

1/22/13

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A MUTUAL OPERATING AGREEMENT WITH SANTEK ENVIRONMENTAL, INC. FOR THE OPERATION OF A SCALE HOUSE AT BIRCHWOOD LANDFILL.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator of the Department of Public Works to enter into a Mutual Operating Agreement with Santek Environmental, Inc. for the operation of a scale house at Birchwood Landfill.

ADOPTED: _____, 2013.

/mms

MUTUAL OPERATING AGREEMENT

THIS AGREEMENT is entered into between SANTEK ENVIRONMENTAL, INC. (herein "Contractor") and the CITY OF CHATTANOOGA, TENNESSEE, acting by and through its Administrator of Public Works (herein "City").

City owns property that is utilized as a landfill known as the City Landfill on Birchwood Pike ("City Landfill"), upon which is located the City's scales and scale house. Contractor operates and maintains a landfill adjacent to the City Landfill known as C&D Landfill ("C&D") and utilizes the scales and scale house. The City and Contractor desire to enter into this Agreement for the operation of the scales and scale house.

In consideration of the above, the parties agree as follows:

1. Purpose.

Contractor will provide the services of a qualified, trained, and bonded scale operator(s) to operate the scales and scale house. City will provide the facilities, equipment, and supplies necessary to operate the scales and scale house.

2. Term.

The duration of the Agreement will be for one (1) year with an option by the City and the Contractor to mutually agree to extend the Agreement for four (4) additional one-year periods.

3. Contractor Supplied Services.

A. Contractor shall provide a qualified, trained, and bonded scale operator(s) to operate the scales at the scale house and ensure that an operator is present and in control of the scales and scale house during operating hours as agreed upon by the City and Contractor.

B. Contractor shall provide all labor, benefits and insurance, and other related services required in connection with its operator(s) and employees in the operation of the scales and scale house.

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C. Contractor's operator(s) shall identify and receive customers, make commercially reasonable efforts to identify the type of materials on vehicles entering the landfill, provide information about fees and other landfill services, direct customers to proper dumping locations, weigh vehicles in and out of landfill, generate weigh tickets and invoices, collect money from cash paying customers, generate a summary report and reconcile report for all money collected daily, and transfer the daily summary report and money to the City's Landfill Manager or his designee on a daily basis or on a schedule as otherwise agreed to by the City.

D. Contractor agrees to fully cooperate with the reconciliation of City's and C&D's respective accounts.

E. Contractor shall answer phones and provide information about City Landfill and C&D fees, hours of operation, and other related services in a polite and friendly manner.

F. Contractor shall notify the City immediately about anything requiring the City's attention regarding the operation of the scales and scale house or other landfill facilities.

4. City Supplied Services.

The City will provide the following:

A. Access and use of scales, scale house, and other necessary landfill facilities to Contractor for its business purposes as well as for provision of the City's services. Nothing herein shall be deemed to impair or restrict any rights held by the Contractor concerning its access over City property to its property. Nothing herein shall create for Contractor a lease, ownership interest, or other property interest in the City Landfill, the scales, or the scale house.

B. The City will provide and cover the cost of utilities (electricity, water, and phone), office supplies, weigh ticket forms, maintenance of the scale house, calibration and maintenance of the scales, and other similar costs.

C. Computer to be used to generate weigh tickets and invoices.

D. Current information about operation and other information related to the landfill to provide to customers.

5. Assignment.

Contractor shall not transfer or assign any interest in this Agreement to another party or person without the prior written consent of the City.

6. Indemnity.

Contractor shall indemnify, defend, and save harmless the City, up to the limits of the Contractor's insurance coverage, as described in Paragraph 7, its elected officials, managers, employees, and agents from and against all claims, suits, actions, orders, judgments, penalties, or decrees entered by reason of or as a result of Contractor's negligence in the performance of the work under this Agreement. Indemnification shall extend to indirect, consequential, and pollution damages.

7. Insurance.

During the term of the Agreement, Contractor shall maintain the following minimum amounts of insurance coverage:

- A. Workers Compensation Insurance – statutory
- B. Employee's Liability - \$100,000
- C. Comprehensive General Liability Insurance - \$2,000,000
- D. Automobile Liability Insurance - \$2,000,000
- E. Environmental Liability Insurance - \$1,000,000

City shall be named as additional insured on the above policies. Certificates of Insurance shall be provided to the City before the award of the Agreement and shall be in effect for the duration of the Agreement.

8. Damage to Property.

Contractor shall be responsible for correcting immediately any damages to private or governmental property caused by the Contractor during the performance of the services.

9. Termination.

Either party may cancel this Agreement without cause upon giving the other party a ninety (90) days' written notice of the intention to do so.

B. Payment for any services not invoiced up to the date of termination shall be in accordance with the City's policies and procedures. Contractor shall be responsible for paying invoices for any outstanding and unpaid costs upon expiration of the Agreement.

10. Equal Opportunity Employment.

Contractor shall be an equal opportunity employer and shall:

A. Provide prior to the Agreement being signed a certification that he/she will not discriminate against any worker, employee, applicant, or any member of the public because of race, creed, age, national origin, sex, or handicap nor otherwise commit an unfair employment practice.

B. Agree to include the above noted nondiscrimination requirements in all contracts in excess of ten thousand dollars (\$10,000.00) entered into with suppliers of materials and services, other contractors and sub-contractors, and all labor organizations that may perform labor or services on this Agreement.

11. Public Records.

Except for information and data that is protected under law as confidential, all reports, permits, applications, etc. filed in connection with the work will be available for public inspection.

12. Records Retention.

The Contractor shall at all times during the term of the Agreement and for a period of five (5) years after the end of the Agreement, keep and maintain records of the work performed pursuant to this Agreement. This shall include proper records of quotations, contracts, correspondence, invoices,

vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Contractor shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

13. Audit Provisions.

A. The City shall have the right to review or audit the records of the Contractor relating to the performance of this agreement upon reasonable notice during regular business hours. The City may conduct this review or audit with its own personnel, with an independent auditor retained by it, or jointly with its own personnel or independent auditor.

B. The City or its assign may audit all financial and related records (including digital) associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Contractor. The City may further audit any Contractor records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the Agreement) or to identify conflicts of interest.

C. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.

D. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Contractor shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

E. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

14. Changes in Law.

In the event that changes in Federal or State laws and regulations required modification of the Agreement, the City and Contractor agree to cooperate, as the circumstances require and to modify this Agreement to comply with any applicable law or regulation.

15. Drug-free Workplace.

Contractor shall provide an affidavit prior to the Agreement being signed that it maintains a drug-free workplace program in accordance with Tennessee Code Annotated § 50-9-113.

16. Access to Worksites.

Representatives of the City, EPA, and State will have access at reasonable times to the site(s) of Contractor's operations for the purposes of conducting inspections, taking samples and otherwise insuring that the work is performed in accordance with all laws and regulations and in accordance with this Agreement.

ENTERED into this _____ day of _____, 2013.

SANTEK ENVIRONMENTAL, INC.

CITY OF CHATTANOOGA, TENNESSEE

BY: _____

BY: _____

_____, *President*

STEVE LEACH

Administrator of Public Works