

CITY OF OAKLAND



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Public Works Agency
Environmental Services Division

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ADDENDUM NO. 12 December 17, 2012

Subject: Request for Proposals for Zero Waste Services
Collection Services – Service Groups 1 and 2
To: All Eligible Proposers

The clarifications, additions and/or deletions contained in this **ADDENDUM** shall be made a part of the Request for Proposals (RFP) for the above-referenced project, and shall be subject to all applicable requirements there-under, as if originally shown and/or specified. RFP is revised as follows:

1. Clarification: MM&O Contract Section 30.02 Dispute Resolution is modified as follows:

~~30.02 Dispute Resolution. All disputes relating to service or compensation changes as specified in Section 30.04 of this Contract Except for a CONTRACTOR Default under Article 29, and except as provided below in section 30.02.3, should any dispute arise under this Contract, including but not limited to the performance and obligations of the parties, or service or compensation changes, such disputes shall be resolved by the following procedures,~~

30.02.1 The parties shall resolve their disputes informally to the maximum extent possible and shall attempt to resolve such disputes in a cooperative and mutually satisfactory manner. Either party shall give the other written notice of such dispute, and also provide written notice to the Contract Manager. The Contract Manager shall then schedule a meeting between CONTACTOR and the CITY Administrator or the CITY Administrator's designee as soon as reasonably possible. In the event such dispute cannot be resolved by the parties themselves within thirty (30) days of meeting, either party may propose the appointment of a mediator.

~~30.02.2 Mediation. The parties shall participate in non-binding mediation of any dispute arising under this Contract (whether contract, tort, or otherwise), as provided hereafter. If the disputing parties cannot informally resolve the dispute, they shall attempt to resolve such dispute through non-binding mediation for a period not to exceed ninety (90) days.~~

~~30.02.2.1 The party desiring mediation shall give written notice thereof to the other party to this Contract, specifying the dispute to be mediated.~~

~~30.02.2.2 The mediation shall be held at Oakland, California, or at such other location as may be mutually agreed among the parties. The mediation shall be conducted according to and a mediator chosen pursuant to the rules of the American Arbitration Association.~~

~~30.02.2.3 At least ten (10) Work Days days before the date of the mediation, each side shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to~~



bind the party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they shall also be asked to participate in the mediation.

30.02.2.4 Should mediation be unsuccessful, and if the dispute does not concern valuation items for which binding arbitration is required in Section 30.02.3, then a party may commence an adversarial proceeding before any court of competent jurisdiction in the County of Alameda. Disputes that concern valuation items in Articles 7 and 8, and sections 17.01.3, 18.01, 30.01, and 30.03, shall proceed with binding arbitration procedures as set forth below.

30.02.3 Binding Arbitration. For disputes relating to valuation items in Articles and 8, and sections 17.01.3, 18.01, 30.01, and 30.03, of the Contract, if mediation is unsuccessful, such disputes shall be referred to binding arbitration upon mutual written approval of the disputing parties. If the disputing parties do not mutually agree in writing to binding arbitration, a party may commence an adversarial proceeding before any court of competent jurisdiction in the County of Alameda.

30.02.3.1 For the purposes of binding arbitration, disputes over "valuation items" refers to disputes over a specific amount of money that is due or owed by either party, and the dispute arises under Articles 7 and 8, and sections 17.01.3, 18.01, 30.01, and 30.03. However, valuation items in section 7.12.2 and section 7.13 and its subsections are not subject to and are excluded from, mandatory binding arbitration requirements in this Contract.

30.02.3.2 Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure Section 1280 et. seq., the then-current JAMS Streamlined Arbitration Rules, and the terms of section 30.02.3 and its subsections. In the event of any inconsistency, the terms of section 30.02.3 and its subsections shall control. The arbitration shall be administered by JAMS and conducted in the County of Alameda. If the parties are unable to select an arbitrator within twenty (20) days after delivering written notice requesting arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the parties cannot agree on the arbitration organization, the Presiding Judge of the Alameda County Superior Court shall designate such an organization upon the petition of either party.

30.02.3.3 The arbitrator shall be independent of, and unaffiliated with, each party and shall not ever have been an employee of either party, under contract with either party in the past five (5) years or acted as an arbitrator for such party within the past five (5) years.

30.02.3.4 Within twenty (20) days after initiation of the arbitration, if not previously done so under the terms of this Contract, the parties shall each submit to each other and the arbitrator their respective relevant value for the item subject to the valuation dispute, with such supporting information as is reasonably necessary to support such suggested value. If the two (2) valuations so submitted differ by less than or equal to ten percent (10%) of the higher of the two (2), the average of the two (2) shall become the agreed upon amount for purposes of this Contract and the arbitration shall not be continued. If the two (2) valuations differ by more than ten percent (10%) of the higher of the two (2), then the arbitrator shall make a determination of the relevant value and submit such determination to both the parties. This third valuation will then be averaged with the closer of the two (2) previous valuations and the result shall be the relevant value. In no event shall the resolution of



a valuation dispute result in a valuation higher than that which was set forth by CONTRACTOR (e.g., a impact of a "material" disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding on the parties.

30.02.3.5 The arbitrator shall have the authority and power to award costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

30.02.3.6 By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

Acknowledgement of waiver of rights to trial by jury if proceeding with binding arbitration pursuant to Section 30.02.3 of this Contract.

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30.02.4 During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall be tolled until its resolution; provided, however, that no tolling shall apply to any matters other than those directly related to the dispute and such tolling shall not entitle a party to breach, default, or fail to perform its obligations under this Contract.

2. Clarification: RR Contract Section 30.02 Dispute Resolution is modified as follows:

30.02 Dispute Resolution. All disputes relating to service or compensation changes as specified in Section 30.01 of this Contract Except for a CONTRACTOR Default under Article 29, and except as provided below in section 30.02.3, should any dispute arise under this Contract, including but not limited to the performance and obligations of the parties, or service or compensation changes, such disputes shall be resolved by the following procedures:

30.02.1 The parties shall resolve their disputes informally to the maximum extent possible and shall attempt to resolve such disputes in a cooperative and mutually satisfactory manner. Either party shall give the other written notice of such dispute, and also provide written notice to the Contract Manager. The Contract Manager shall then schedule a meeting between CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as reasonably possible. In the event such dispute cannot be resolved by the parties themselves within thirty (30) days of meeting, either party may propose the appointment of a mediator.

30.02.2 Mediation. The parties shall participate in non-binding mediation of any dispute arising under this Contract (whether contract, tort, or otherwise), as provided hereafter. If the disputing parties cannot informally resolve the dispute, they shall attempt to resolve such dispute through non-binding mediation for a period not to exceed ninety (90) days.

30.02.2.1 The party desiring mediation shall give written notice thereof to the other party to this Contract, specifying the dispute to be mediated.



30.02.2.2 The mediation shall be held at Oakland, California, or at such other location as may be mutually agreed among the parties. The mediation shall be conducted according to and a mediator chosen pursuant to the rules of the American Arbitration Association.

30.02.2.3 At least ten (10) ~~Work-Days~~ days before the date of the mediation, each side shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to bind the party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they shall also be asked to participate in the mediation.

30.02.2.4 Should mediation be unsuccessful, and if the dispute does not concern valuation items for which binding arbitration is required in Section 30.02.3, then a party may commence an adversarial proceeding before any court of competent jurisdiction in the County of Alameda. Disputes that concern valuation items in Articles 7 and 8, and sections 17.01.3, 18.01, 30.01, and 30.03, shall proceed with binding arbitration procedures as set forth below.

30.02.3 Binding Arbitration. For disputes relating to valuation items in Articles and 8, and sections 17.01.3, 18.01, 30.01, and 30.03, of the Contract, if mediation is unsuccessful, such disputes shall be referred to binding arbitration upon mutual written approval of the disputing parties. If the disputing parties do not mutually agree in writing to binding arbitration, a party may commence an adversarial proceeding before any court of competent jurisdiction in the County of Alameda.

30.02.3.1 For the purposes of binding arbitration, disputes over "valuation items" refers to disputes over a specific amount of money that is due or owed by either party, and the dispute arises under Articles 7 and 8, and sections 17.01.3, 18.01, 30.01, and 30.03. However, valuation items in section 7.12.2 are not subject to and are excluded from, mandatory binding arbitration requirements in this Contract.

30.02.3.2 Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure Section 1280 et. seq., the then-current JAMS Streamlined Arbitration Rules, and the terms of section 30.02.3 and its subsections. In the event of any inconsistency, the terms of section 30.02.3 and its subsections shall control. The arbitration shall be administered by JAMS and conducted in the County of Alameda. If the parties are unable to select an arbitrator within twenty (20) days after delivering written notice requesting arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the parties cannot agree on the arbitration organization, the Presiding Judge of the Alameda County Superior Court shall designate such an organization upon the petition of either party.

30.02.3.3 The arbitrator shall be independent of, and unaffiliated with, each party and shall not ever have been an employee of either party, under contract with either party in the past five (5) years or acted as an arbitrator for such party within the past five (5) years.

30.02.3.4 Within twenty (20) days after initiation of the arbitration, if not previously done so under the terms of this Contract, the parties shall each submit to each other and the arbitrator their respective relevant value for the item subject to the valuation dispute, with such supporting information as is reasonably necessary to support such suggested value. If the two (2) valuations so submitted differ by less than or equal to ten



percent (10%) of the higher of the two (2), the average of the two (2) shall become the agreed upon amount for purposes of this Contract and the arbitration shall not be continued. If the two (2) valuations differ by more than ten percent (10%) of the higher of the two (2), then the arbitrator shall make a determination of the relevant value and submit such determination to both the parties. This third valuation will then be averaged with the closer of the two (2) previous valuations and the result shall be the relevant value. In no event shall the resolution of a valuation dispute result in a valuation higher than that which was set forth by CONTRACTOR (e.g., a impact of a "material" disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding on the parties.

30.02.3.5 The arbitrator shall have the authority and power to award costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

30.02.3.6 By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

Acknowledgement of waiver of rights to trial by jury if proceeding with binding arbitration pursuant to Section 30.02.3 of this Contract.

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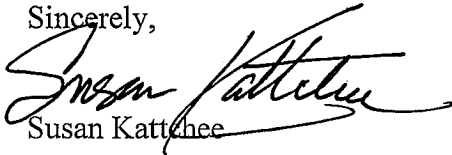
30.02.4 During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall be tolled until its resolution; provided, however, that no tolling shall apply to any matters other than those directly related to the dispute and such tolling shall not entitle a party to breach, default, or fail to perform its obligations under this Contract.

Please note that the sole difference between the dispute resolution sections in the MM&O and RR Contracts is that MM&O Contract Section 30.02.3:1 specifies that valuation items in Section 7.13 and its subsections are not subject to and are excluded from, mandatory binding arbitration requirements in this Contract.



All proposers are required to note this Addendum No. 12, and sign this Addendum No. 12 and submit it with their proposal.

Sincerely,



Susan Kattchee

Zero Waste Services RFP Project Manager

ADDENDUM NO. 12	DATED: 12-17-12
COMPANY / AGENCY NAME:	_____.
COMPANY ADDRESS:	_____.
REPRESENTATIVE'S NAME:	_____.
SIGNATURE:	_____.
DATE:	_____.

