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## MEMORANDUM

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**To:** ESJPA Board of Directors

**From:** Mary Pitto, Program Manager

**Date:** December 3, 2007

**RE:** ESJPA – RCRC Contract Services Agreement – CY 2008

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The proposed ESJPA – RCRC Contract Services Agreement for the 2008 calendar year is shown on the following pages and is presented for your consideration and approval.

The purpose of this agreement is to provide personnel services for technical and grant-related activities. The terms and conditions of the 2008 contract remain consistent with the 2007 contract. RCRC will continue to provide technical and grant-related personnel services to the ESJPA. The ESJPA would pay RCRC \$7,500 per month (\$90,000 per year) out of the membership dues for advocacy efforts and regulatory involvement.

The Agreement also provides that the ESJPA will pay RCRC for reimbursable grant-related activities (principally staff time) on a per hour basis calculated monthly. The estimate for reimbursable grant-related activities 2008 is \$101,874. This amount includes direct and indirect personnel costs consistent with the terms and conditions of each grant or contract ESJPA is assigned to implement on behalf of participating member jurisdictions.

Recommendation:

It is recommended that the ESJPA Board adopt the 2008 ESJPA – RCRC Contract Services Agreement.

## AGREEMENT

THIS AGREEMENT ("Agreement"), dated as of January 1, 2008, is entered into by and between the Rural Counties' Environmental Services Joint Powers Authority, a joint powers agency organized and operated under Articles 1-4 of Chapter 5 of Division 7 of Title I (commencing with Section 6500) of the California Government Code (hereinafter "ESJPA"), and the Regional Council of Rural Counties, a California nonprofit corporation (hereinafter "Contractor").

### R E C I T A L S

WHEREAS, ESJPA desires to obtain the services of Contractor; and,

WHEREAS, Contractor is competent and willing to provide such services to ESJPA,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, ESJPA and Contractor (each a "party," or collectively, the "parties") agree as follows:

1. Contractor's Services.

Contractor shall perform the services described herein and otherwise as specified in **Exhibit A** hereto which is incorporated herein by this reference, under the supervision of ESJPA's Contract Manager. Contractor understands that ESJPA may desire Contractor to perform certain additional services related to the scope of services hereunder, and Contractor agrees to perform such additional services when requested by ESJPA in writing. All such additional services shall be performed as provided herein, unless otherwise provided by written amendment hereto, subject only to an adjustment reflecting the cost of such additional services and the time for performance.

2. Contractor's Personnel.

Contractor acknowledges that the personal services of Contractor's personnel are essential to the performance of Contractor's obligations hereunder, and that no substitution of Contractor's personnel so identified may be made without the prior written approval of ESJPA. Contractor shall not subcontract or assign any portion of the services provided hereunder without the prior written approval of ESJPA, except any subcontracted services identified in **Exhibit A**.

Contractor, and its agents and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of ESJPA. By initialing this Agreement in the space provided immediately below, Contractor acknowledges that this Agreement is complete, that it does not create an employer-employee relationship between ESJPA and Contractor or any person performing services hereunder on behalf of

Contractor, and that this Agreement cannot and will not be modified by any oral representation of employment.

Contractor's Initials: \_\_\_\_\_

Contractor further acknowledges that its taxpayer identification number is 94-1366200, and warrants that it is responsible for paying payroll or any other kind of taxes resulting from compensation paid to Contractor hereunder.

3. Term.

This Agreement shall cover services rendered hereunder from January 1, 2008, until the earlier of completion of Contractor's work hereunder, termination of this Agreement as provided herein, or December 31, 2008, unless the term of the Agreement is otherwise extended by mutual consent of both parties. Contractor specifically acknowledges that time is of the essence with respect to completing its obligations hereunder, and that any failure to meet deadlines provided herein will result in material damage to ESJPA.

4. Compensation.

For services described in **Exhibit A** as "Non-Grant Related," Contractor shall be paid the sum of \$7,500 per month which shall be deemed to include all reasonable actual ordinary and necessary business expenses incurred for work performed hereunder.

For services described as "Grant Related" in **Exhibit A**, Contractor shall be compensated in the amount of the actual cost of personnel provided, including direct salary, benefits and related overhead expenses, all as specified in Contractor's invoices. However, if a specific grant program ("**Grant Program**") that the Contractor is administering, hereunder, includes a limitation on the right of Contractor to receive compensation for overhead costs, Contractor's compensation for such overhead costs shall be subject to the limitation specified in the Grant Program. The actual overhead for each hour of work performed by Contractor under this Agreement shall be the amount determined by Contractor's auditors, as adjusted from time-to-time. Nothing herein shall preclude ESJPA from directly contacting granting authorities for each Grant Program to seek the authority to modify any limitation on overhead compensation to be charged against a Grant Program.

Contractor shall submit invoices for services rendered and reimbursable expenses incurred to date not more frequently than monthly for compensation and reimbursement of allowable expenses. Approved invoices shall be paid by ESJPA within ninety (90) calendar days of receipt of such invoices.

The fees provided in this paragraph shall be the entire compensation due Contractor for these services and ESJPA shall not be liable for additional compensation for any of Contractor's time or expense except as provided herein.

5. Work Product; Confidentiality.

Contractor understands and agrees that all documents, information and reports developed in the course of performing its obligations hereunder shall be the property of ESJPA. Contractor agrees to exert its best efforts in the production of such work product of this Agreement. Contractor may retain copies of materials collected or produced hereunder during the term hereof, but in the event of termination of this Agreement, Contractor shall promptly deliver any such materials to ESJPA without exception or reservation.

If, in the course of performing its obligations hereunder, Contractor comes into possession of information known or reasonably expected to be confidential information from any source, Contractor will respect and maintain such confidentiality, whether under state, federal or common law, and be solely liable to any injured person in the event of its wrongful distribution of such confidential material.

6. Nonassignability.

No assignment of the rights nor delegation of the duties of Contractor whether in whole or in part shall be valid unless specifically agreed to in writing by ESJPA.

7. Termination.

A. Either party may terminate this Agreement at any time in the event the other party defaults in performance, fails to perform services in a timely fashion, or otherwise fails to comply with the terms of this Agreement. Either party's default or failure to perform shall be excused if prevented by acts of God, labor disputes or strikes, or other forces beyond such party's control.

B. Either party may terminate this Agreement without cause or default after having given thirty (30) calendar days notice to the other party which indicates which services and/or expenses hereunder are suspended from the date of such notice and the date of termination. Upon such termination, Contractor shall be entitled to compensation for services not suspended and actually rendered and/or expenses allowed to the date of termination and for any unreimbursed expenses otherwise payable hereunder.

8. Attorney's Fees, Costs.

If any action at law or in equity is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other relief to which that party may be entitled. This provision for the recovery of attorney's fees and costs shall be construed as applicable to the entire Agreement.

9. Indemnification and Insurance.

Contractor shall indemnify, defend and hold harmless ESJPA, its officers, directors, agents, employees and attorneys, from any and all claims, causes of action, damages and losses, whether in law or equity (collectively, "**Claim**") arising from or related to the services performed by Contractor under this Agreement or accruing or resulting to any and all

contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies, in connection with Contractor's willful misconduct or negligent acts or omissions in the performance of Contractor's duties and services hereunder.

ESJPA shall promptly notify Contractor of any Claim made in connection with the performance of services rendered hereunder.

In order to ensure Contractor's obligations hereunder, Contractor shall maintain insurance as follows:

(1) Contractor shall maintain a commercial general liability insurance policy in the amount of not less than \$1 million per occurrence, and not less than \$2 million in the aggregate, from a carrier admitted in the State of California with a Best rating of not less than A-, VIII;

(2) Comprehensive business or commercial automobile liability coverage, including non-owned and hired automobile liability, in the amount of not less than \$1 million from a carrier admitted in the State of California with a Best rating of not less than A-, VIII;

(3) Worker's Compensation Insurance as may be required by the California Labor Code for Coverage A (statutory limits) and not less than \$1 million for Coverage B (employer liability limits) from a carrier admitted in the State of California with a Best rating of at least B+, VIII;

(4) All such policies shall remain in force during the term of this Agreement and shall be payable on a "per occurrence" basis unless otherwise accepted in writing by ESJPA, and shall be in form acceptable to ESJPA and its insurance advisers. ESJPA shall be named as an "additional insured" on any policy as may be requested by ESJPA and Contractor shall provide certificates of insurance and any endorsements required signed by Contractor's insurer prior to the commencement of Contractor's services hereunder. Any such policies or endorsements shall provide for 30 days prior notice to ESJPA in the event of any termination or reduction in coverage of such insurance.

(5) Nothing contained herein shall be construed as or constitute a limitation of Contractor's liability or Contractor's responsibility in law or equity to indemnify and hold harmless from any and all claims, damages, losses and expenses that may arise by reason of Contractor's willful misconduct or negligence, and all remedies provided hereunder shall be cumulative with all other remedies under law or equity.

#### 10. Jurisdiction and Venue.

This Agreement shall be governed by the laws of the State of California without regard to choice of law if an action is brought in California based on activities outside California. Any action to enforce or interpret the terms of this Agreement shall be brought in Sacramento County, California.

11. Miscellaneous Provisions.

A. Partial Invalidity.

If any provision of this Agreement shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

B. Contractor's Qualifications.

Contractor covenants that it is competent to provide the services required hereunder and is licensed and qualified as necessary to perform such services in California and/or as provided herein. Contractor covenants that it will comply with all applicable federal, state and local laws affecting services provided hereunder.

C. Records and Audit.

Contractor shall maintain current and complete books and records relating to this Agreement, including, but not limited to, documents supporting all bids, income and expenditures. Books and records kept shall be original entry books with a general ledger itemizing all debits and credits for work performed hereunder. In addition, where applicable, Contractor shall maintain detailed payroll records including subsistence, travel and field expenses, and canceled checks, receipts and invoices for all such items. Contractor's documents, books and records shall be retained for at least five (5) years from the date of completion of this Agreement, and Contractor shall permit access to audit its books, accounts and records relating hereto, and such records of all business entities controlled by Contractor who participated in the performance of this Agreement. Any audit by ESJPA may be conducted on Contractor's premises, or at the option of ESJPA, Contractor shall provide all such records to ESJPA for such audit elsewhere. Contractor shall refund any moneys erroneously paid; if Contractor has erroneously billed for an amount exceeding five percent (5%) of the compensation paid hereunder, Contractor shall also be liable for the cost of audit in addition to any other penalty.

D. Nondiscrimination Clause.

During the performance of this Agreement, Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or sexual orientation, ancestry, physical handicap, medical condition, marital status, or age (over 40).

E. Cooperation.

The parties shall cooperate with each other in the performance of their respective obligations hereunder. ESJPA's Contract Manager shall be Mary Pitto or such other person designated in writing by ESJPA. Contractor's representative for the purpose of any approvals or requests made hereunder shall be Greg Norton.

F. Entirety, Amendments.

This Agreement supersedes any and all other agreements, oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied or referred to herein, and that no other agreement, statement, or promise not contained or referred to in this Agreement shall be valid or binding.

This Agreement is entire as to all of the performances to be rendered under it. Breach of any of the performances to be rendered by Contractor shall constitute a breach of the entire Agreement and shall give ESJPA the right to terminate this Agreement. ESJPA's breach of any of the obligations created by this Agreement shall constitute a breach of the entire Agreement and give Contractor the right to terminate this Agreement.

No amendment or modification of the provisions of this Agreement shall be valid unless made in writing and signed by the parties hereto.

G. Disclosure.

Contractor agrees to make any necessary disclosures and filings required of Contractor under the California Government Code, if applicable.

H. Notice.

Any notice, tender, or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid, and shall be deemed communicated as of the date of actual receipt. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To Contractor:           Regional Council of Rural Counties  
801 12<sup>th</sup> Street, Suite 600  
Sacramento, California 95814  
Attn: Greg Norton, President and CEO

To ESJPA:                 Rural Counties' Environmental Services  
Joint Powers Authority  
801 12<sup>th</sup> Street, Suite 600  
Sacramento, California 95814  
Attn: Mary Pitto, Program Manager

WHEREFORE, the parties hereto have executed this Agreement as of the date set forth above.

**CONTRACTOR:**

REGIONAL COUNCIL OF RURAL COUNTIES,  
A CALIFORNIA NONPROFIT CORPORATION

By: \_\_\_\_\_

Greg Norton  
President and CEO

**ESJPA:**

RURAL COUNTIES' ENVIRONMENTAL  
SERVICES JOINT POWERS AUTHORITY, A  
JOINT POWERS AGENCY

By: \_\_\_\_\_

Bob Pickard  
ESJPA Board Chair



## **EXHIBIT A**

Contractor shall provide professional, technical, administrative, and related support services to the ESJPA as follows:

A. Non-Grant Related Work: For the purposes of this Agreement, "non-grant related work" shall include all services provided by the Contractor for which the ESJPA does not receive reimbursement from a grantor agency. Under the direction of the ESJPA Board of Directors, this work shall include providing advocacy services on behalf of the member county interests; providing technical support services and information distribution; organizing, scheduling, preparing agendas, and recording minutes for ESJPA Board meetings, for the ESJPA Technical Advisory Group, and for the ESJPA Legislative Task Force; representing the ESJPA at conferences, workshops, and seminars, as well as to governmental agencies, trade associations, private industry, and other organizations; facilitating coordination and cooperation between member counties; preparing reports, technical memoranda, grant applications, and other documents on behalf of the ESJPA; managing ESJPA contracts and performing associated administrative and clerical duties; and other related services and projects as may be requested by the ESJPA Board of Directors.

B. Grant Related Work: Upon request by the ESJPA and/or member counties, Contractor shall provide services for the administration and implementation of grant-related projects. Services shall be provided by the Contractor in accordance with the requirements of the grantor agency and shall be consistent with the approved scope of work as described in the grant agreement between the ESJPA and grantor agency.

Contractor shall provide requested services to the ESJPA for the following grant programs:

- Household Hazardous Waste Grants
- Waste Tire Grants
- Used Oil Block Grants
- Used Oil Opportunity Grants
- SB 332 City/County Recycling Programs
- USDA Universal Waste Management Training

Upon mutual agreement, RCRC may provide additional grant-related services, in accordance with the terms of this agreement, for other grant programs as may be requested by the ESJPA in writing.

C. Additional Work: Upon mutual written agreement of the parties, RCRC may provide additional services to the ESJPA beyond those specified above. The basis for compensation to RCRC for these additional services shall be as specified in writing and as agreed to by both parties.