



The CITY OF DAYTONA BEACH

— "THE WORLD'S MOST FAMOUS BEACH" —

Office of the City Manager

May12, 2014

Mrs. Jean S. Redman, President
Redman Consulting Group, Inc.
7017 S. Atlantic Ave.
New Smyrna Beach, FL 32169

Re: Contract for Solid Waste Administrative Services

Dear Mrs. Redman:

This letter shall serve as the City's written notice of its renewal of the subject contract for four (4) years. The contract was approved by City Commission Resolution Resolution 14-83 granting the City the option to renew the contract term for an additional term of 4 years upon the expiration of the first renewal term, to wit: August 26, 2014. The contract will expire on August 25, 2018. This letter provides the required minimum 90 day notice of the City's intent to renew.

The City looks forward to continuing to work with Redman Consulting Group on its Solid Waste issues. Please contact Joanne Flick, Purchasing Agent, at 386-671-8082.

Sincerely,

James V. Chisholm, City Manager

C: Ron McLemore, Deputy City Manager - Operations
Jennifer Thomas, City Clerk

SOLID WASTE ADMINISTRATIVE SERVICES CONTRACT

The Parties to this Contract, dated this 26 day of August, 2010 (the "Effective Date") are the City of Daytona Beach (the "CITY"), and Redman Consulting Group, Inc., 7017 S Atlantic Ave., New Smyrna Beach, FL, 32169 ("CONTRACTOR")

In consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1. Scope of Services. CONTRACTOR will provide for contract administrative services required by the CITY in relation to the CITY's [name of contract] with [name of vendor]. These administrative services are further described in Exhibit A, attached hereto and incorporated herein by reference. The CONTRACTOR shall provide the CITY additional services related to solid waste, recycling, collection, and disposal from time to time at the direction of the CITY upon the CITY's issuance of one or more purchase orders.

Section 2. Payment. In addition to requirements for payment established by applicable federal, state, or local law including the City of Daytona Beach Code of Ordinances, and by incorporated Exhibits, payment terms and conditions are as follows:

(a) For contract administrative services, the CONTRACTOR shall be paid an annual fee of \$41,700, which shall be paid annually in 12 equal installments beginning [insert]. For additional services described in Exhibit A, the CONTRACTOR shall be paid based on a rate of \$115.00 per hour, as further described in the purchase order requisitioning such services.

(b) Each purchase order shall state a not-to-exceed amount based on the foregoing rate, and each purchase order may require phased payment based upon completion of sub-tasks, deliverables, or other factors agreed to by the Parties. For the additional services provided by purchase order, no payment will be due until CONTRACTOR submits a proper invoice. CONTRACTOR may submit invoices no more than monthly. In order to be considered to be proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due, including any deliverables required as a condition for payment and documentation of reimbursable costs and expenses (if authorized) incurred by CONTRACTOR.

The CITY shall within a reasonable time after receipt of invoice notify the CONTRACTOR that the invoice is improper or pay CONTRACTOR the amount due.

(c) Unless approved in advance by a change order properly issued in accordance with applicable CITY ordinances and policies, the fee(s) described above shall be CONTRACTOR's sole compensation for the work provided by CONTRACTOR under this Contract.

Section 3. Standard of Performance. CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's occupation/profession performing the type of services provided herein within the State of Florida.

Section 4. Relationship between Parties. This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract, and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes.

Section 5. Term. The Term of this Contract is three (3) years commencing on the Effective Date. Any purchase order entered into prior to the expiration of the Term will remain valid. The CITY will have the option to renew this Contract for up to five (5) one (1) year terms, by providing CONTRACTOR written notice at least ninety (90) days before the end of the current Term.

Section 6. Termination.

(a) The CITY may by written notice to CONTRACTOR terminate this Contract or any purchase order issued hereunder, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected, unless the notice directs otherwise, and deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, all of the CITY's real or personal property then in the possession of CONTRACTOR, and any and all additional information and services of whatever type or nature as may have been accumulated by CONTRACTOR in performing this Contract, whether completed or in process.

(b) If the termination is for the CITY's convenience, a ninety (90) day notice of the date of termination shall be sent by the CITY to the CONTRACTOR. The CONTRACTOR shall be paid compensation for services performed until the date of termination.

(c) If the termination is due to the failure of CONTRACTOR to fulfill its contractual obligations, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise. In such case, the CONTRACTOR shall be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby, unless the failure is due solely to a force majeure event. Force majeure events are acts of God or of the public enemy, acts of the CITY in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the CONTRACTOR, or the CONTRACTOR's officers, employees, or agents including subcontractors.

(d) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is determined that the CONTRACTOR had not so failed, the termination shall be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

(f) Non-appropriation: This contract will span more than one appropriation period, therefore, a non-appropriation clause shall be in effect. This clause provides that should a contract be cancelled for reasons of non-availability of funds, cancellation would take effect on the last day of the appropriation period for which funding was available. The date would be September 30 of any year during which the contract is in effect.

Section 7. Indemnification. CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, and agents including subcontractors and other persons employed or utilized by the CONTRACTOR in the performance of the contract.

Section 8. Insurance. CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth below.

(a) Coverage and Amounts.

(1) Workers Compensation Insurance as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$100,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

(2) Liability Insurance - Commercial General Liability Insurance, including coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring the Proposer and any other interests, including but not limited to any associated or subsidiary companies involved in the work.

THE LIABILITY INSURANCE POLICIES SHALL NAME THE CITY AS AN ADDITIONAL INSURED. The limit of liability shall be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$1,000,000.

(b) Proof of Insurance. CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and will contain the following language as to cancellation:

"In the event of cancellation of this policy by the insurer or any insured, this Company will give not less than 30 days advance written notice to:

Risk Manager
The City of Daytona Beach
P.O. Box 2451
Daytona Beach, Florida 32115-2451"

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

(c) Replacement Required. CONTRACTOR will file replacement certificates 30 days prior to expiration of termination of the required insurance occurring prior to the acceptance of the work by the CITY. In the event such insurance will lapse, the CITY expressly reserves the right to renew the insurance at CONTRACTOR'S expense.

(d) Termination of Insurance. CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Management Division of the CITY that CONTRACTOR may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

Section 9. Notices. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein.

To the CITY:
Ron McLemore, Deputy City Manager/Public Works

P.O. Box 2451 , Daytona Beach, FL 32115-2451

To CONTRACTOR:
Jean S Redman, President
7017 S Atlantic Ave., New Smyrna Beach, FL 32169

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

Section 10. Personnel. CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

None of the services to be provided pursuant this Contract will be subcontracted without the CITY's prior review and written approval.

Section 11. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, shall be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR shall be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the CITY's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

Section 12. General Terms and Conditions.

(a) **Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

(b) **Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval

(c) **Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract

(d) **No Third Party Beneficiaries.** There are no third party beneficiaries of CONTRACTOR'S services under this Contract.

(e) **Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(f) Nondiscrimination. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

(g) Principles in Construing Contract. This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate.

(h) Venue. The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(i) Litigation Costs. In case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

(j) Force Majeure. In the event that fire, riots or civil commotion, acts of government or government immobility (whether federal, state or local) war, acts of God or contingencies beyond the reasonable control of a Party (hereinafter, "force majeure event") interfere with or prevent the fulfillment by such Party of its obligations hereunder, such obligations will be suspended until such time as such contingency or contingencies have terminated. Each Party will promptly notify the other upon becoming aware that any such contingency or contingencies have occurred or are likely to occur and will use its best efforts to minimize any resulting delay in or interference with the performance of its obligations hereunder.

(k) Jury Trial Waived. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

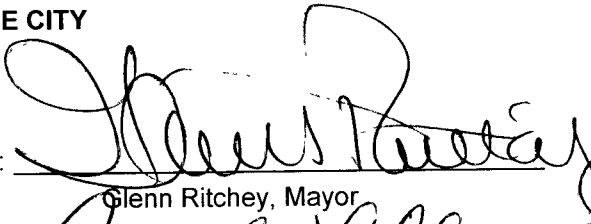
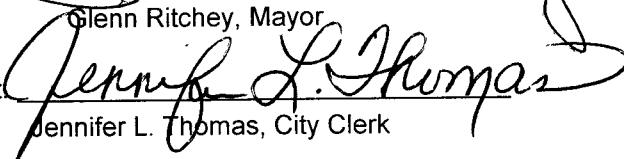
(l) Authority to Bind CONTRACTOR. The undersigned representative of CONTRACTOR represents and warrants that he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

(m) Incorporation of RFP and Proposal. The CITY's Invitation to Bid/Request for Proposals # 1710-1610, and the CONTRACTOR's bid/responsive proposal are incorporated herein by reference as Composite Exhibit B and will remain on file in the Office of the City Clerk. In case of conflicts between the ITB and Bid/RFP and Proposal, the ITB/RFP will govern. In case of conflicts between Composite Exhibit B and other provisions of this Contract, including Exhibit A, this Contract will govern.

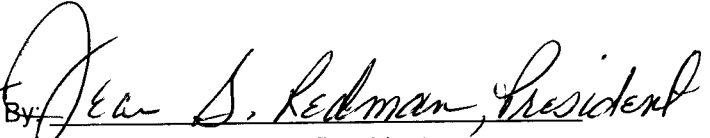
(n) Integration. This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

THE CITY

By: 
Glenn Ritchey, Mayor
Attest: 
Jennifer L. Thomas, City Clerk

CONTRACTOR

By: 
Jean S. Redman, President

Approved as to legal form:

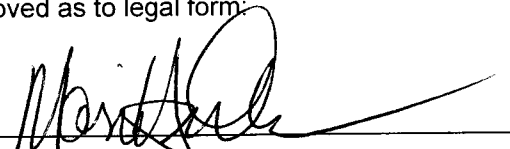
By: 
Marie Hartman, City Attorney

EXHIBIT A: Scope of Services

Contract Administrative Services

The contract administrative are further described as follows:

- Submit to the Engineering Department Account Clerk all figures needed for calculating the monthly contract payment to Waste Pro as follows: See Exhibit 1-SW contract payment sheets :
 1. number of cubic yards of un-compacted and compacted front load dumpsters and roll off containers serviced,
 2. number of commercial toters emptied,
 3. number of houses and apartments collected,
 4. number of residential curbside recycling customers,
 5. number of customers with centralized recycling,
 6. number of dumpster rentals,
 7. number of dumpsters with optional wheels
 8. number of dumpsters with optional lock bars.
 9. liquidated damages to be assessed to hauler.
 10. landfill billing adjustments...(send copy to J. Strickland, Finance)
- Review, insert rate code, and return to Utility Billing any commercial waste service change forms originated by Waste Pro or the City Solid Waste Division. Rate codes on the forms shall be pro-rated, as needed, to properly bill customer and also pay hauler their entitled amount. See -Change of Service Form.
- Calculate monthly the "landfill not to exceed figure" per the contract with Waste Pro
- Calculate quarterly fuel component adjustment for all waste and recycling rate codes and provide to Utility Billing
- Calculate the waste and recycling rate increase/decrease based on annual CPI change as per the contract with Waste Pro and provide report to Utility Billing. .
- Calculate Volusia Mall and Volusia Square Mall billing rates annually, or as needed, based on volume and frequency fluctuations and provide to Utility Billing.
- Analyze spreadsheet reports provided monthly by the City of Daytona Beach Utility Billing Department to identify and resolve large solid waste or recycling billing errors. See - sample data sheets
- Prepare a monthly Compactor and Roll off billing report for Utility billing detailing service level changes from the previous month. Report shall be submitted in time for the Utility bill print deadlines. See attached billing cycle schedule calendar with cycle bill dates

Note:

The above scope does not require the selected firm to:

- Provide office staff to answer complaint calls or commercial service calls from citizens. These tasks will continue to be provided by the City Inspector, ACT workers, and Waste Pro office staff.
- Make field inspections The City Inspector and Waste Pro supervisors will continue these tasks.

Additional Services

Upon the City's issuance of a purchase order, the CONTRACTOR shall provide services to the CITY not included within the contract administrative services above, that the CITY may from time to time determine as necessary for the delivery of Solid Waste and Public Works related services in the CITY

Examples:

- Provide additional manpower after a hurricane for monitoring, truck inspections, etc
- Assist CITY staff with the transition to contracted services from CITY staff contract administration.
- Provide contractor site inspection.
- Provide Truck Fleet inspections
- Perform city-wide route inspections.
- Perform fleet, equipment, and accounting records inspections for other permitted haulers.
- Solid Waste, Composting, and Recycling program comparisons and analysis.