

**CONTRACT FOR SERVICES
BETWEEN THE CITY OF PACIFIC
AND THE CITY OF AUBURN
FOR DECANT FACILITIES USAGE**

THIS AGREEMENT is made and executed by and between the City of Pacific, a Washington municipal corporation, hereafter designated as "Pacific," and the City of Auburn, a Washington municipal corporation, hereafter designated as "Auburn."

WHEREAS, Pacific has inadequate facilities to properly handle the Waste Materials produced as a result of their Public Works street sweeping and Vector maintenance activities; and

WHEREAS, Auburn has sufficient capacity at their decant facility to handle the Pacific Waste Materials.

NOW, THEREFORE, for the consideration stated in this Agreement, Pacific and Auburn do agree as follows:

1. PURPOSE

The purpose of this Agreement is to provide for proper handling, processing and disposal of Street Sweeper and Vector truck materials, herein referred to as "Waste Materials" generated by Pacific.

2. RESPONSIBILITIES

The City of Pacific shall deliver Waste Materials to the decant area of the City of Auburn Maintenance & Operations facility (hereafter, the "Facility"), currently located at 1305 C Street SW during the hours of 7:00 am and 3:00 pm, Monday through Friday. The unloading of the Waste Materials by Pacific at the Facility is to be done under the supervision of an Auburn employee at the Facility. Pacific will only send operators to use the decant facility that have been properly trained by Auburn on the safe and efficient use of the facility and dumping of Waste Materials.

If conditions at the Facility require limiting or restricting Pacific from delivering waste materials, such as when the Facility is down for maintenance or the storage area is full, Auburn reserves the right to request Pacific to retain its Waste Materials until such time as the conditions at the Facility allow Auburn to accept the Waste Materials again. Auburn will give Pacific as much advance notice of these conditions as is practicable. Auburn further reserves the right to reject any individual shipment of Waste Materials, such as material from a fuel spill or other products that may exceed Auburn's allowable discharge permit.

Auburn agrees to provide for the dewatering and the disposal of the Waste Materials in compliance with all local, state, and federal permits pertaining to the dewatering and disposal of such Waste Materials.

3. VOLUME

Subject to the provisions of Paragraph 2, above, Auburn shall accept Waste Materials from Pacific in the following volumes: not to exceed 50 tons per month or a total of 300 tons per year as measured at Auburn's truck scale. Auburn may accept Waste Material from Pacific that exceeds these volumes upon the review of a written request from Pacific. All such requests shall be made to Auburn's Assistant Director of Public Works Services thirty (30) days in advance of proposed delivery of such additional Waste Materials.

4. COST FOR SERVICES

Subject to the Reopener provisions of Paragraph 7, below, Pacific shall pay Auburn \$100.00 per month base fee for administration costs and \$75.00 per ton of Waste Materials for processing, testing and disposal fee (measured as scale weight). Auburn will bill Pacific on a quarterly basis.

5. DECANT FACILITY IMPROVEMENTS

Pacific recognizes that the capacity of Auburn's Facility is limited and that additional capacity will need to be provided, as both Cities waste disposal needs continue to grow, in order to provide long-term service to Pacific.

6. TERM

The duration of this Agreement shall be for an initial term of three (3) years beginning January 1, 2017 through December 31, 2019, and may be extended thereafter for an optional, additional term of three (3) years beginning January 1, 2020 through December 31, 2022, by written amendment of the Parties, including but not limited to mutual agreement on proposed changes –increases or decreases- to the cost for services Section 4 of this Agreement, not later than sixty (60) days prior to the end of the initial term. It is further provided, however, that either party may terminate this Agreement with or without cause upon providing one hundred twenty (120) days advance written notice to the other party.

7. REOPENER

Either party may request that any provision of this Agreement can be renegotiated by submitting a written request with fourteen (14) days advanced notice. Any amendment

of this Agreement, including cost for services, shall be in writing and shall be signed by both parties consistent with Section 13 of this Agreement.

8. HOLD HARMLESS AND INDEMNIFICATION

- a) Pacific shall indemnify and hold Auburn and its agents, employees, officers and/or volunteers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages or costs, of whatsoever kind or nature, brought against Auburn arising out of, in connection with, or incident to the execution of this Agreement and/or Pacific's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of Auburn, its agents, employees, officers and/or volunteers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Pacific; and provided further, that nothing herein shall require Pacific to hold harmless or defend Auburn, its agents, employees officers and/or volunteers from any claims arising from the sole negligence of Auburn, its agents, employees, officers and/or volunteers. No liability shall attach to Auburn by reason of entering into this Agreement except as expressly provided herein.
- b) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Auburn and Pacific, its officers, officials, employees, and volunteers, each party's liability hereunder shall be only to the extent of that party's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.
- c) Auburn shall have no liability for, and shall be held harmless from and against, all claims, damages, liabilities and costs arising out of or relating to the presence, discovery, or failure to discover, remove, address, remediate or cleanup environmental or biological hazards resulting from pacific deliveries or otherwise attributable to pacific, specifically including, but not limited to, mold, fungus, hazardous waste, substances or materials.
- d) Pacific shall have no liability for, and shall be held harmless from and against all claims, damages, liabilities and costs arising out of or relating to the presence, discovery or failure to discover, remove, address, remediate or cleanup environmental or biological hazards attributable to auburn, specifically including, but not limited to, mold, fungus, hazardous waste, substances or materials. In addition, pacific shall have no liability for, and shall be held harmless from and

against all claims, damages, liabilities and costs arising out of auburn's failure to properly dispose of such waste materials after delivery by pacific according to all applicable law.

9. RESOLUTION OF DISPUTES AND GOVERNING LAW

- a) Alternative Dispute Resolution If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation before resorting to other avenues of dispute resolution. The mediator may be selected by agreement of the parties. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be handled through litigation as described in subsection b) below. Each party shall bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence.
- b) Applicable Law and Jurisdiction This Agreement shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Agreement cannot be settled through mediation, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. The prevailing party in any such action before the courts shall be entitled to recover its costs of suit and reasonable attorneys' fees.

10. WRITTEN NOTICE

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing. If written notice is provided by electronic mail (e-mail), then such written notice shall become effective one (1) business day after it is successfully sent.

11. NON-DISCRIMINATION

Parties shall not discriminate in any manner related to this Agreement on the basis of race, color, national origin, sex, religion, age, marital status or disability in employment or the provision of services.

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12. INSURANCE

A) The Parties shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Waste Disposal described in this Agreement.

B) The Parties shall obtain and maintain, during the effective dates of this Agreement, the following insurance coverage and limits (at a minimum):

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. The Automobile Liability insurance shall include a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident, and
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The Commercial General Liability insurance shall be written with limits no less than \$1,000,000 per occurrence with a \$2,000,000 general aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, mold, pollution and employers liability, and
3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Employer's Liability insurance, as necessary, shall be written with limits of each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease-Policy limit \$1,000,000.

C) Each party's insurance shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the other party.

D) If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period shall be given to the other party.

E) Insurance, other than through an insurance pool, is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

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13. Compliance with Law, Right of Inspection

The parties agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the activities described in this Agreement, and to all equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. Each party shall have the right to inspect the records of the other party relating to this Agreement upon reasonable notice to the other party, during working hours.

14. Non-Waiver of Breach

The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

15. Assignment and Modification

Any assignment of this Agreement by either party without the prior written consent of the other party shall be void.

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless agreed to in writing and signed by a duly authorized representative of both parties.

16. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

17. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. No agent, employee, or representative of Auburn shall be or shall be deemed to be the employee, agent or representative of Pacific. No agent, employee or representative of Pacific shall be or shall be deemed to be the employee, agent or

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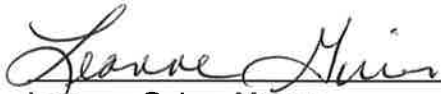
representative of Auburn. None of the benefits provided by Auburn or Pacific to its respective employees including, but not limited to, compensation, insurance, and unemployment insurance are available from Auburn or Pacific to the employees, agents or representatives of the other City. Each City will be solely and entirely responsible for its acts and for the acts of its agents, employees and representatives during the performance of this Agreement.

18. Severability


The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

DATED this 3rd day of July 2017.


CITY OF PACIFIC


Leanne Guier, Mayor
100 3rd Avenue SE
Pacific, WA 98047

CITY OF AUBURN


Nancy Backus, Mayor
25 W. Main Street
Auburn, WA 98001


ATTEST:


Amy Stevenson-Ness, City Clerk

ATTEST:


Dani Daskam, City Clerk

APPROVED AS TO FORM:


Carol Morris, City Attorney

APPROVED AS TO FORM:


Dan Heid, City Attorney

July 7, 2017

City of Pacific
Office of the City Clerk
100 3rd Avenue SE
Pacific, WA98047

RE: Decant Facilities Usage Agreement

On July 3, 2017 the City of Auburn City Council passed Resolution No. 5295 authorizing a Decant Facilities Usage agreement. I have included a fully signed original agreement for your records.. Thank you.

Sincerely,



Shawn Campbell
Deputy City Clerk