

**AGREEMENT BETWEEN THE COUNTY OF MENDOCINO AND PACIFIC
RECYCLING SOLUTIONS, INC., DBA PACIFIC ORGANICS SOLUTIONS, FOR
ORGANIC WASTE COMPOSTING SERVICES**

This Agreement is by and between the County of Mendocino (hereinafter referred to as "County"), and Pacific Recycling Solutions, Inc., a California corporation doing business as Pacific Organics Solutions (hereinafter referred to as "Facility"), who shall collectively be referred to as the "Parties."

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059, the Mendocino County Board of Supervisors has, by ordinance, provided that the County has the right to direct the wastestream of the County to the facilities at which Solid Waste, Organic Waste and recyclables are Processed as the County may designate; and

WHEREAS, the County desires to contract with Facility to provide Organic Waste Processing services for County Franchisees; and

WHEREAS, Facility is specially trained, experienced and competent to perform such services; and

WHEREAS, the parties desire to set forth the terms and conditions under which said services shall be furnished.

NOW, THEREFORE, the Parties agree to the terms and conditions set forth herein.

ARTICLE 1: DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the words and phrases in this Article shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement.

- 1.1** **"AB 876"** means the Assembly Bill approved by the Governor of the State of California on October 8, 2015, which added Section 418214 to the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, and replaced from time to time.

- 1.2 **“AB 901”** means Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.
- 1.3 **“AB 939”** means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq.), as amended, supplemented, superseded, and replaced from time to time.
- 1.4 **“AB 1594”** means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Sections 40507 and 41781.3 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.
- 1.5 **“AB 1826”** means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.
- 1.6 **“Applicable Law”** means all federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the collection, Transportation, Processing, and Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383 and corresponding regulations.
- 1.7 **“Change in Law”** means any of the following after the effective date of this Agreement: (a) adoption, modification, binding interpretation of finding, including by court decision, of any federal, state or local law, statute, ordinance, rule, regulation, or requirement impacting Facility, including new, increased or changed diversion requirements (whether imposed/requested by the Federal government, the State of California, CalRecycle, the Town, or any other regulator); (b) the imposition of a new material condition or requirement in connection with the issuance, renewal, or modification of any official permit, license or approval relating to Facility or its operations that is inconsistent with or materially more restrictive than that in existing on the effective date of this Agreement; (c) any order or judgement of any local, state or federal court or administrative agency relating to Facility that changes any federal, state or local law, statute, ordinance, rule, regulation, or requirement applicable to Facility as of the effective date of this Agreement; or (d) the suspension, termination, interruption, denial, delay in issuance or failure or renewal of any permit relating to Facility.
- 1.8 **“Compost”** has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the Effective Date of this Agreement, that “Compost” means

the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized Facility.

- 1.9** “**Contamination Fee**” shall be \$20.00 per Ton found to be contaminated in accordance with Section 2.11 of this Agreement.
- 1.10** “**County Franchisees**” are Redwood Waste Solutions, Inc., the current County franchisee for Solid Waste Franchise Area No. 2, and Solid Wastes of Willits, Inc., the current County franchisee for Solid Waste Franchise Areas 1, 3, and 4, and the current County contractor for the County-owned Transfer Stations, together with any future replacement franchisees or contractors.
- 1.11** “**Discarded Materials**” are a form of Solid Waste, and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for Recycling or Disposal, and whether or not it has been separated from other Solid Wastes, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or, levied, charged, or otherwise imposed on, or paid by, the generator or customer in exchange for handling services. As used herein, handling services include, without limitation, the collection, removal, Transportation, delivery, and Processing and/or Disposal of the material.
- 1.12** “**Disposal**” or “**Dispose**” means the final disposition of any Solid Waste or Residue at a permitted Landfill or other permitted Solid Waste facility.
- 1.13** “**Diversion (or any variation thereof including “Divert”)**” means activities which reduce or eliminate Discarded Materials from Disposal, including, but not limited to, source reduction, reuse, salvage, Recycling, and composting.
- 1.14** “**Excluded Waste**” means Hazardous Substance, Hazardous Waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Facility’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Facility or County to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

- 1.15 “Food Scraps”** means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.
- 1.16 “Food-Soiled Paper”** means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.
- 1.17 “Food Waste”** means Source Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of SSGCOW. Edible food separated for food recovery shall not be considered Food Waste.
- 1.18 “Hazardous Substance”** shall mean any of the following: (a) any substance defined, regulated or listed (directly or by reference) as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic waste”, “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; (ii) the Hazardous Materials Transportation Act, 49 USC Section 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; (iv) the Clean Water Act, 33 USC Section 1251, et seq.; (v) California Health and Safety Code Sections 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7401, et seq.; and (vii) California Water Code Section 13050; (b) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereinafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State, and local environmental laws currently existing or hereinafter enacted, including without limitation, friable asbestos, polychlorinated biphenyl (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.
- 1.19 “Hazardous Waste” or “Hazardous Wastes”** means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; or as otherwise defined in 14 CCR Section 17402(a)(7). Hazardous Waste includes hazardous wood waste, which means wood that falls within the definition of “treated wood” or “treated wood waste” in 22 CCR Section 67386.4, or as otherwise defined in 14 CCR Section 18982(a)(30.5).
- 1.20 “Incompatible Material” or “Incompatibles”** mean(s) human-made inert material, including, but not limited to, glass, metal, plastic, and also includes organic waste for which the receiving end-user, facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities as defined in 14 CCR Section 18983.1(b), or as otherwise defined by 14 CCR Section 17402(a)(7.5).

- 1.21 “Landfill”** means a **“Solid Waste Landfill”** defined by Public Resources Code Section 40195.1.
- 1.22 “Multi-Family”** means of, from, or pertaining to residential Premises with two (2) or more dwelling units. Multi-Family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered commercial businesses. References to “Multi-Family Dwelling Unit” refer to an individual residential unit of the Multi-Family Premises.
- 1.23 “Non-Compostable Paper”** includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).
- 1.24 “Organic Waste”** means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.
- 1.25 “Processing” or “Processed”** means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).
- 1.26 “Prohibited Materials”** means any material specified in 14 CCR Section 17855.2.
- 1.27 “Public Resources Code” or “PRC”** means the California Public Resources Code.
- 1.28 “Recycle” or “Recycling”** means the process of collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.
- 1.29 “Reloading Fee”** shall be \$5.00 per Ton.
- 1.30 “Remnant Organic Material”** means the Organic Waste that is collected in a gray container that is part of the gray container collection stream, or as otherwise defined in 14 CCR 17402(a)(23.5).

- 1.31** “**Residual**” or “**Residue**” means the Solid Waste destined for Disposal, further transfer/processing as defined in 14 CCR Section 17402(a)(30) or 14 CCR Section 17402(a)(31), or transformation which remains after Processing has taken place and is calculated in percent as the weight of Residual divided by the total incoming weight of materials.
- 1.32** “**SB 1383**” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.
- 1.33** “**SB 138 Regulations**” or “**SB 1383 Regulatory**” refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.
- 1.34** “**Single-Family**” or “**Single-Family Dwelling**” or “**SFD**” means any residential premises with less than two (2) units.
- 1.35** “**Solid Waste**” has the same meaning as defined in PRC Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:
- (1) Hazardous waste, as defined in PRC Section 40141.
 - (2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
 - (3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste Landfill, as defined in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division 30.
- 1.36** “**Source Separated**” means materials, including commingled Recyclable materials, that have been separated or kept separate from the Solid Waste stream,

at the point of generation, for the purpose of additional sorting or Processing those materials for Recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the Agreement, Source Separated shall include separation of materials by the generator, property owner, property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source Separated materials are separated from gray container waste or mixed waste and other Solid Waste for the purposes of collection and Processing.

1.37 "Source Separated Green Container Organic Waste" or "SSGCOW" means Source Separated Organic Waste that can be placed in a green container that is specifically intended for the separate Collection of Organic Waste by the generator, excluding carpets, Non-Compostable Paper, and textiles. SSGCOW is a subset of Organic Waste.

1.38 "State" means the State of California.

1.39 "Ton" or "Tonnage" or "Tons" means a unit of weight equal to 2,000 pounds (907.18474 kg).

1.40 "Transfer" means the act of transferring Discarded Materials collected by County Franchisees from collection vehicles into larger vehicles at a Transfer Facility for Transport to other Facilities for Processing or Disposing of such materials. Transfer allows for removal of materials excluded or prohibited from handling at the Transfer Facility (e.g., removal of Hazardous Waste).

1.41 "Transportation" or "Transport" means the act of conveying collected materials from one location to another.

1.42 "Yard Trimmings" means types of SSGCOW resulting from normal yard and landscaping installation, maintenance, or removal that the generators Source Separate and set out in green containers for collection for the purpose of Processing by the Facility. Yard Trimmings are a subset of SSGCOW.

ARTICLE 2: TERM AND SCOPE OF AGREEMENT

2.1 The term of this Agreement shall be from January 1, 2023 (the "**Effective Date**"), and shall continue through midnight June 30, 2032, unless this Agreement is extended in writing by the Parties or terminated in accordance with Article 6.

2.2 Facility warrants and represents that it operates a fully-permitted industrial compost facility at 3201 Taylor Drive, Ukiah, CA 95482, which has the ability to Process Organic Waste, including Single-Family, Multi-Family, and commercial Source Separated Green Container Organic Waste (SSGCOW), meets all the

requirements of 14 CCR Section 17867, and has capacity sufficient to perform its obligations hereunder.

- 2.3** Any event or circumstance which may affect operations of Facility, shall be disclosed to County by Facility via telephone within twenty-four (24) hours and followed by notification in writing to County within three (3) days of Facility gaining knowledge of such event. Such written notification shall be made in accordance with Section 6.11 of this Agreement.
- 2.4** County provides for Organic Waste and SSGCOW collection programs under its exclusive County Solid Waste Franchise Contracts (hereinafter, "Franchise Contract(s)") and Transfer Station Operations Contracts & Leases (hereinafter, "Transfer Station Contract(s)"). Facility agrees to accept Organic Waste, including SSGCOW, from County Franchisees, under the terms and conditions set forth herein.
- 2.5** The rights granted to Facility under this Agreement are non-exclusive and County retains the right to direct flow of Organic Waste generated from Franchise Contracts and Transfer Station Contracts to any properly permitted facility it deems in the best interest of the County and its customers.
- 2.6** Facility shall be open for deliveries Monday through Friday, 7 a.m. to 3:30 p.m., and Saturday from 7 a.m. to 1 p.m., excluding the following holidays: Christmas, New Year's Day, Labor Day, Memorial Day, 4th of July, Thanksgiving Day.
- 2.7** Facility shall maintain all-weather access to its facility for tractor-trailer configured vehicles.
- 2.8** Facility shall compost substantially all Organic Waste accepted under this Agreement into Compost, in all cases consistent with the standards and requirements set forth in Section 3.2.
- 2.9** County shall provide, either through the Franchise Contract or other means, reasonable public information, monitoring, inspection and enforcement functions to minimize contamination of the SSGCOW by unacceptable materials deposited by customers in collection containers.
- 2.10** Upon being legally transferred to Facility, all Discarded Materials shall forthwith become the property of the Facility. Except as required in the County's sole discretion for law enforcement purposes, at no time shall the County obtain any right of ownership or possession of Discarded Materials and nothing in this Agreement shall be construed as giving rise to any inference that County has such rights.
- 2.11** If a load is determined by Facility upon initial inspection, or after material is unloaded but before the load is comingled with other materials, to contain Prohibited Materials, Excluded Waste, or be contaminated with more than 40% by

weight of Incompatible Materials, Facility may reject the load at Facility's sole discretion, reload and require County Franchisee to remove material from site and charge County Franchisee a Reloading Fee, or accept the load and charge County Franchisee a Contamination Fee. For loads contaminated with between 20% and 40% by weight of Incompatible Materials, Facility shall accept the load but may charge a Contamination Fee. For loads contaminated with less than 20% by weight of Incompatible Materials, Facility shall accept the load at the approved Rate and may not charge any additional fees.

- 2.12** Facility shall comply with all Applicable Laws pertaining to the operation of its compost facility including closure and post closure obligations and any financial assurances. Upon request, Facility shall provide County with copies of any regulatory inspection reports on its operation.
- 2.13** The scope of services to be performed by Facility pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform all requirements of the Agreement. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve the Facility of the duty to furnish all others, as may be required, whether enumerated or not.
- 2.14** Facility shall cooperate with all waste evaluations or other contamination monitoring processes conducted by County Franchisees, or their designee. Facility's cooperation may include, but is not limited to: providing data, equipment, and access to Facility. Facility recognizes that the waste evaluations may conflict with normal working operations and shall make adjustments to its normal working operations as reasonably requested by the County Franchisees.
- 2.15** Facility shall deliver and make available for use or giveaway by County up to one thousand five hundred (1500) Tons of bulk Compost per calendar year at no cost to the County. County will notify Facility as to the County's needs for delivery of finished Compost throughout the calendar year. Facility shall deliver Compost within seven (7) days of request to any accessible location within County limits. If County does not request Compost be made available by Facility by the end of the calendar year, the County no longer retains the right to request that bulk compost allocation that was reserved for that calendar year. Any of the Compost allotment that is not requested by the County during the calendar year shall not carry over into the next calendar year. Upon request, Facility shall provide County with Compost lab results and specifications. All Compost provided by Facility must meet or exceed State requirements for Compost quality, including those standards regarding Compost maturity, reduction of pathogens, elimination of weed seeds, and concentrations of physical contaminants such as glass, plastic, metal, and other non-organic recyclables. All Compost provided by Facility must be suitable for use in landscaping, parks, sports fields, and community gardens, and must be suitable for distribution to the general public, but shall not be required to be certified by the Organic Materials Review Institute (OMRI).

ARTICLE 3: PROCESSING AND FACILITY STANDARDS

3.1 General Requirements

- A. **Overview.** Facility will perform all Processing services in accordance with Applicable Law, standard industry practice, and specifications and other requirements of this Agreement.
- B. **Facility Capacity Guarantee.** Facility shall guarantee sufficient capacity over the Term of this Agreement to accept and Process up to five thousand (5,000) tons of Organic Waste from County Franchisees annually.
- C. **Equipment and Supplies.** Facility shall equip and operate the Facility in a manner to fulfill Facility's obligations under this Agreement, including achieving all applicable standards for Landfill Disposal reduction, Recycling, recovery, Diversion, Residue amount and content, and Processing of Compost. Facility is solely responsible for the adequacy, safety, and suitability of the Facility. Facility shall modify, enhance, and/or improve the Facility as needed to fulfill service obligations under this Agreement, at no additional compensation from the County or rates charged to customers.

Facility shall provide all rolling stock, stationary equipment, material storage containers, spare parts, maintenance supplies, Transport, and Processing equipment, and other consumables as appropriate and necessary to operate the Facility and provide all services required by this Agreement. Facility shall place the equipment in the charge of competent equipment operators. Facility shall repair and maintain all equipment at its own cost and expense.

- D. **Facility Permits.** Facility shall keep all existing permits and approvals necessary for use of the Facility, in full regulatory compliance. Facility shall, upon request, provide copies of permits or other approvals and/or notices of violation of permits to the County.
- E. **Notification of Emergency Conditions.** The Facility shall notify the County of any unforeseen operational restrictions that have been imposed upon the Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Facility from Processing the Discarded Materials accepted under this Agreement. Facility shall notify the County in accordance with Section 6.11 of the Agreement.
- F. **Discarded Materials Monitoring/Waste Evaluation Requirements.** Facility shall conduct material sampling, sorting, and waste evaluations to meet or exceed SB 1383 Regulatory requirements.
- G. **Compliance with Applicable Law.** Facility (including its Affiliates and Sub-contractors) warrants throughout the Term that the Facility is respectively authorized and permitted to accept Discarded Materials in accordance with Applicable Law and is in full compliance with Applicable Law.

- H. **Records and Investigations.** Facility shall maintain accurate records of the quantities of Discarded Materials accepted at the Facility and shall cooperate with County and any regulatory authority in any audits or investigations of such quantities.
- I. **Inspection and Investigations.** Upon 24 hours written notice to Facility, an authorized County employee or agent shall be allowed to enter the Facility during normal working hours in order to conduct inspections and investigations in order to examine Facility operations; Processing activities; and operational records pertaining to the Facility in order to assess operational compliance with this Agreement, to understand protocols and results, and conduct investigations, if needed; provided, however, that such County employee's access shall not interfere in any way with the operation of Facility. Facility shall permit County or its agent to review or copy (at the County's sole expense), or both, any paper, electronic, or other records required by County.

3.2 Operating and Processing Standards

- A. **Recovery Required.** Facility shall conduct Processing activities for all Organic Waste to reduce Disposal. The Processing shall be performed in a manner that minimizes Disposal to the greatest extent practicable and complies with Applicable Law, including SB 1383 Regulations. Facility may Dispose of Organic Waste from homeless encampments and illegal disposal sites and quarantined Organic Waste rather than Process such materials.

B. **Loadchecking—Prohibited Wastes.**

1. Facility shall implement a loadchecking program to prevent the acceptance of waste which is prohibited by 14 CCR Division 7 Chapter 3 Article 6.2.

C. **Separate Handling Requirements**

1. Facility shall keep Organic Waste separate from other non-organic material streams and shall Process the materials separately from each other.
2. Pursuant to 14 CCR Section 17409.5.6(a)(1), Remnant Organic Material separated from the gray container waste for recovery can be combined with Organic Waste removed from the SSGCOW for recovery once the material from the SSGCOW has gone through the Organic Waste recovery measurement protocol described in 14 CCR Sections 17409.5.4 and 17409.5.5.
3. Pursuant to 14 CCR Section 17409.5.6(b), SSGCOW shall be:
 - a. Stored away from other activity areas in specified, clearly identifiable areas as described in the Facility plan or Transfer/Processing report (which are defined in 14 CCR); and,
 - b. Removed from the Facility consistent with 14 CCR Section 17410.1 and either:

- i. Transported only to another Facility or operation for additional Processing, composting, in-vessel digestion, or other recovery as allowed by Applicable Law; or,
- ii. Used in a manner approved by local, State, and federal agencies having appropriate County.

D. Residue Disposal. Facility shall be responsible for Disposal of Residue from Processing activities at its own expense and may select the Disposal facility(ies) to be used for such purpose.

E. Processing Facility Residue.

Upon request of the County, Facility shall provide a certified statement documenting its Residue level. The Residue level calculation method shall be reviewed and approved by the County.

F. SSGCOW Processing Standards

1. Facility shall Process all SSGCOW in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as alternative daily cover (ADC) or alternative intermediate cover (AIC).
2. Facility shall meet one or more of the following criteria, and shall be capable of and permitted to accept and recover the types of Organic Wastes included in the SSGCOW:
 - a. A “compostable material handling operation or facility” as defined in 14 CCR Section 17852(a)(12); small composting facilities that are otherwise excluded from that definition; or community composting as defined in 14 CCR Section 18982(a)(8). The Facility shall, pursuant to 14 CCR Section 17867(a)(16), demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
 - i. Before January 1, 2024, less than 20 percent (20%); and,
 - ii. On and after January 1, 2024, less than 10 percent (10%).
 - b. Other operation or facility with processes that reduce short-lived climate pollutants that are approved by the State in accordance with 14 CCR Sections 18983.1 or 18983.2.

If Facility is interested in using an operation, or activity not expressly identified above and not specifically identified in 14 CCR Section 18983.1(b) for SSGCOW Processing, Facility shall be responsible for securing the necessary approvals from CalRecycle, pursuant to 14 CCR Section 18983.2, that the Facility’s Process or technology constitutes a reduction in Landfill Disposal pursuant to 14

CCR Section 18983.1(b)(8) prior to the County's final approval of such operation, Facility, or activity.

- G. **Marketing.** Facility shall be responsible for marketing materials recovered from Discarded Materials Processed under this Agreement. Facility's marketing methods for materials shall be performed in a manner that supports achievement of Disposal reductions and in such a manner that complies with State statutes, including, but not limited to, AB 901, AB 939, SB 1016, AB 1594, AB 1826, and SB 1383, and corresponding regulations. Facility shall retain revenues resulting from the sale and marketing of said materials.

Upon request, Facility shall provide proof to the County that all SSGCOW received by Facility were Processed and recovered materials were marketed as organics products in such a manner that materials are not deemed Landfill Disposal pursuant to pursuant to 14 CCR Section 18983.1(a) and in a manner that materials are deemed Diversion pursuant to AB 939.

3.3 Weighing of Discarded Materials

- A. **Maintenance and Operation.** Facility shall be equipped with one or more State-certified motor vehicle scales in accordance with Applicable Law. Upon request, Facility shall provide documentary evidence of such scale certification within ten (10) days of County's request during the Term. Licensed weigh master(s) shall operate those scales to weigh all inbound and outbound vehicles transporting Discarded Materials. Facility shall provide County with access to weighing information at all times and copies thereof within three (3) business days following the County's request. Exceptions to weighing requirements are specified in Section 3.3.G.
- B. **Vehicle Tare Weights.** Facility shall electronically record the tare weight and provide a distinct vehicle identification number for each vehicle delivering to the Facility. Facility shall provide County with a report listing the vehicle tare weight information upon request.
- C. **Substitute Scales.** If any scale is inoperable, being tested, or otherwise unavailable, Facility shall use reasonable business efforts to weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Facility operator shall (i) substitute portable scales until the permanent scales are replaced or repaired, or (ii) use other certified scales located in the same geographic area as Facility until the permanent scales are replaced or repaired. Facility operator shall arrange for any inoperable scale to be repaired as soon as possible.
- D. **Estimates.** Pending substitution of portable scales or during power outages, Facility operator shall estimate the Tonnage of the Discarded Materials transported to and accepted at the Facility by utilizing the arithmetic average of each vehicle's recorded Tons of Discarded Materials delivered on its preceding three (3) deliveries.

During any period of time the scales are out of service, Facility operator shall continue to record all information required by Section 3.3 of this Agreement, for each delivery of Discarded Materials to the Facility.

- E. **Weighing Standards and Procedures.** Facility operator shall weigh and record inbound weights of all vehicles delivering Discarded Materials when the vehicles arrive at the Facility. In addition, Facility operator shall weigh and record outbound weights of vehicles for which Facility operator does not maintain tare weight information.
- F. **Records.** Facility operator shall maintain scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights (or tare weights) of vehicles, vehicle identification number, County of origin of materials delivered, type of material, company/hauler identification, and classification, type, and weight of Discarded Material.
- G. **Exceptions to Weighing Requirements.** If Facility does not have motor vehicle scales to weigh vehicles and Discarded Materials delivered to the Facility, Facility shall provide a receipt for delivery of the Discarded Materials that identifies the date and time of delivery, the type of material delivered, and the vehicle number. Facility shall estimate the Tonnage of material delivered for each load based on the volumetric capacity of the vehicle and material density factors (e.g., pounds per cubic yard).
- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Facility, Facility shall make those videos available for County review during the Facility's operating hours, upon request of the County.
- I. **Residue.** Facility shall be deposit Residue in a roll-off container, weigh such container and then transport such container of Residue to the Disposal Facility(ies) of its selection for proper Disposal.

3.4 Rejection of Excluded Waste

- A. **Inspection.** Facility will use standard industry practices to detect and reject Excluded Waste in a uniform and non-discriminatory manner and will not knowingly accept Excluded Waste. Facility will comply with the inspection procedure contained in its permit requirements. Facility will promptly modify that procedure to reflect any changes in permits or Applicable Law.
- B. **Excluded Waste Handling and Costs.** Facility will arrange for or provide handling, Transportation, and delivery to a Recycling, incineration, or a Disposal facility permitted in accordance with Applicable Law of all Excluded Waste detected at the Facility. Facility is solely responsible for making those arrangements or provisions and all costs thereof. Nothing in this Agreement will excuse the Facility from the responsibility of handling Excluded Wastes that Facility inadvertently accepts in a lawful manner and of arranging for the disposition of that Excluded Waste in accordance with Applicable Law.

3.5 Discarded Materials Evaluations

- A. **General.** Facility shall conduct the following “evaluations” if required by Applicable Law referenced below:
1. Organic Waste Recovery Efficiency Evaluations. If applicable pursuant to 14 CCR Sections 17409.5.1 to 17409.5.5 and 17409.5.8, Facility shall conduct waste evaluations in accordance with 14 CCR Sections 17409.5.1 to 17409.5.5 and 17409.5.8.
 2. Evaluation of Organic Waste in Residuals. If applicable pursuant to 14 CCR Sections 17409.5.3, 17409.5.5, 17867, and/or 17896.44.1, Facility shall conduct compliance evaluations of Organic Waste to determine the level of Organic Waste in materials sent for Disposal in accordance with 14 CCR Sections 17409.5.3 (transfer/processor for Mixed Waste), 17409.5.5 (transfer/processor for SSGCOW/SSBCOW), 17867 (Compost operations and facilities), and 17896.44.1 (In-vessel digestion operations and facilities).
- B. **Record Keeping and Reporting.** For the evaluations described above, Facility shall maintain all records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3, Article 6.3; 14 CCR Division 7, Chapter 3.1, Article 8; and 14 CCR Division 7, Chapter 3.2, Article 4; and, 14 CCR Sections 18815.5 and 18815.7, as applicable. Facility shall report this information to the County in the annual report.
- C. **Scheduling of Evaluations.** Facility shall schedule evaluations during normal working hours. Facility shall provide County notice of its intent to conduct evaluations at least three (3) days in advance of the evaluations.
- D. **Observance of Study by County and/or CalRecycle.** Facility acknowledges that, upon request, a representative of the County, the LEA, and/or CalRecycle may oversee any of the evaluations described in Section 3.5.A.

ARTICLE 4: RECORD KEEPING AND REPORTING

4.1 General

Facility shall maintain such accounting, statistical, and other records related to its performance under this Agreement as shall be necessary to develop the reports required by this Agreement or County Code; provided, however, that except for the purposes of supporting rate adjustment requests, Facility shall not be required to provide to County any financial information. Facility agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Laws and regulations and to meet the reporting and Organic Waste Processing program management needs of the County. At the written direction or approval of County, the records and reports to be maintained and provided by Facility in accordance with this Agreement may be adjusted in number, format, and frequency, if required to comply with State or federal regulatory or reporting requirements.

Information from Facility’s records and reports can be used to, among other things:

- Determine and set rates;
- Evaluate past and expected progress toward achieving the County's Diversion goals and objectives;
- Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law;
- Determine needs for adjustment to programs; and,
- Determine compliance with AB 1826 and SB 1383 statutes and corresponding regulations; and, any subsequent State-mandated Landfill Disposal reduction, Recycling, recovery, or Diversion statutes, regulations, or other requirements.

4.2 Record Keeping

- A. **General.** Facility shall maintain statistical, operational, and other records related to its performance as shall be necessary to provide reporting required by this Agreement and Applicable Law and to demonstrate compliance with this Agreement and Applicable Law (such as, but not limited to, AB 939, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations); provided, however, that except for the purposes of supporting rate adjustment requests, Facility shall not be required to provide to the County any financial information.

Record keeping and reporting requirements specified in this Agreement shall not be considered a comprehensive list of reporting requirements. In particular, this section is intended to highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define the scope and content of the records and reports that Facility is required to maintain and report by Applicable Law or this Agreement; provided, however, that except for the purposes of supporting rate adjustment requests, Facility shall not be required to provide any financial information. Upon reasonable written direction or approval of County, the records and reports required by Facility in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

In addition to all other records required by law and this Agreement, Facility shall keep records consistent with CCR 14 Section 17869.

Facility shall maintain adequate records, and corresponding documentation, of information required by Article 4 of this Agreement, such that the Facility is able to produce accurate reports, and is able to provide records to verify such reports. Facility will make these records available and provide to the County any record or documentation necessary for the County to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations; and, other current or future federal, State, or local statutes and regulations, as amended. Upon request by the County, Facility shall

provide access to Facility's requested records in a timely manner, not to exceed ten (10) Business Days from the time of County's request to Facility.

- B. Record Retention and Security.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, pursuant to this Article. Facility's records shall be stored in one central location, physical or electronic, that can be readily accessed by Facility. County reserves the right to require the Facility to maintain the records required herein through the use of a County-selected web-based software platform, at County's expense. Unless otherwise required in this Article, Facility shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination.

Records and data shall be in chronological and organized form and readily and easily interpreted. Facility shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. To the extent that Facility utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Facility shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

- D. CERCLA Defense Records.** County views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the County regards its ability to prove where Solid Waste collected are taken for transfer or disposal, as well as where they are not taken, to be matters of concern. Facility shall maintain, retain and preserve records which can establish where Solid Waste collected were disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Facility shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Facility shall provide these records to County (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.
- E. Compilation of Information for State Law Purposes.** Facility shall maintain accurate records for its operation. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Facility will make these records available and provide to the County any record or documentation necessary for the County to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and, other current or future local, federal or State statutes and regulations, as amended.

4.3 Inspection by County

At a mutually agreed upon time during normal business hours, but within ten (10) work days of a written request, Facility shall make available to the County for examination at reasonable locations within the County the Facility's data and records with respect to the operational matters covered by this Agreement and the County Code; provided, however, that except for the purposes of supporting rate adjustment requests, Facility shall not be required to provide any financial information. Facility shall permit the County, or its designee, to examine, and make excerpts or transcripts from such data and records. Facility shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years following the expiration or termination of this Agreement unless the County agrees in writing to an earlier disposition. The County, or its designee, shall maintain the confidentiality of proprietary information, to the extent allowed by law.

4.4 Reporting

4.4.1 General

- A. **General Purpose.** Reports are intended to compile recorded data into useful forms of information that can be used by the County. All reports shall be adequate to meet County's current and future reporting requirements to CalRecycle, including AB 939, AB 1826, and SB 1383 statutes and corresponding regulations, or any other State or federal agency statutes and regulations throughout the Term of this Agreement.
- B. **Failure to Report.** Facility's repeated failure to submit reports, and/or failure to submit reports on time, may be deemed an event of default and may result in the termination of the Agreement at the discretion of the County, in accordance with Article 6 of this Agreement.

C. Report Format

Facility may use a Facility-selected format for the annual reports, if approved by the County. The County reserves the right to request modification to the report format(s) or deny this format request and provide the Facility with a County-approved format.

- D. **Submittal Process.** All reports shall be submitted to the County, Solid Waste Division. Reports shall be submitted electronically via email, unless otherwise agreed upon by both Parties. County reserves the right to require the Facility to maintain records and submit the reports required herein through use of a County-selected web-based software platform, at the Facility's expense.

Annual reports shall be submitted within forty-five (45) days after the end of the reporting year.

4.4.2 Annual Reports

The Facility shall provide an Annual Report, covering the most recently-completed calendar year, in accordance with the format and submittal requirements of this Agreement. The Annual Report shall include the information in the following subsections.

A. Tonnage Report

1. Facility shall report the total quantities in Tons of Discarded Materials Processed by the Facility pursuant to this Agreement, and shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocols in Section 3.3 of this Agreement. If loads are received comingled with materials from other origin jurisdictions, Facility shall make their best effort to estimate the Tons originating from the Unincorporated County.
2. Report Residue level, Tonnage, and final disposition location for the Discarded Materials processed by the Facility pursuant to this Agreement.

B. Discarded Materials Evaluation Reports

For the Discarded Materials processed by the Facility pursuant to this Agreement, Facility shall provide reports of evaluations of Discarded Materials conducted at Facility.

C. Processing Facility Report

For the Discarded Materials processed by the Facility pursuant to this Agreement, Facility shall demonstrate the actual percent of the material removed for Landfill Disposal that is Organic Waste is less than the percent specified in 14 CCR Section 17409.5.8(c)(2) or 17409.5.8(c)(3), whichever is applicable, and, if applicable, demonstrate compliance with the digestate handling requirements specified in 14 CCR Section 17896.5.

4.4.3 Additional Reports

- A. Upon Incident Reporting.** County reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the County. The Facility shall provide the requested reports, documents, or information within ten (10) business days upon receipt of the request.
- B. AB 901 Reporting.** At County's option, County may require that Facility provide the County copies of Facility's AB 901 reports on a regular basis or within ten (10) business days of the request.
- C. Facility Capacity Planning Information.** County may require Facility to provide County with information of available Organic Waste Processing capacity, where available capacity may include identification of monthly Tons of additional Organic Waste Facility has the ability to receive within permitted limits. Facility shall respond to County within 60 days of County's request for information regarding available new or expanded capacity, and, at County's option, may be required to submit reports on a more regular basis (such as monthly, quarterly, or annually). The Facility capacity planning report(s) shall comply with the following:

1. Include reports of current throughput and permitted capacity and available capacity for SSGCOW Processing. Existing capacity may include identification of monthly Tons of additional SSGCOW Facility has the ability to receive within permitted limits.
 2. Include description of potential new or expanded Processing capacity at Facility, operations, and activities for Processing of SSBCOW and/or Organic Waste, including information about throughput and permitted capacity necessary for planning purposes.
 3. Be submitted using a form or format approved by the County.
- D. **Customized Reports.** County reserves the right to request Facility to prepare and provide customized reports from records Facility is required to maintain.

ARTICLE 5: COMPENSATION AND RATE REGULATION

- 5.1 As of the effective date of this Agreement, Facility shall charge County Franchisees the rate of \$65.00 per Ton for Organic Waste.
- 5.2 The rate charged shall be adjusted up or down on January 1, 2024, and then on each subsequent January 1, by a percentage factor equal to the change of the All Urban Consumers Consumer Price Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 - 1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor, and its value twelve months before. Facility shall submit annual Rate adjustment notifications, including calculations and supporting documentation, to County no later than October 31 of each year for the Rate adjustments which are to take place January 1 of the following calendar year.
- 5.3 The rate charged shall be increased for actual increased costs to Facility resulting from any (a) Change in law and (b) unforeseen circumstances arise which are caused by no fault of Facility and are outside Facility's control and materially affect Facility's costs or revenues under this Agreement. Facility's request for a Change in Law or unforeseen circumstance Rate adjustment shall include a statement of the amount of the requested rate adjustment, the basis therefor, and all financial and other records on which Facility relies for its claim that Facility's costs have increased. The County shall review Facility's rate adjustment application and notify Facility if its application is complete or whether the county wishes to review any additional documents or information reasonably related to the requested increase. The County shall not unreasonably deny, delay or condition Facility's requested rate adjustment. Rate adjustment requests for a Change in Law or unforeseen circumstances shall be effective thirty (30) days after they are approved by the County Board of Supervisors.
- 5.4 Facility will invoice County's Franchisees weekly with payments due in 30 days. Failure of County's Franchisees to pay charges due to Facility within 90 days of

invoicing shall constitute good cause for Facility, at Facility's sole discretion, to refuse additional deliveries. County shall incur no obligation to pay Facility for charges, costs or penalties incurred by County's Franchisees unless County consents in writing to pay such charges.

ARTICLE 6: OTHER AGREEMENTS OF THE PARTIES

- 6.1 Compliance with Laws and Regulations.** Facility warrants that it will comply with all Applicable Laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the California Public Resources Code Section 40000 et. seq., and all other Applicable Laws of the State of California, the County of Mendocino, ordinances of the County, the County's Source Reduction and Recycling Element, the County's Household Hazardous Waste Element, the County of Mendocino's County-wide Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the services provided by Facility under this agreement. In the event of conflict between regulations or statutes, Facility shall comply with the regulation or statute containing the most stringent applicable standards. Facility shall comply with all final and binding judgments entered against Facility regarding its services performed under this agreement.
- 6.2 AB 939 and Applicable Law Indemnification.** Facility shall defend with counsel reasonably acceptable to the County, indemnify and hold the County harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the County for the County's failure to meet the requirements of Applicable Law, with respect to the Discarded Materials Collected by the Facility, or amendments or any successor legislation thereto and/or all rules and regulations promulgated thereunder if said failure results from Facility's failure to comply with this Agreement and/or Facility's failure to comply with said laws, rules or regulations, including but not limited to failing to timely supply to the County the reports and information required by the County in order to comply with AB 939. Facility's obligations in this section shall survive termination of this Agreement.
- 6.3 Hazardous Substances Indemnification.** Facility agrees to indemnify, defend (with counsel reasonably acceptable to County), protect and hold harmless the County from and against any and all claims, damages (including, but not limited to, special, consequential, natural resources, and punitive damages), injuries, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, reasonable attorney's fees, and other expenses (including, but not limited to, reasonable attorneys' and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, suffered or incurred by or against the

County resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the Health & Safety Code or other similar Federal, State or local law or regulation, with respect to Solid Waste or Hazardous Waste collected and Disposed of by Facility. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA and Section 25364 of the Health & Safety Code to defend, protect, hold harmless and indemnify the County from all forms of liability under CERCLA, the Health & Safety Code or other similar Federal, State or local law or regulation. Facility's obligations in this section shall survive termination of this Agreement.

- 6.4 Relationship of Parties.** It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing a partnership relationship between the Parties hereto, or as constituting the Facility as the agent, representative, or employee of the County for any purpose whatsoever. The Facility is to be and shall remain an independent Facility with respect to all services performed under this Agreement.
- 6.5 Governing Law.** The laws of the State of California and Code and Ordinances of the County shall govern the validity, construction, and effect of this Agreement. The venue for any claims, litigation, or causes of action between the Parties shall be in the Superior Court of the State of California for Mendocino County.
- 6.6 Binding on Successors.** This Agreement shall inure to the benefit of and shall be binding upon the Facility, the County, and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.
- 6.7 Indemnification.** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), Facility shall assume the defense of, indemnify, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, costs, demands, damages, costs, liabilities, and losses whatsoever alleged to the extent occurring, arising out of or resulting in any way from the Facility's performance or its obligations under this Agreement, including compliance with Applicable Law, except to the extent arising out of the sole negligence or willful misconduct of County. "Facility's performance" includes Facility's action or inaction and the action or inaction of Facility's officers, employees, agents and subcontractors. Facility's obligations in this section shall survive termination of this Agreement.
- 6.8 Workers' Compensation.** Facility shall provide Workers' Compensation insurance, as applicable, at Facility's own cost and expense and further, neither the Facility nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

Facility affirms that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the

provisions of the Code and Facility further assures that it will comply with such provisions before commencing the performance of work under this Agreement. Facility shall furnish to County certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and Facility shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

- 6.9 Insurance Requirements.** Insurance coverage in a minimum amount set forth herein shall not be construed to relieve Facility for liability in excess of such coverage, nor shall it preclude County from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, Facility's indemnity obligations under this Agreement.

Facility shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

Facility shall furnish to County certificates of insurance evidencing the minimum levels described above.

- 6.10 Conflict of Interest.** The Facility covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.

- 6.11 Notices.** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

County of Mendocino
Attn: Solid Waste Division
340 Lake Mendocino Drive
Ukiah, CA 95482

Pacific Organics Solutions
Attn: Bruce McCracken
PO Box 630
Ukiah, CA 95482

With a copy to:

Waste Connections US, Inc.
Attn: Legal Department
3 Waterway Square Place, Suite 110
The Woodlands, TX 77380

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

6.12 Equal Employment Opportunity Practices Provisions. Facility certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.

- a. Facility shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
- b. Facility shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.

- c. If requested to do so by the County, Facility shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.
- d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
- e. The Facility shall include the provisions set forth in this paragraph in each of its subcontracts.

6.13 Drug Free Workplace. Facility and Facility 's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Facility nor Facility's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Facility or any employee of Facility is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the Facility, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

6.14 Termination. Except as provided in Section 6.15, the County has and reserves the right to suspend or terminate this Agreement in the event Facility has failed to comply with one or more of the terms or conditions of this Agreement, or future amendment(s) to this Agreement, failed to comply with any material federal, state or local laws, ordinances, rules or regulations pertaining to the activities contemplated by this Agreement, or when Facility's failure to perform the activities contemplated by this Agreement has become a nuisance or is detrimental to the public health, safety or welfare. If Facility does not perform the activities contemplated by this Agreement for a period in excess of 15 days, this Agreement may be terminated by the County. Facility shall not be in default of this Agreement if Facility commences such action required to cure the particular breach within 7 calendar days after notice by County, and it continues such performance diligently until completed.

6.15 Force Majeure. Neither Party shall not be in default under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, fires, and volcanic eruptions, epidemics and pandemics (and restrictions imposed by governmental authorities in response thereto), strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of Facility. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Facility's employees or directed at Facility is not an excuse from performance and Facility shall be obligated to continue to perform,

notwithstanding the occurrence of any or all of such events; provided, however, that labor unrest or job action directed at a third party over whom Facility has no control, shall excuse performance.

A Party claiming excuse under this Section must (i) have taken reasonable precautions to avoid being affected by the cause, and (ii) notify the other Party in writing within five (5) days after the occurrence of the event specifying the nature of the event, the expected length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform.

- 6.16 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 6.17 Modification of Agreement.** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
- 6.18 Survival.** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification and Conflict of Interest, shall survive termination or expiration.
- 6.19 Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- 6.20 Attorney's Fees.** In any action to enforce or interpret the terms of this agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEPARTMENT FISCAL REVIEW: Transportation

Howard N. Dashiell 11/17/22
HOWARD N. DASHIELL, Director DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: N/A

Line Item: N/A

Grant: ☐ Yes ☒ No

Grant No.: _____

FACILITY NAME:

By: Susan L. VanDelinder

NAME AND ADDRESS OF FACILITY:

Pacific Recycling Solutions, Inc.,
DBA Pacific Organics Solutions

PO Box 630

Ukiah, CA 95482

COUNTY OF MENDOCINO

By: TW
TED WILLIAMS, Chair
BOARD OF SUPERVISORS

Date: 12/06/2022

ATTEST:

DARCIE ANTLE, Clerk of said Board

By: Antle
Deputy 12/06/2022

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

DARCIE ANTLE, Clerk of said Board

By: Antle
Deputy 12/06/2022

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: Christian M. Curtis
Deputy

Date: 11/17/2022

INSURANCE REVIEW:

By: Darcie Antle
Risk Management

Date: 11/17/2022

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Jim Hahn
Deputy CEO

Date: 11/17/2022

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed ☐ _____
Mendocino County Business License: Valid ☐ _____
Exempt Pursuant to MCC Section: _____