional Waste Management District:

By _____
Stacie Guzman, Executive Director

By _____
Contact Name, Title

APPROVED AS TO FORM:

By _____
General Counsel
Haden Law Office

EXHIBIT A – COST SUMMARY

Processing Fee:

\$45 per ton net cost per ton delivered to CONTRACTOR's Materials Recovery Facility (MRF)

Transportation Costs:

\$310 per load from Billy Wright Landfill*

*Transportation will be provided in 45' walking floor trailers that MCRWMA will be responsible for loading.