

**PROFESSIONAL SERVICES CONTRACT  
FOR  
RECYCLING DROP BOX SERVICE**

This AGREEMENT is made by and between Pacific County, P.O. Box 68, South Bend, Washington, 98586; a municipal corporation hereinafter referred to as the "COUNTY", and Peninsula Sanitation Service, P.O. Box A, Ilwaco, Washington 98624, hereinafter referred to as the "CONTRACTOR".

WHEREAS, the COUNTY, desires to have certain professional services performed and provided by the CONTRACTOR, as set forth hereafter, which services require specialized skills and abilities; and,

WHEREAS, the CONTRACTOR represents that they are qualified and possess sufficient skills and abilities to perform the professional services hereafter in the Agreement, now therefore,

IN CONSIDERATION of the terms, conditions, covenants, and performances described herein, the parties hereto

HEREBY AGREE AS FOLLOWS

**I. SERVICES TO BE PROVIDED BY CONTRACTOR**

The CONTRACTOR will provide services set forth in *Exhibit A* to county owned recycling drop boxes defined in *Exhibit B*, unless boxes not meeting the specifications in Exhibit B are agreed to by the COUNTY and the CONTRACTOR, in accordance with the terms and conditions of this Agreement. These drop boxes will be located as defined in *Exhibit A*. The CONTRACTOR will be responsible for the professional quality and timely completion of all services provided by the CONTRACTOR under this Agreement.

**II. RESPONSIBILITY OF COUNTY**

The COUNTY will:

1. Ensure access to the drop box sites.
2. Compensate the CONTRACTOR as specified herein.

**III. DURATION OF AGREEMENT**

This Agreement will commence upon contract execution and will terminate on March 30, 2013 with the option to extend the contract for additional twelve (12) month periods by mutual agreement, unless sooner terminated by either party, with or without cause, upon thirty (30) days prior written notice to the other party. Termination as herein provided will be in addition to, and not in lieu of, a party's right to terminate for breach. Termination will operate to discharge all obligations that are executory by either party on or after the effective date of termination, but any right of a party based on performance or breach of this Agreement prior to the effective date of termination will survive.

**IV. CHANGES IN WORK**

The COUNTY may at any time, by written order, make changes within the general scope of the Agreement in the services to be performed. If such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of the Agreement, the COUNTY will make an equitable adjustment in the maximum amount payable and/or

other affected terms. Upon mutual agreement to make an equitable adjustment, a written supplement to the Agreement will be prepared by the COUNTY for execution by both parties.

The CONTRACTOR must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. The COUNTY may act upon a claim immediately. Failure to agree to any adjustment will be a dispute under Section XVI. Until the dispute is resolved, the CONTRACTOR shall be obligated to comply with the Agreement as changed.

Notwithstanding the terms and conditions above, the amount payable under this Agreement, will not be increased except by specific written supplement to this Agreement.

## **V. COMPENSATION AND METHOD OF PAYMENT**

The COUNTY will reimburse the CONTRACTOR for satisfactory completion of the services specified under this Agreement on a time and materials basis in an amount not to exceed \$246.10 per service call minus 50% of the market value of the recyclables contained within the recycling drop box. Said marked value will be determined by the CONTRACTOR as the recycling drop box(es) is (are) emptied.

Payment will be made within thirty (30) days after receipt of invoices. In the event any items in the billing may be questioned or disputed by the COUNTY, such items will be deleted from the billing until their resolution and the remainder of the billing will be processed within the above-stated period. Invoices due and owing for more than thirty (30) days beyond the established thirty (30) day payment period, and the subject of dispute under Section XVI, will accrue interest at the rate of twelve (12) percent per annum on the unpaid balance.

If the CONTRACTOR fails to comply with any terms or conditions of this Agreement or to provide in any manner the services agreed to herein, the COUNTY may withhold any payment due the CONTRACTOR until the COUNTY is satisfied that corrective action, as specified by the COUNTY, has been completed to the satisfaction of the COUNTY. This right is in addition to and not in lieu of the COUNTY right to terminate this Agreement as provided below.

## **VI. INDEPENDENT CONTRACTOR**

The CONTRACTOR agrees that it is acting as an independent contractor with the COUNTY, and not as an employee of the COUNTY. As such, the COUNTY will not provide any compensation or benefits beyond the compensation described immediately hereinabove.

## **VII. COMPLIANCE WITH LAWS**

The CONTRACTOR, in performance of the Agreement, will comply with all applicable local, state, and federal laws and regulations, including standards for licensing, certification, and operation of facilities. The CONTRACTOR also will comply with any programs and other standards or criteria that are described in this Agreement to assure quality of services.

## **VIII. INDEMNIFICATION**

In accepting this Agreement, the CONTRACTOR, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be

suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the CONTRACTOR or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the CONTRACTOR, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

## **IX. INSURANCE**

The CONTRACTOR shall maintain, and upon request of the COUNTY, provide proof of occurrence based general business professional liability insurance of at least \$1,000,000 or greater per occurrence and \$2,000,000 aggregate for the term of this CONTRACT. The CONTRACTOR agrees that its liability insurance shall be primary to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state. The CONTRACTOR shall be responsible at its own expense to provide any and all employment insurance coverage, including but not limited to, unemployment insurance, worker's compensation insurance, etc. for any and all of its employees as might apply.

## **X. SAVINGS AND SEVERABILITY**

If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, said provision(s), or portion(s) thereof, will be deemed severed and the remainder of this Agreement will not be affected and will remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

## **XI. SUBCONTRACTING**

The services to be furnished under the terms of this Agreement will be performed by the CONTRACTOR personally and will not be delegated or subcontracted in whole or in part without express written consent of the COUNTY. Permission for subcontracting will not create any contract or any other relationship between the COUNTY and subcontractor. All subcontracts will contain applicable provisions of this Agreement.

## **XII. MINORITY AND WOMEN'S BUSINESS PARTICIPATION**

The CONTRACTOR agrees to utilize to the maximum extent possible, minority-and women-owned businesses as subcontractors in conducting the services of this Agreement. The goals established for minority- and women-owned business participation for this project are as follows:

Minority-owned business participation 10%  
Women-owned business participation 6%

The CONTRACTOR will take the following steps in any solicitation or procurement of subcontractors under this Agreement:

1. Include qualified minority and women's business on solicitation lists.

2. Ensure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The CONTRACTOR agrees to incorporate similar requirements in any solicitations, requests for bids, or contract documents prepared for the services required under this Agreement.

### **XIII. NON DISCRIMINATION IN SERVICES**

The CONTRACTOR will not discriminate against any person presenting himself/herself for service because of race, religion, color, gender, age, national origin, physical/mental impairment, or other disability.

### **XIV. VENUE, APPLICABLE LAW, AND PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under the Agreement, the parties hereto agree that any such action will be initiated in the Superior Court of the State of Washington for Pacific County. The parties hereto agree that all questions will be resolved by application of Washington law and that the parties to such action will have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONTRACTOR hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in Pacific County.

### **XV. TERMINATION**

This Agreement may be terminated by the COUNTY without cause, in whole or in part, upon providing written notice to the CONTRACTOR at least thirty (30) days in advance of the termination date.

In the event this Agreement is terminated by the COUNTY other than for default on the part of the CONTRACTOR, a final payment will be made to the CONTRACTOR with consideration given to the actual costs incurred by the CONTRACTOR in performing the work to the date of termination.

No payment will be made for any work completed after the termination date. If the accumulated payment made to the CONTRACTOR prior to Notice of Termination exceeds the total amount that would be due computed as set forth above, then no final payment will be due and the CONTRACTOR will immediately reimburse the COUNTY for any excess paid.

If the services of the CONTRACTOR are terminated by the COUNTY for default on the part of the CONTRACTOR, the above formula for payment will not apply. In such an event, the amount paid will be determined by the COUNTY with consideration given to the actual costs incurred by the CONTRACTOR in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the COUNTY at the time of termination; the cost to the COUNTY of employing

another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the COUNTY of the work performed at the time of termination.

If it is determined for any reason that the CONTRACTOR was not in default or that the CONTRACTOR's failure to perform did not result from its fault or negligence, the termination will be deemed to be for the convenience of the COUNTY and the immediately preceding paragraph will not apply.

Payment for any part of the work by the COUNTY will not constitute a waiver by the COUNTY of any remedies of any type it may have against the CONTRACTOR for any breach of this Agreement by the CONTRACTOR, or for failure of the CONTRACTOR to perform work required by the COUNTY.

#### **XVI. DISPUTES**

Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONTRACTOR and the COUNTY will be referred for determination to the Board of Pacific County Commissioners whose decision in the matter will be final; provided however, the CONTRACTOR may file a lawsuit challenging the decision of the Board.

#### **XVII. WAIVER OF CONTRACTUAL RIGHT**

The failure of either party to enforce any provision of this Agreement will be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

#### **XVIII. ATTORNEY'S FEES AND COST OF SUIT**

In the event either party pursues a lawsuit, including appeals to appellate courts, the prevailing party will be entitled to costs of suit, court costs, and reasonable attorney fees.

#### **XIX. CHANGES TO WORK**

The CONTRACTOR will make such changes and revisions in the complete work of this Agreement as necessary to correct errors appearing herein and omissions, where required to do so by the COUNTY, without additional compensation thereof. Should the COUNTY find it desirable for its own purpose to have previously satisfactorily completed work or parts thereof changed or revised, the CONTRACTOR will make such revisions as directed by the COUNTY. This work will be considered a Change in Work and will be paid for as herein provided under Section IV.

#### **XX. SOLICITATION OF CONTRACT**

The CONTRACTOR warrants that is has not employed or retained any company or person to solicit or secure this contract, that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting form the award of making this Agreement. For breach or violation of this warranty, the COUNTY will have the right to annul this contract without further liability.

#### **XXI. NOTICES**

All notices required or permitted under this Agreement will be in writing and will be deemed delivered when delivered in person or by certified mail, return receipt requested, postage prepaid. Address changes by either party must be provided by written notice to the other in the manner set forth above.

If to the COUNTY:  
Pacific County  
Dept. of Community Development  
Attn: Faith Taylor-Eldred  
PO Box 68  
South Bend, WA 98586

If to the CONTRACTOR:  
Peninsula Sanitation Service  
Attn: Jay Alexander  
PO Box A  
Ilwaco, WA 98624

**XXII. ENTIRE AGREEMENT**

The parties agree that this Agreement is the completed expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Further, any modification of the Agreement will be in writing and signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Board of Pacific County Commissioners

Peninsula Sanitation Service, Inc.

\_\_\_\_\_  
Lisa Ayers, Chairman

  
Jay Alexander, Manager

\_\_\_\_\_  
Norman "Bud" Cuffel, Commissioner

\_\_\_\_\_  
Jon Kaino, Commissioner

ATTEST:

\_\_\_\_\_  
Kathy Noren, Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
David Burke, Prosecuting Attorney

**EXHIBIT A**  
**Scope of Services**

Peninsula Sanitation Service, Inc. will complete the following collection, operation, maintenance, and accounting support tasks. Deliverables are listed at the end of each supporting task, when appropriate.

Task 1	Collection of Recyclables
Task 2	Maintenance and Operation
Task 3	Accounting

**Task 1: Collection of Recyclables**

Peninsula Sanitation’s personnel will haul and recycle the materials deposited within the county owned recycling drop boxes in Ocean Park, Naselle, Bay Center, Chinook, South Bend, South Bend (Courthouse), Raymond, Ilwaco, Long Beach and Menlo. The recycling drop boxes will be emptied and returned or replaced in the originating location within twenty-four (24) hours of the time of box removal, unless otherwise agreed to by county staff.

The boxes will be emptied on an “as needed” basis. Peninsula Sanitation’s personnel will attempt to remove material from those containers used more heavily than others. The drop box will be emptied when all containers within said recycling drop box are nearing 90% of their capacity unless otherwise mutually agreed upon by county and Peninsula Sanitation staff.

*Deliverable:*

1. A written report detailing the locations Peninsula Sanitation utilized for the disposal of recyclable materials derived from the above mentioned recycling drop boxes will be prepared. Said report will list a contact person and telephone number for each location for the disposal of recyclable materials. Peninsula Sanitation will update this information within fourteen (14) days of any change in location.

**Task 2: Maintenance and Operation**

Peninsula Sanitation’s personnel will be charged with the maintenance of the recycling drop boxes designated above, defined below, and with the collection of materials left around or under said recycling drop boxes. Said drop boxes will be checked a minimum of two (2) times per week. Removal of excessive recyclables from within or material left around or under said drop boxes will occur during these site visits. Peninsula Sanitation will supply all necessary equipment to be utilized in the maintenance of said drop boxes and the surrounding area.

Peninsula Sanitation will provide maintenance to said recycling drop boxes as needed. Maintenance will include the following:

1. Painting of any dings, scratches, and/or dents on the drop box.
2. Lubrication and evaluation of all moveable parts
3. General cleanliness of drop box.

Additional maintenance will not occur without prior approval of the county and will be financed solely by the county.

*Deliverable:*

1. A Written request will be submitted to the Department of Community Development for any extra maintenance needed on said drop boxes for which Peninsula Sanitation will request reimbursement.

**Task 3: Accounting**

Peninsula Sanitation's personnel will track the pounds of recyclables removed from said recycling drop boxes by type and total pounds per drop box.

Peninsula Sanitation's personnel will submit vouchers, in an amount not to exceed that amount stipulated in the Professional Services Contract For Recycling Drop Box Service, Section V., to the Pacific County Department of Community Development for the hauling of said recycling drop boxes and the recycling of materials contained within said drop boxes.

*Deliverable:*

1. A written report detailing the pounds of recycled materials removed from said drop boxes, listed by material recycled and by total quantity recycled per drop box for the year, will be submitted to the Department of Community Development on or before the following March 31. Said report will also include the individual "markets" utilized for the recycling of these materials and the "end products" for these recyclables.
2. Vouchers submitted to the Department of Community Development or Department of Public Works on an "as hauled" basis will include business name, business federal identification number, invoice number, date, location of box, box number, service charge, pounds of recyclables removed from drop box by category, recycling reimbursement, and total dollar amount due.

**Exhibit B**  
**Recycling Drop Box Specification**

OUTSIDE

- 30 yard, metal drop box
- 20 feet in length
- Solid peaked weld on lid
- Superior type skids
- 2 steel rear wheels (8 inch diameter minimum)
- Gutter over rear door
- 12 gauge walls and floor
- 4 windows per side with closable doors
- #811 safety blue color – heavy paint and primer inside, outside and underneath
- RECYCLE printed on the two 20 foot sides of container – 18 inch letters, white color
- Items accepted printed near window – minimum 3 inch letters white color
- “T” lock rear door – lockable with paddle lock

INSIDE

- 66 inch inside wall height
- 6 inch shoot under each window
- 8 containers inside
  - 2 2-yard metal containers
  - 6 1.5-yard metal containers
- Container must have: two 6-inch coasters on one end and 2 6-inch ridged wheels on the other end.
- Forklift pockets on bottom of container
- Cable and “come along” on each side to hold containers
- Glass breaking bar and basket (to hold plastic bags, face mask, etc.)