

AGREEMENT FOR COMPOSTABLE MATERIALS TRANSPORT SERVICES

This agreement ("Agreement"), dated as of _____, 2018 ("Effective Date") is by and between the Sonoma County Waste Management Agency, (hereinafter "SCWMA"), and _____ (hereinafter "Contractor").

RECITALS

This Agreement is entered into on the basis of the followings facts, understandings, and intentions of the parties:

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000, et seq.; hereinafter the "Act") established a Solid Waste management process which requires cities and other local jurisdictions to implement source reduction, reuse, and recycling as integrated waste management practices; and

WHEREAS, the Act authorizes and requires local agencies to make adequate provision for Solid Waste handling within their jurisdictions; and

WHEREAS, pursuant to Section 40059 of the Public Resources Code, SCWMA is authorized to enter into an exclusive or non-exclusive agreement for the collection and disposal of Compostable Materials; and

WHEREAS, the SCWMA desires to enter into an exclusive agreement with Contractor for the collection and disposal of Compostable Materials at a Compost Facility(ies) permitted by the California Department of Resources Recycling and Recovery; and

WHEREAS, Contractor represents that it is duly qualified and experienced in the Transportation of Compostable Materials; and

WHEREAS, in the judgment of the Board of Directors of SCWMA, it is necessary and desirable to employ the services of Contractor to perform necessary transportation of compostable materials; and,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1 Definitions

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Section and shall be capitalized throughout this Agreement. When not inconsistent with the context, words and phrases used in the present tense include the future, and words and phrases used in the singular number include the plural number.

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

"Adjustment Date" means July 1st of each year, commencing July 1, 2019.

"SCWMA" means the Sonoma County Waste Management Agency, a joint powers authority.

“SCWMA Contract Manager” means the SCWMA’s Executive Director or their designee. The Contract Manager may designate certain individuals or agents of the SCWMA as the SCWMA Contract Manager for specific issues, projects, or requirements. In the event of a dispute between a designee and Contractor, the Contract Manager’s determination shall be final.

“Applicable Law” means all Federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Solid Waste that are in force on the Effective Date and as they may be enacted, issued or amended during the Term of this Agreement, including but not limited to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code).

“Central Landfill Site” means the landfill facility operated by Republic Services on behalf of the County of Sonoma at 550 Mecham Road, Petaluma, California.

“Collection” (or variation thereof) means the act of collecting Compostable Materials from the Central Landfill Site and the Transfer Stations. Collection does not include sorting, grinding, or loading of Compostable Materials prior to the deposit of Compostable Materials into Contractor’s transport vehicle.

“Composting” or **“Compost”** means “compost” as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40116 and regulations promulgated thereunder.

“Compostable Materials” means any organic material that when accumulated will become active compost as defined by the California Code of Regulations, Title 14, Division 7, Chapter 3.1, Section 17852.

“Contaminants” means those chemicals, waste, or other materials that render normally Compostable Materials unusable or cause them to lose their market value.

“Contractor” means The Ratto Group of Companies, Inc. and its officers, directors, employees, agents, companies, and Subcontractors.

“Contractor’s Proposal” means the proposal submitted by Contractor and received on _____ by the SCWMA in response to the SCWMA’s RFP, which are included as Exhibit E and are incorporated by reference. Should any conflict arise between the Contractor’s Proposal and this Agreement, the Agreement shall control.

“CPI Factor” means the increase, if any, in the San Francisco/Oakland/San Jose All Urban Consumer Price Index (“CPI”) during the preceding year. The CPI Factor shall be determined pursuant to a ratio, the denominator of which is the CPI for the last calendar month immediately preceding the prior Adjustment Date and the numerator of which is the CPI for the calendar month immediately preceding the then current Adjustment Date, except that for purposes of the first Adjustment Date, the denominator shall be the CPI for the last calendar month immediately preceding the Commencement Date and the numerator of which is the CPI for the calendar month immediately preceding the first Adjustment Date.

“Disposal” or **“Dispose”** (or variation thereof) means the final disposition of Compostable Materials at a Disposal Site.

“Disposal Site” means a facility for ultimate Disposal of Compostable Materials. The facility must have a current solid waste facility permit from the California Department of Resources Recycling and Recovery for accepting and processing Compostable Materials. The SCWMA-approved Disposal Site(s) are listed in Exhibit C. The SCWMA may, at its discretion, amend the list of approved Disposal Site(s) at its sole and absolute discretion by written notice to Contractor.

“Effective Date” means _____.

“Federal” means belonging to or pertaining to the national general government of the United States; or founded on or organized under the constitution of the United States.

“Fuel Factor” means the change, if any, in the Bureau of Labor Statistics "Average of Series ID:WPU057303" for the previous six month period (e.g., July 2014 - December 2014) "New Baseline" versus the "Baseline" and multiplying that percentage by the Fuel Component for Transport, the Fuel Component of Transport to Central and the Wood and Yard Debris Fuel Component. The "New Baseline" as determined above shall become the "Baseline," and the "New Fuel Fee Component" of the Fees shall become the "Fuel Fee Component" of the Fees for computing the "Fuel Cost Adjustment" for the next adjustment period. The "Baseline" for calculating the "Fuel Cost Adjustment" shall be 315.4.

“Fuel Component Fee” means the component of the Contractor service fees representing the fuel costs associated with the transport of Compostable Materials as set forth in Exhibit B.

“Hazardous Substance” means any of the following: (a) any substances 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) CERCLA; (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25110 et seq., 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter 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 Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

“Liquidated Damages” means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 12.

“Owner” means the person holding legal title to the land or building.

“Party” or **“Parties”** refers to the SCWMA and Contractor, individually or together.

“Processing” (or variation thereof) means to prepare, treat, or convert through some special method.

“RFP” means the SCWMA’s Request for Proposals for Compostable Materials Transport Services, dated August 10, 2014, and any addenda thereto, which is attached hereto as Exhibit D and incorporated by reference. Should any conflict arise between the RFP and this Agreement, the Agreement shall control. Should any conflict arise between Contractor’s Proposal and the RFP, the RFP shall control.

“Solid Waste” means “solid waste” as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder.

“State” means the State of California.

“Subcontractor” means a party who has entered into a contract, express or implied, with the Contractor for the

performance of an act that is necessary for the Contractor's fulfillment of its obligations under this Agreement.

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Section 5.1

"Transfer Station" means a permitted facility owned by the County of Sonoma utilized to temporarily store, separate, recover, convert or otherwise process Compostable Materials, and to load Compostable Materials into transfer vehicles for Transport to the Disposal Site or an Approved Processing Site. The Transfer Stations are located at Annapolis Transfer State: 33549 Annapolis Road; Guerneville Transfer Station: 13450 Pocket Drive; Healdsburg Transfer Station: 166 Alexander Valley Road; Sonoma Transfer Station: 4376 Stage Gulch Road.

"Transport Component Fee" means the component of the Contractor service fees for labor and equipment, as set forth in Exhibit B.

"Transportation" (or variation thereof) means the act of transporting or state of being transported.

2 Representations and Warranties of the Contractor.

2.1 Corporate Authority. Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

2.2 No Litigation. To the best of Contractor's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- (a) Materially, adversely affect the performance by Contractor of its obligations hereunder;
- (b) Adversely affect the validity or enforceability of this Agreement; or
- (c) Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

2.3 Ability to Perform. Contractor possesses the business, professional, and technical expertise to provide the services described in this Agreement. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

2.4 Licenses; Permits. Contractor represents and warrants to SCWMA that Contractor has all licenses, permits, and approvals of whatsoever nature which are legally required for Contractor to provide the services described in this Agreement. Contractor represents and warrants to SCWMA that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Contractor to perform this Agreement.

2.5 Voluntary Use of Designated Facilities. The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the SCWMA-approved Disposal Site(s) for the purposes of Disposing of all Compostable Materials. Such decision by Contractor in no way constitutes a restraint of trade.

3 Scope of Services.

3.1 Contractor's Specified Services: Compostable Materials Collection and Transportation. This Agreement is entered into for the purpose of Collecting Compostable Materials from County of

Sonoma Transfer Stations and the Central Landfill Site, if necessary, and Transporting such materials to the SCWMA-approved Disposal Site(s). Contractor shall perform services as defined in Exhibit A, Scope of Services.

The SCWMA shall not compensate the Contractor for any increased Transportation and Disposal costs associated with the use of Disposal Site(s) different from the Disposal Site(s) approved or designated as a potential future Disposal Site as of the Effective Date except in the event that an authorized Disposal Site is not available due to reasons beyond the control of Contractor in which event Contractor will notify the SCWMA of such closure and Contractor will deliver Compostable Materials to a lawful disposal site and will be reimbursed its reasonable costs therefor.

The Contractor shall not commence work until receiving a Notice to Proceed.

3.2 Cooperation with SCWMA. Contractor shall cooperate with SCWMA and SCWMA staff in the performance of all work hereunder.

3.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If SCWMA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, SCWMA, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with SCWMA to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Section 6; or (d) pursue any and all other remedies at law or in equity.

3.4 Assigned Personnel.

a. Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time SCWMA, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from SCWMA.

b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by SCWMA to be key personnel whose services are a material inducement to SCWMA to enter into this Agreement, and without whose services SCWMA would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SCWMA.

c. In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

3.5 Subcontracting. Contractor shall not engage any subcontractors for collection, transportation, or processing, of Compostable Materials without the prior written consent of the SCWMA's Contract Manager. As of the Effective Date of this Agreement, the SCWMA has approved Contractor's use of the Subcontractors listed in Exhibit A. Contractor's use of Subcontractor(s) does not in any way limit the Contractor's obligations under this Agreement. The SCWMA reserves the right to require Contractor to replace a Subcontractor in the event of a regulatory or criminal judgment against a Subcontractor and a legal judgment against a Subcontractor that is related to performance under this Agreement.

3.6 Ownership of Compostable Materials. Contractor assumes ownership of Compostable materials upon receipt. Contractor must deliver Compostable Materials to an SCWMA-approved Disposal Site. Once Compostable Materials are deposited by Contractor at a Disposal Site, such materials shall become the property of the Owner or operator of the facility.

3.7 Rejected Materials. Contractor shall be responsible for the removal of all loads of Compostable materials rejected by the receiving compost facility. SCWMA shall not be responsible for the cost of removal and/or disposal for loads rejected due to excessive amounts of Contaminants, as determined by the receiving compost facility.

4 Payment.

4.1 Contractor shall be paid for services rendered in accordance with tasks detailed in Section 3.1 above and in Exhibit A and B, upon monthly submission of progress reports, verified claims and invoices. The per ton payment amounts are defined by Schedule 1. Payments shall be made in the proportion of work completed based upon progress reports to total services to be performed. In the event there is a discrepancy between the outbound material, from the Transfer Stations or the Central Compost Site, and the inbound materials at the Disposal Site, payment shall be based upon the weight as determined at the scales from Transfer Stations or the Central Compost Site.

4.2 Monthly progress reports shall be submitted by Contractor and shall identify the source and tonnage of Compostable Materials Transported, the facility to which the Compostable Materials were transported, and the amount due to Contractor for the services performed.

4.3 Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes which do not increase or decrease the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the SCWMA's Executive Director in a form approved by SCWMA Counsel. All other extra or changed work must be authorized in writing by the SCWMA Board of Directors.

4.4 CPI Adjustments to Transport Component Fees. The transport fee for compostable materials shall be adjusted annually on the Adjustment Date by the CPI Factor, provided, however, that in no case shall such adjustment exceed three percent (3%) in any one-year period.

4.5 Adjustments to Fuel Component Fees. The Fuel Component Fee shall be adjusted bi-annually (effective January 1 and July 1 each year this agreement is effective) by the Fuel Factor.

4.6 Payment of Tipping Fees at Disposal Facility. The SCWMA shall pay all tipping fees due, including all governmental fees, for delivery of compostable materials by Contractor to each Disposal Facility. SCWMA shall indemnify and hold Contractor harmless from any and all liability to each Disposal facility for tipping fees, government fees. The SCWMA shall enter into such agreements with each Disposal facility as may be reasonably necessary to facilitate the performance of this Agreement.

5 Term of Agreement.

5.1 The term of this Agreement shall be from Effective Date to December 31, 2021 unless terminated earlier in accordance with the provisions of Section 6 below. This Agreement may be extended up to two additional years upon mutual agreement between the SCWMA and Contractor.

6 Termination.

6.1 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided,

or otherwise violate any of the terms of this Agreement, SCWMA may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

6.2 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to SCWMA all product final progress report and shall submit to SCWMA an invoice for services rendered up to the date of termination.

7 Collection Standards

7.1 Care of Property. Contractor shall not damage private, public or SCWMA-owned property. Contractor shall ensure that its employees: (i) do not cross landscaped areas; (ii) do not climb or jump over hedges and fences; and, (iii) check for obstructions or impediments including, but not limited to, lighting, plumbing, wiring, or signage prior to operating Transportation equipment. SCWMA shall refer complaints about property damage to Contractor. Contractor shall repair all damage to private or publicly-owned property caused by its employees.

7.2 Minimization of Spills. Contractor shall use due care to prevent Compostable Materials, vehicle oil, and vehicle fuel from being spilled or scattered during the Collection or Transportation process. If any materials are spilled or scattered during Collection or Transportation, the Contractor shall promptly clean-up all spilled and scattered materials. Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the SCWMA Contract Manager.

7.3 Minimization of Contamination. Contractor shall use due care to prevent Compostable Materials from being contaminated by Contaminants during the Collection or Transportation process.

8 Vehicle Specifications.

8.1 All vehicles used by Contractor in providing Transportation services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency (EPA) noise emission regulations and other applicable noise control regulations. Any vehicle that does not comply with noise level requirements shall be prohibited from performing services under this Agreement.

8.2 As required by law, Contractor shall comply with State and Federal regulations including, but not limited to: (i) the California Air Resources Board Heavy Duty Engine Standards, contained in CCR Title 13, Section 2020 et seq; and, (ii) the Federal Environmental Protection Agency's Highway Diesel Fuel Sulfur regulations (Section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b)). In addition, Contractor shall comply with all applicable Northern Sonoma County Air Pollution Control District (NSCAPCD), Bay Area Air Quality Management District (BAAQMD), State, and Federal regulations related to emissions controls. If Contractor needs to convert, retrofit, or replace its vehicles to be in full compliance with local, State and Federal clean air requirements in effect on the Effective Date of the Agreement, the costs for such changes shall be the sole responsibility of the Contractor.

8.3 Vehicle Identification. Contractor's name, local telephone number, and a unique vehicle identification number for each vehicle shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of four (4) inches high. Contractor shall not place the SCWMA's logo on its vehicles nor shall Contractor paint their vehicles in a way that, in the reasonable judgment of the SCWMA's Contract Manager, would cause the public to mistake Contractor's vehicles with those that the SCWMA uses.

8.4 Operation. Vehicles shall be operated in compliance with the State Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions for vehicles and roads.

9 Record Keeping and Reporting.

9.1 Records Maintenance. Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all costs associated with providing services. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied. Contractor shall maintain all records and data for the Term of this Agreement plus four (4) years after its expiration or earlier termination.

9.2 CERCLA Defense Records. The SCWMA views its ability to defend itself against CERCLA and related litigation as a matter of great importance. For this reason, the SCWMA regards its ability to prove where Compostable Materials are taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where Compostable Material Collected was Disposed (and therefore establish where it was not). Contractor shall provide these records to the SCWMA Contract Manager at the expiration or early termination of this Agreement, in an organized and indexed manner rather than destroying or disposing of them.

9.3 Inspection of Records. The SCWMA, its auditors and other agents, shall have the right, during regular business hours, and with twenty-four (24) hours written notice identifying the information desired and the types of records that may contain that information, to conduct on-site inspections of accounting systems, payroll tax reports, specific documents or records required by this Agreement, or any other similar records or reports of the Contractor and all companies conducting operations addressed in this Agreement, that the SCWMA shall deem, at its sole discretion, necessary to evaluate the Contractor's performance provided for in this Agreement.

10 Indemnification.

10.1 GENERAL INDEMNIFICATION. Contractor shall indemnify, defend with counsel acceptable to the SCWMA, protect and hold harmless the SCWMA and each of its officers, officials, employees, volunteers, and agents (collectively, indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit damages arising from or attributable to any Collection, Processing, or Transportation of Solid Waste under this Agreement to the greatest extent permitted by law. Notwithstanding the foregoing, however, Contractor shall not be required to indemnify the SCWMA for the costs for any claims arising from the Disposal of Hazardous Substances or Hazardous Waste at the Disposal Site(s), including, but not limited to, claims arising under CERCLA unless the claim is a direct result of Contractor's actions or negligence. This indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitees, and as provided below. The foregoing indemnity is intended to operate as an Agreement pursuant to Section 42 USC §9607(e) of CERCLA and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify SCWMA from liability.

If Contractor should subcontract any portion of the work to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless, and defend the indemnitees in accordance with the terms of the preceding paragraph.

This provision is in addition to all other provisions in this Agreement and is intended to survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall prevent SCWMA from seeking indemnification or contribution from persons or entities other than indemnitees, for any liabilities incurred by SCWMA or the indemnitees.

10.2 **INDEMNIFICATION RELATED TO PERSONNEL.** Contractor shall defend, hold harmless, and indemnify the SCWMA and each of its officers, officials, employees, volunteers, and agents, for all loss, damages, liability, claims, suits, costs or expenses whatsoever, including reasonable attorneys' fees, regardless of the merits or outcome of any such claim or suit arising from or in any manner related to the SCWMA's lawful and reasonable request to remove or reassign any employee pursuant to Section 3.4. This Section 10.2 shall survive the termination or expiration of this Agreement.

SCWMA shall defend, hold harmless, and indemnify the Contractor and each of its officers for all claims, suits, costs or expenses including reasonable attorneys' fees, regardless of the merits or outcome of any such claim or suit, arising from compensation, pension, or other benefit due an employee by the SCWMA solely as a direct result of his or her prior employment with the SCWMA.

11 INSURANCE

11.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

11.1.1 The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

11.1.2 Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto", and endorsement CA 0025.

11.1.3 Workers' Compensation insurance as required by the State Labor Code and Employers Liability insurance.

11.1.4 Either: Employee Blanket Fidelity Bond; or, Commercial Crime Insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Crime and Fidelity Form CR 00 20.

11.1.5 Pollution Legal Liability insurance.

11.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than:

11.2.1 Commercial General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

11.2.2 Automobile Liability: \$10,000,000 combined single limit per accident for bodily injury and property damage.

11.2.3 Workers' Compensation and Employers Liability: Workers' compensation limits as required by the State Labor Code and Employers Liability limits of \$1,000,000 per accident.

11.2.4 Pollution Legal Liability: \$5,000,000 for bodily injury, property damage, and remediation of contaminated site.

11.3 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the SCWMA. At the option of the SCWMA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the SCWMA, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.4 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

11.4.1 Commercial General Liability, Commercial Auto Liability and Pollution Legal Liability coverages:

- (a) The SCWMA and each of its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the SCWMA, its officials, employees, or volunteers. The automobile liability is endorsed to contain MCA-90 coverage.
- (b) The Contractor's insurance coverage shall be primary insurance as respects the SCWMA, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the SCWMA, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the SCWMA, its officials, employees, or volunteers.
- (d) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.4.2 Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the SCWMA, its officers, employees, and volunteers for losses arising from work performed by the Contractor for the SCWMA.

11.4.3 All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) calendar days' prior written notice by certified mail, return receipt requested, has been given to the SCWMA.

11.5 Acceptability of Insurers. The insurance policies required by this Section 11 shall be issued by an insurance company or companies authorized to do business in the State and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A- or better; or authorized by the SCWMA's Risk Manager.

11.6 Verification of Coverage. Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct the agent to provide the SCWMA with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the SCWMA before work commences. Upon request of SCWMA, Contractor shall immediately furnish SCWMA with a complete copy of any insurance policy required under this

Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

11.7 Required Endorsements.

11.7.1 The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty calendar days' prior written notice shall be given to the Sonoma County Waste Management Agency in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Executive Director
Sonoma County Waste Management Agency
2300 County Center Drive, Suite B100
Santa Rosa, CA 95403

11.7.2 The Commercial General Liability, Commercial Auto Liability and Pollution Legal Liability insurance policies shall contain endorsements in substantially the following form:

1. "Thirty calendar days' prior written notice shall be given to the Sonoma County Waste Management Agency in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Executive Director
Sonoma County Waste Management Agency
2300 County Center Drive, Suite B100
Santa Rosa, CA 95403

2. "The Sonoma County Waste Management Agency, its officers, employees, and agents are additional insureds on this policy." The SCWMA requires form CG2010 1185.

3. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the Sonoma County Waste Management Agency, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

4. "Inclusion of the Sonoma County Waste Management Agency as an insured shall not affect the SCWMA's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the SCWMA in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one Party had been named as an insured."

11.8 Delivery of Proof of Coverage. Simultaneously with the execution of this Agreement, Contractor shall furnish the SCWMA certificates of each policy of insurance required hereunder, in form and substance satisfactory to SCWMA. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the SCWMA Contract Manager requests, copies of each policy, together with all endorsements, shall also be promptly delivered to SCWMA Contract Manager.

Renewal certificates will be furnished periodically to SCWMA Contract Manager to demonstrate maintenance of the required coverages throughout the Term.

11.9 Other Insurance Requirements

11.9.1 If Contractor should subcontract any portion of the services to be performed under this Agreement, Contractor shall require each subcontractor to provide insurance protection in favor of SCWMA and each of its officers, officials, employees, agents and volunteers in accordance with the terms of Section 11, except that any required certificates and applicable endorsements shall be on file with Contractor and SCWMA prior to the commencement of any services by the subcontractor.

11.9.2 If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, Contractor shall be in breach of the Agreement until notice is received by SCWMA that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to SCWMA. Any failure to maintain the required insurance shall be sufficient cause for SCWMA to terminate this Agreement. No action taken by SCWMA pursuant to this section shall in any way relieve Contractor of its responsibilities under this Agreement.

If Contractor fails to procure and maintain any insurance required by this Agreement, the SCWMA may take out and maintain, at the Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due the Contractor.

11.9.3 The Commercial General Liability, Commercial Auto Liability and Pollution Legal Liability insurance policies shall be written on an occurrence form. If Contractor is unable to purchase Pollution Legal Liability insurance on an occurrence form and must purchase such insurance on a claims made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.
2. The policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Contractor must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of this Agreement.

11.10 PERFORMANCE BOND. On or before the Effective Date of this Agreement, Contractor shall file with the SCWMA a bond, payable to the SCWMA, securing the Contractor's faithful performance of its obligations under this Agreement and such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be five hundred thousand dollars (\$500,000). The bond shall be executed by a corporation authorized to issue surety bonds in the State, with a financial condition and record of service satisfactory to the SCWMA.

12 Liquidated Damages

12.1 **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by SCWMA as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) damage may result to the public which is denied Compost hauling services or denied quality or reliable service; (ii) such breaches cause inconvenience, public nuisance, health and safety risks, deprivation of the benefits of the Agreement, which are incapable of measurement in precise monetary terms; (iii) the monetary loss resulting from denial of services is impossible to calculate in precise

monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

12.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Compostable Materials Collection and Transportation service is of utmost importance to SCWMA and that SCWMA has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, SCWMA and its members will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which SCWMA will suffer. Therefore, without prejudice to SCWMA's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established below represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to SCWMA that reasonably could be anticipated and that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the following amounts:

Liquidated Damages	
Item	Amount
A. Failure to submit monthly report to SCWMA in accordance with Article 4.2	\$100 per calendar day of delay
B. Failure to notify SCWMA in writing of any regulatory violation, order or similar notice that could impact Contractor's ability to collect and transport Compostable Materials or potentially affect SCWMA's liability.	\$300 per calendar day of delay
C. Failure to maintain proper covers on transport vehicles	\$500 per occurrence
D. Failure to deliver material to the locations as instructed by SCWMA staff	\$100 per occurrence

SCWMA may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representatives or investigation of third parties.

Before assessing Liquidated Damages for Items A and B in the Liquidated Damages Table above, SCWMA Contract Manager shall give Contractor notice of its intention to do so and a reasonable opportunity to cure, not more than ten calendar days (the "LD Notice"). No Liquidated Damages will be imposed if Contractor cures within the time allowed by the LD Notice. SCWMA may impose Liquidated Damages on Contractor and Contractor will not have the right to cure in the event that Contractor is subject to the imposition of Liquidated Damages hereunder for the same failure to perform more than once in any twelve month period. The LD Notice will include a brief description of the incident(s) and non-performance. The SCWMA Contract Manager may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. SCWMA Contract Manager may, within ten (10) calendar days after issuing the notice, request a meeting with Contractor. SCWMA Contract Manager may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. SCWMA Contract Manager will provide Contractor with a written explanation of his or her determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 12.4. The decision of SCWMA Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

Liquidated damages for Item C in the Liquidated Damages Table above shall be imposed by SCWMA on Contractor for each occurrence. Contractor shall not have a period of time in which to cure Liquidated Damages related to Item C.

Contractor shall have the right to appeal the assessment of Liquidated Damages to the SCWMA Executive Director. The decision of the SCWMA Executive Director shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

12.3 Timing of Payment. Contractor shall pay any Liquidated Damages assessed by SCWMA within ten (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-day period, the Contractor shall pay the SCWMA the Liquidated Damage payment due plus interest compounded daily, where interest shall be calculated using the annual yield rate for the California Local SCWMA Investment Fund most-recently published by the State Treasurer's office. The SCWMA Contract Manager shall send written notice to the Contractor and the Contractor's performance bond company stating Contractor's failure to pay Liquidated Damages and the SCWMA's right to terminate the Agreement and proceed against the performance bond if payment is not received within ninety (90) days of the date Liquidated Damages were assessed.

If the Liquidated Damages payment is thirty (30) days past due, the Contractor shall pay the SCWMA double the Liquidated Damages payment due plus interest compounded daily, where interest shall be calculated as described above. If the Liquidated Damages payment is sixty (60) days or more past due, the SCWMA Contract Manager shall notice the Contractor and the Contractor's performance bond company of the City's intent to terminate the Agreement and proceed against the performance bond if Liquidated Damages are not paid within ninety (90) days of the date of assessment. If the Liquidated Damages payment is ninety (90) days or more past due and the SCWMA provided Contractor with 30-day advance written notice of its intent to terminate the Agreement for failure to pay Liquidated Damages, the SCWMA may terminate the Agreement, in which case the SCWMA may proceed against the performance bond required by the Agreement.

13 Additional Covenants of Contractor.

13.1 Standard of Care. SCWMA has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by SCWMA shall not operate as a waiver or release.

13.2 Compliance with Law. Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the United States, the State and local agencies, and with all applicable regulations promulgated by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

13.3 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of SCWMA and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits provided to SCWMA staff. In the event SCWMA exercises its right to terminate this Agreement pursuant to Section 6, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

13.4 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold SCWMA harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case SCWMA is audited for compliance regarding any withholding or other applicable taxes. Contractor agrees to furnish SCWMA with proof of payment of taxes on these earnings.

13.5 Nondiscrimination. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

13.6 AIDS Discrimination. Contractor agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

13.7 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of SCWMA. SCWMA shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to SCWMA all such documents which have not already been provided to SCWMA in such form or format as SCWMA deems appropriate. Such documents shall be and will remain the property of SCWMA without restriction or limitation. Contractor may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SCWMA.

14 Miscellaneous Provisions.

14.1 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding fifteen (15) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Section 14.1 limits SCWMA's right to terminate this Agreement pursuant to Section 6.

14.2 Excuse from Performance. The Parties shall be excused from performing their respective obligations hereunder if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The Party claiming excuse from performance shall, within two (2) Business Days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any damages sustained thereby.

The partial or complete interruption or discontinuance of Contractor's services caused by one or more of the events

described in this Section shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, the SCWMA shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) calendar days notice to Contractor unless Contractor has demonstrated, by the thirtieth (30th) calendar day, to the satisfaction of the SCWMA that the Contractor will resume services no later than the sixtieth (60th) day following the date service was interrupted or discontinued by Contractor.

14.3 Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

14.4 Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

SCWMA: Sonoma County Waste Management Agency
Attention: Executive Director
2300 County Center Drive, Suite B 100
Santa Rosa, CA 95403
Phone: (707) 565-3687

Contractor:

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile, the notice bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail, (2) the sender has a written confirmation of the facsimile transmission, and (3) the facsimile is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

14.5 No Waiver of Breach. The waiver by SCWMA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.6 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and SCWMA acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and SCWMA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.7 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.8 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.9 Entire Agreement. This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties relating to the matters covered herein.

14.10 Amendment. This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

14.11 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.12 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.13 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.14 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SCWMA: SONOMA COUNTY WASTE MANAGEMENT AGENCY

By: _____
Chair

CONTRACTOR:

By: _____

Name: _____

Title: _____

APPROVED AS TO SUBSTANCE BY
AND CERTIFICATES OF INSURANCE
ON FILE WITH:

By: _____
Executive Director, SCWMA

APPROVED AS TO FORM FOR SCWMA:

By: _____
SCWMA Counsel

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

SCHEDULE OF PAYMENT TERMS

EXHIBIT C

LIST OF APPROVED DISPOSAL SITES