

A-15-317
9/29/15

AGREEMENT FOR SOLID WASTE TRANSFER STATION SERVICES

This Agreement is made and entered into this 15th day of Sept., 2015, by and between the **CITY OF MANTECA**, a public body, corporate and politic ("City") and **THE COUNTY OF SAN JOAQUIN**, a political subdivision of the state of California ("County").

RECITALS

A. County owns and operates a Solid Waste Transfer Station located on Lovelace Road ("Lovelace"), approximately one quarter mile east of Airport Way. The Lovelace facility is adequate to perform all services provided for herein;

B. County has invested in landfills, transfer stations, and other facilities that provide benefits to CITY;

C. County and City believe that it is to their mutual benefit for the County to continue to operate landfills and transfer stations because these facilities guarantee long-term disposal capacity and provide some competition to private sector companies to limit the amount that they can charge for similar services;

D. City requires a facility in which to process food waste for landfill diversion and contemplates providing a regional service for food waste processing in order to meet State mandated landfill diversion goals and promote methane production in the City's anaerobic digesters.

E. County provides solid waste management, planning, education, and reporting countywide, with funding support from an AB939 fee collected on all waste disposed of at public and private disposal sites in the County;

F. City recognizes that the convenience and affordability of the self-haul option at the County-owned Lovelace is important to the residents of the CITY;

G. County personnel at Lovelace are trained, experienced, and competent to perform the Solid Waste Transfer services required by this Agreement;

H. County possesses the skill, experience, ability, background, certification, permits, and knowledge to provide the services described in this Agreement on the terms and conditions specified herein; and

I. City desires to retain County to render the Solid Waste Transfer Station services set forth in this Agreement and Exhibit A, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the above-mentioned recitals, the parties hereto agree as follows:

1. Scope of Services. County shall perform the Solid Waste Transfer Station services described in Exhibit A and pursuant to the proposal submitted by County dated 08-21-2015, attached hereto as Exhibit B and incorporated herein by this reference. County shall provide these services at Lovelace in the manner specified in Exhibit A.. City agrees to use Lovelace exclusively, where specified in Exhibit A, to dispose of all residential and commercial waste collected by the City municipal crews during the term of this Agreement, to include that collected by roll-off vehicles.

2. Work Through City Staff. County shall perform its services pursuant to this Agreement solely through City staff. No communications, information or documentations shall be made directly to any applicant regarding the City without the prior written consent of the City. This shall not apply to the sole request of information or clarification of information by County from the applicant. All requests shall be noted to City in an expeditious manner.

3. Time of Performance. County's services will commence upon execution of this Agreement and shall be completed in accordance with the Schedule of Activities, attached hereto as Exhibit C. Failure to perform Solid Waste Transfer Station services in accordance to the Schedule of Activities may result in the City withholding payments. Repeated failure to provide Solid Waste Transfer Station services in accordance with the Schedule of Activities may result in a reduction of the total compensation provided for in Section 4 herein.

4. Compensation. Without additional authorization from the City, compensation to be paid to County shall not exceed TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000.00) per year. Payment by City under this Agreement shall not be deemed a waiver of any defects, even if those defects were known to the City at the time of payment.

5. Method of Payment. County shall submit monthly billings to City specifying and describing the Solid Waste Transfer station services performed by category specified in Exhibit A during the preceding month. County's bills shall include a brief description of the services performed and the date the services were performed.

City shall pay County no later than 30 days after approval of the monthly invoice by City staff. Payments may be delayed by City if County fails to provide services in accordance with the Schedule of Activities, unless the City has provided prior written consent to any delay in schedule.

6. Extra Work. At any time during the term of this Agreement, City may request that County perform Extra Work. As used herein, the term "Extra Work" means any work that is determined by City to be necessary for the provision of Solid Waste Transfer services by the County, but which the parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. County shall not perform, nor be compensated for, Extra Work

without the City's prior written Notice to Proceed. Compensation to County for Extra Work requested by City will be agreed upon by County and City before Notice to Proceed is issued by City. When Extra Work has been performed by County and accepted by City, County shall include the agreed upon amount for the Extra Work in the monthly invoice for City to pay.

7. Term of Contract. This is a ten (10) year municipal solid waste ("MSW") disposal contract, with the added feature of space provided at Lovelace for food waste processing by the City, commencing October 1, 2015 and ending September 30, 2025. The County guarantees its rates for years 1 through 2 with price escalation tied to CPI for years 3 through 10.

- A. The rate shall be frozen for the initial two years, from October 1, 2015, to September 30, 2017. In year one there will be a gate fee of \$250,000. In year two there will be a gate fee of \$100,000. There will be no gate fees for the remaining eight years of the contract.
- B. After the first two years, price of services will be adjusted annually by a percentage equal to 80% of the annual percentage change in the Consumer Price Index for All Urban Consumers – for the San Francisco – Oakland – San Jose Area (1982 – 1984 = 100) as published by the Bureau of Labor Statistics. Additionally, the price of services shall be adjusted upward at any time to reflect an increase in any government surcharge, tax, or fee, or any new government surcharge, tax, or fee imposed on Manteca's waste processing or disposal which County is responsible for collecting or paying (for example, an increase in the current \$1.40/ton Board of Equalization fee). The following procedure will be used to notify the City of any rate adjustments.
 - i. Rate adjustments based on CPI will be effective on the anniversary date of the contract each year, commencing year three, October 1, 2017. County shall notify City 120 days before anniversary of the Contract commencement. Should County not provide the City with 120 day notice of a CPI adjustment prior the anniversary date of the contract year, the rate adjustment will be effective 120 days after County notifies the City, but no more than one CPI adjustment shall be made in any one calendar year.
 - ii. Rate adjustments due to new or increased government surcharges or taxes will be effective on the date the new surcharge or tax goes into effect, provided that County has provided the City with at least 120 days notice of such increases. Should County not provide the City with 120 days notice prior to new surcharges or taxes going into effect, the rate adjustment will be effective 120 days after County notifies the City,

8. Ownership of Documents; Confidentiality.

A. County shall, at County's expense, provide such data, invoices, reports, documents and other writings to City upon written request by City. County shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose.

9. County's Books and Records.

A. County shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City, for a minimum period of three years, or for any longer period required by law, from the date of final payment to County under this Agreement.

B. County shall maintain all records that document performance under this Agreement for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at County's address specified in Section 15 of this Agreement.

10. Independent Contractor. In the performance of the work and services required by this Agreement, County and its employees are not agents or employees of the City. County employees shall obtain no rights to retirement or other benefits that accrue to City's employees, and County expressly waives any claim it may have to any such rights.

11. Performance of County and Complete or Temporary Termination of Contract.

A. City is relying upon the professional training and ability of County employees and suitability of the Lovelace facility to perform the services hereunder as a material inducement to enter into this Agreement. County shall therefore provide skilled personnel to perform all services under this Agreement. All work performed by County shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent personnel in County's field of expertise.

B. In the event City believes County has failed to perform any Solid Waste Transfer services of this Agreement which could result in termination, City and County shall do the following:

- i. City shall within 3 days notify County in writing of any failure of performance at Lovelace.
- ii. County shall immediately correct the failure of performance or,
- iii. County shall request additional time to correct the failure of performance. Any extension shall be approved by the City's Director of Public Works or his designee.

C. In the event County fails to correct a failure of performance after notice from the City, City may without further notice, exercise any right it has in law or equity including, but not limited to, any or all of the following:

- i. Declare this Agreement terminated effective on a date determined by City.
- ii. Engage others to perform the obligation of County, or perform them itself.
- iii. County shall pay the City the cost of any additional expenses incurred by City.

12. Compliance with Laws. County shall use the customary standard of care in its profession to comply with all applicable federal, state, and local statutes, codes, ordinances, and regulations.

13. Licenses. County represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals that are legally required of County to practice its Solid Waste Transfer services. County represents and warrants to City that County shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance, and approvals that are legally required of County to practice its Solid Waste Transfer Station services.

14. Indemnification and Hold Harmless. County agrees to defend, indemnify, and hold harmless the City, its officers, officials, agents, employees, and volunteers, from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of County's performance of this Agreement, or County's failure to comply with any of its obligations contained in this Agreement; excluding, however, any claim arising out of the active negligence or willful misconduct of the City, its officers, agents, employees, or volunteers. Specifically, the County will indemnify and hold harmless the City from all claims arising from disposal of MSW, including, but not limited to, fines, closure costs, groundwater contamination, and environmental cleanup costs. Notwithstanding the forgoing, the indemnification will not extend to the City for delivery of any unacceptable waste such as hazardous waste that the Lovelace facility is not permitted to accept.

15. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Manteca
 1001 W. Center Street
 Manteca, CA 95337

If to County: San Joaquin County
 Department of Public Works
 Solid Waste Division
 1810 E. Hazelton Avenue
 Stockton, CA 95205

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and County. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in their entirety by this Agreement.

17. Amendments. This Agreement may be amended only by a written document executed by both County and City and approved as to form by the City Attorney and County Counsel.

18. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience, and competence of County. Assignments of any or all rights, duties, or obligations of the County under this Agreement will be permitted only with the express written consent of the City. County shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, County shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay any monies due to any such subcontractor other than as may be required by law.

19. Waiver. Waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this Agreement.

20. Severability. If any provision of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

21. Controlling Law; Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California, and any legal action relating to this Agreement shall be brought in a state or federal court in the County of San Joaquin.

22. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

23. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. Each party shall have the option to strike two of the five mediators selected by the presiding judge of the San Joaquin County Superior Court, and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy has been signed by both parties.

25. Authority to Enter Agreement. County warrants that it has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants to the other that the signatories to this Agreement have the legal power, right, and authority to enter into this Agreement and to bind each party.

26. Prohibited Interests.

A. City and County each represents and warrants to the other that they have neither employed nor retained any person, other than a bona fide employee working solely for their respective agency, to solicit or secure this Agreement. Further, County and City warrant to the other that they have neither paid nor agreed to pay any person, other than a bona fide employee working solely for County or City, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For any breach or violation of this representation and warranty, City and County shall each have their own right to rescind this Agreement without liability.

B. For the term of this Agreement, no member, officer, or employee of City, during the period of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

27. Equal Opportunity Employment. County represents that it is a political subdivision of the State of California and as such is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. County shall comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan, or other related programs or guidelines currently in effect or later enacted.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

CITY OF MANTECA,
a public body, corporate and politic

By: Steve DeBrum
Stephen F. DeBrum
Mayor

COUNTY OF SAN JOAQUIN,
a political subdivision of the
State of California

By: Katherine M. Miller
Katherine M. Miller
Chair of the Board of Supervisors

ATTEST:

By: Joann Tilton
Joann Tilton, MMC
City Clerk

ATTEST:

By: Mimi Duzenski
Mimi Duzenski,
Clerk of the Board of Supervisors
Of the County of San Joaquin,
State of California



APPROVED AS TO FORM:

By: John Brinton 9-17-15
John Brinton
City Attorney

APPROVED AS TO FORM:

By: Lawrence P. Meyers
Lawrence P. Meyers
Deputy County Counsel

RECOMMENDED FOR APPROVAL:

By: Michael Selling
Michael Selling
Deputy Director of Public Works

EXHIBIT A

Scope of Work

1. Municipal Solid Waste – EXCLUSIVE TO COUNTY

County accepts complete responsibility for the disposal of municipal solid waste ("MSW") delivered to Lovelace by the CITY. For purposes of this agreement, MSW includes commercial refuse, residential refuse, food waste, recyclables, green waste, and street sweepings as further described and in the manner set forth below. Disposal of biosolids, sewer sand and grit are not part of this agreement.

Should the City contract residential or commercial waste collection to another hauler, or use a sub-contractor, they will instruct the contractor hauler to use Lovelace during the term of this agreement.

City makes no guarantee as to the quantity of materials to be collected by City or delivered to County.

Each City truck shall be weighed upon entering Lovelace. At the time of entry, Lovelace shall provide City with a certified weight tag with certified tare and gross weights.

In order to ensure compliance with AB939 reporting requirements, County shall ensure that monthly invoices include summary listing of dates, weights, and tag numbers for each delivery to Lovelace. County shall, upon request, provide any other data as required for the City's compliance with AB939 reporting.

A) Lovelace Gate Fee

Year 1:	\$250,000
Year 2:	\$100,000
Years 3-10:	No gate fee

B) MSW Quantities and Tipping Rates

Estimated annual quantity tipped:	30,000 tons
Price per ton tipped, initial period years 1-2:	\$50.00
Price per ton renewal years 3-10:	Escalator tied to CPI

- i. Rate adjustments based on CPI will be effective on the anniversary date of the contract each year, commencing year three, October 1, 2017. County shall notify City 120 days before anniversary of the Agreement commencement. Should County not provide City with 120 day notice of a CPI adjustment prior the anniversary date of the Agreement year, the rate adjustment will be effective 120 days after County notifies City, but no more than one CPI adjustment shall be made in any one calendar year.

2. Food Waste – EXCLUSIVE TO COUNTY

County will provide 1000 square feet, under cover, at Lovelace for the term of this Agreement. The provided space is to be used by City to process collected food waste from City and potentially the region, in order to meet State mandated landfill diversion goals and promote methane production in City's anaerobic digesters.

City food waste vehicles will not be charged a tipping fee, with the exception of processing residue. City will pay County actual costs for electricity and water, associated with operating the 1000 square feet occupied by City.

A) Food Residue Quantities and Tipping Rates

Estimated annual residue quantity tipped:	10,000 tons
Price per ton tipped, initial period years 1-2:	\$50.00
Price per ton renewal years 3-10:	Escalator tied to CPI

- i. Rate adjustments based on CPI will be effective on the anniversary date of the contract each year, commencing year three, October 1, 2017. County shall notify City 120 days before anniversary of the Agreement commencement. Should County not provide City with 120 day notice of a CPI adjustment prior the anniversary date of the Agreement year, the rate adjustment will be effective 120 days after County notifies the City, but no more than one CPI adjustment shall be made in any one calendar year.

3. Processing of Commingled Recyclables – EXCLUSIVE TO COUNTY July 17, 2018 through September 30, 2025.

For the period October 1, 2015 through July 16, 2018, County will not receive recyclables collected by City. For the period July 17, 2018 through September 30, 2025 County will receive recyclables from City and receive no fee for the tipping, handling, and processing of the recyclables. County shall transport such materials to facility of County's choice for processing and shall maintain ownership of such materials.

A) Recyclable Quantities and Handling Fees (July 17, 2018 through September 30, 2025).

Estimated annual quantity tipped and handled:	6,000 tons
Price per ton for recyclables tipped:	\$0

4. Green Waste – NON-EXCLUSIVE TO COUNTY

County agrees to accept green waste from City.

A) Green Waste quantities and Tipping Fees (October 1, 2015 through September 30, 2025).

Estimated annual quantity tipped and handled:	10,000 tons
Price per ton tipped, handled, and held:	\$40

- i. Rate adjustments based on CPI will be effective on the anniversary date of the contract each year, commencing year three, October 1, 2017. County shall notify City 120 days before anniversary of the Agreement commencement. Should County not provide City with 120 day notice of a CPI adjustment prior the anniversary date of the Agreement year, the rate adjustment will be effective 120 days after County notifies City, but no more than one CPI adjustment shall be made in any one calendar year.

5. Biosolids

County is not required to accept transfer or dispose of biosolids.

END OF EXHIBIT A.

EXHIBIT B

COUNTY'S PROPOSAL

The San Joaquin County Solid Waste Management Strategy calls for a cooperative effort by the County of San Joaquin and the Cities of the County for the management of solid wastes existing within the jurisdiction of the County.

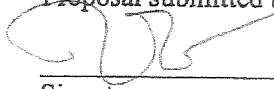
City seeks to replace its expiring solid waste disposal contract with a service that better supports food waste processing and landfill diversion and contemplates providing regional service for food waste processing in order to meet State mandated landfill diversion goals and promote methane production in the city's anaerobic digesters.

City has provided County with its desired scope of work, as a result, the County offers the following terms for a 10 year agreement (October 1, 2015 through September 30, 2025).

In consideration for a payment October 1, 2015 of \$250,000 and a payment on October 1, 2016 of \$100,000, County offers to provide the following Solid Waste Transfer Station services and rates at Lovelace:

1. **MSW – EXCLUSIVE**
Tipping fee year 1 and 2: \$50 per ton
Tipping fee year 3 through 10: Annual increase 80% of Bay Area CPI
2. **Food Waste – EXCLUSIVE**
County will provide 1,000 square feet of covered space.
No tipping fee for food waste.
Processing of food waste residuals at MSW rate.
City to pay actual cost of electricity and water needed for food processing. The actual and variable charges shall be billed monthly based on the previous month's actual costs.
3. **Recyclables – EXCLUSIVE July 17, 2018 through September 30, 2025**
No tipping fee. County retains any revenue from sale of recycled material.
4. **Green Waste – NON-EXCLUSIVE**
Tipping fee year 1 and 2: \$40
Tipping fee year 3 through 10: Annual increase 80% of Bay Area CPI
5. **Other**
County will also provide reasonable space for bin storage and vehicle parking.

Proposal submitted by:



Signature

August 21, 2015

Date

Integrated Waste Manager

Title

EXHIBIT C

SCHEDULE OF ACTIVITIES

1. This is a ten (10) year MSW disposal contract, with the added feature of space provided at Lovelace for food waste processing, commencing October 1, 2015 and ending September 30, 2025.
2. County's Lovelace facility shall be opened to receive waste from City between the hours of 6:30 a.m. and 2:00 p.m. Monday through Saturday and every Holiday with the exception of Christmas and New Year's Day.
3. County guarantees its rates for years 1 through 2 with price escalation tied to CPI for years 3 through 10.