

Addendum to Request for Qualifications for Composting Services

- RFQ §1.4 – What is the anticipated timeframe for approval of the EIRs on the potential processing sites under consideration by the SCWMA?

EIR approval is heavily dependent on the volume and substance of comments received as a result of the forthcoming Draft EIR for relocation. It is estimated the soonest a Final EIR would be available for certification would be April 2012.

- RFQ §1.4 states that Increased waste diversion strategies, and their implementation, are a key facet of this effort. Should C&D recycling operations be considered as a potential to increase organic diversion? If so, what is the anticipated volume of C&D to be processed?

As listed in Section 1.4 of the RFQ, wood material from the C&D category was estimated to be 6.8% of the waste stream in the 2007 Sonoma County Waste Characterization Study. Since that study was completed, the County has begun pilot C&D recycling operations at the Healdsburg and Sonoma Transfer stations. The untreated, unpainted wood recovered from these operations is delivered to the SCWMA's composting program. It is likely that additional recoverable materials exist in the waste stream. While there is currently insufficient area to perform C&D sorting and recycling activities at the Central Compost Site in its current configuration, the SCWMA would be interested in a discussion of increasing C&D diversion as it relates to this RFQ.

- RFQ §4.2.3 – To estimate cost structures for services, RFQ respondents would need to have access to the proposed sites mentioned in RFQ §1.4 to produce an accurate cost estimate of developing a new facility at each of the sites. Can RFQ respondents gain access to these sites prior to any evaluation interviews, in order to estimate the costs for site development?

The SCWMA Board of Directors wants to ensure the public is receiving the best service for their organics recycling program. The availability of the current location for these operations is finite and dependent on a multitude of issues related to the future status of the Central Disposal Site. As such, the SCWMA has issued this RFQ to learn more about potential partners and their current and planned, future operations.

This RFQ was not issued with the intent of selecting a service provider to develop a future composting site related to the forthcoming EIR. The CEQA process must be complete on that issue before the SCWMA can make a decision on that project.

This RFQ was distributed to examine bridging the time between the expiration of the agreement for composting services with Sonoma Compost Company (as soon as November 2012) and the beginning of operations at a new site (as soon as Q1 2014), or to eliminate the need for that relocation project if an appropriate privately owned and operated site is identified.

Given the above, the SCWMA does not envision access to the sites studied in the EIR will be necessary for this RFQ.

Addendum to Request for Qualifications for Composting Services

- RFQ §4.2.4 states, in part, “Location of services, particularly if the current location is intended to be utilized for initial or long term operations...” For how long is the current facility available for use, while developing a potential new site as discussed in RFQ §1.4?

The availability of the current site is the main driver for this project. While the County has not issued a vacate date for the site, future County activities at the site will require the removal of composting equipment, feedstock, and finished products. Under a scenario in which the County is denied a permit to expand landfilling operations, the current compost site (which is above intermediate landfill cover) would be subject to closure activities as early as the first quarter of 2014. Under scenarios of expanded landfill capacity at the Central Disposal Site, the vacate date could be further in the future.

- RFQ §4.2.5 – Any interim plan would require a timeline for operations of the current facility and the time to permit the locations discussed in RFQ §1.4. What are the anticipated timeframes for operation of the current facility and for permitting of the potential new locations?

As mentioned previously, at this time decisions of how to proceed with the results of this RFQ and how to proceed with the process resulting from the relocation EIR process are separate and may not coincide.

- In response to RFQ §5.1.3 we contemplate submitting operational details for each of our existing composting and wood processing facilities, corresponding to the requirements of RFQ §5.1.3.1 through §5.1.3.8. Please describe the nature of additional information the SCWMA expects to be submitted in response to RFQ §5.1.7.

Section 5.1.3 refers to agreement and contracts in which your operation is currently engaged. Section 5.1.7 refers to the capabilities and limitations of the site itself.

For example, the SCWMA is interested to know the overall, permitted site capacity and how much of that capacity is still available, should the SCWMA decided to send material to that site.

It is also important to know whether that permitted capacity is logistically accessible as well. For example, it is conceivable that a site may be permitted to accept 200 tons per day, and it currently accepts an average of 50 tons per day, leaving 150 tons per day of available, permitted capacity. However, to access that capacity, an upgrade or extension of the pad is required to have enough physical space to process the material.

Another scenario is a site has 100 tpd of available capacity, but cannot accept additional food materials.

These are examples of details that will aid the SCWMA in making decisions on the future of its organics programs.

- RFQ §5.2 Insurance states, in part:

Addendum to Request for Qualifications for Composting Services

“The Respondent should demonstrate the ability to submit proof of the required insurance coverages, as defined by 5.2.1 – 5.2.7 below, in the form of Certificates of Insurance clearly evidencing all required insurance and endorsements.”

By what means does the SCWMA contemplate that a respondent should demonstrate the ability to submit proof of the required insurance coverages?

The SCWMA does not require to be listed as an additional insured for this RFQ. A copy of a valid certificate of insurance for another client in which your operation has an agreement would suffice.

- What is the estimated amount of food waste currently received at the SCWMA Central Compost Site?

The permit at the Central Compost Site currently restricts food waste receipt to 10% of incoming green materials, or 12 tons per day (a permit revision currently underway will likely increase the tpd amount). Further, this feedstock cannot include meat, dairy products, or oils. It is estimated the current food waste receipt is approximately 1,500 tons per year.

- What are the current categories of generators of the food waste received at the SCWMA Central Compost Site (i.e. residential curbside, commercial, etc.) and what amounts are currently handled and anticipated, by generator category?

Residential vegetative food waste is co-mingled with yard debris and collected curbside in all incorporated Sonoma County cities and in most unincorporated Sonoma County areas on a weekly basis. The only regular commercial delivery of vegetative food waste originates from businesses in the City of Sonoma. Of the estimated 1,500 tons per year of food waste, 1,350 tons is estimated to originate from residential curbside programs, and 150 tons is estimated to originate from commercial sources in Sonoma.

- What are each of the several grades of compost produced currently at the SCWMA Central Compost Site, and are these grades negotiable/changeable?

The compost products produced by Sonoma Compost Company are available for viewing at <http://www.sonomacompost.com/product.shtml>. The SCWMA does not require specific products, but does require the contractor produce a marketing plan, in which the contractor describes their products; sales, marketing, and distribution plans; and operating procedures and quality control. Other products are allowed as long as there is a plan for the end use of such products.

- Who will be responsible for marketing the materials produced at the SCWMA Central Compost Site or at a future SCWMA-owned processing site?

Marketing of products is the responsibility of the contractor.

Addendum to Request for Qualifications for Composting Services

- Is there a requirement for selling finished compost to, or otherwise providing finished compost to the local community?

Restricting sales within the county is not required, however, there is a strong local market for the material currently produced, and due to traffic, emission, and cost factors, the SCWMA would encourage serving the needs of Sonoma County before considering export to other counties.

The current SCWMA agreement with Sonoma Compost Company includes a provision in which 10% of the finished product is made available to the member jurisdictions (distributed based in incoming material amounts) at no charge. While not a requirement for potential future agreements, it is a provision that is well used by SCWMA member jurisdictions.

- If meat and dairy products become permitted for inclusion as feedstock, what additional volumes can be anticipated for these items?

The 2007 Waste Characterization Study does not provide the requested level of detail. In general, the SCWMA expects that the majority of the estimated 80,000 tons compostable material currently landfilled to be food materials.

- Section 4.3 requires that Respondents submit a signed Exhibit B acknowledging the rights of the Agency. The RFQ document provided did not have such a form included. Please clarify the requirement or provide the Exhibit.

The reference to Exhibit B was included in error. Respondents are not required to sign Exhibit B for this RFQ, but Respondents should be aware of the Agency's rights as outlined in Section 4.3.

- Section 5.1.3.6 requires that the Respondent provide volumes and types of materials handled and produced for each Activity listed in Section 5.1.3. Please confirm that the required description of use and location of finished product is historical data and not projected use.

Section 5.1.3.6 refers to existing operations, so the information provided should appropriately reflect historical and current operations. If the respondent provides information with regard to Section 5.1.6 the information could include projected data. However, if a respondent has concerns about providing information regarding confidential future plans, they may note this and provide additional detail in a potential interview pursuant to Section 4.2 of the RFQ.

- Our question is regarding the request for the Regulatory History of the activities, including any permit revocations, fines, violations, areas of concern, or similar inspection or enforcement actions. The request does not specify the time period for which the agency would like this information reported. We are proposing that in regards to the regulatory history regarding permit revocations, fines, violations, or similar enforcement actions that this information be provided for the full history of the facility operations. Areas of Concern (AOC) however are not enforcement actions and given the wide latitude afforded LEAs when issuing AOC's, they may be

Addendum to Request for Qualifications for Composting Services

numerous and inconsistent from LEA to LEA. If the agency determines AOC's should be provided in the SOQ, we propose that this is for a defined period of a few years so that this information can be readily and accurately obtained from the CalRecycle database.

The SCWMA understands that LEA procedures may vary county to county. Examining the regulatory histories of the respondents allows the SCWMA to determine whether the site is stable and has a future, should the SCWMA decide to send organic material to that facility.

To clarify the requirements of the request for permit/regulatory histories (Sections 5.1.3.5 and 5.1.7), the SCWMA agrees that any permit revocations, fines, violations, or similar inspection or enforcement actions should be provided for the full history of the composting site(s) and Areas of Concern should be provided for the past three years.

- How much time is there left on the current agreement with SCC?

The current agreement with Sonoma Compost Company requires the acceptance of material end in July 15, 2012 and for the site to be vacated by November 15, 2012. The agreement allows for two additional one year extensions at the SCWMA's and County's discretion.

- Can we obtain a copy of the current agreement with SCC?

A compilation of the agreement and amendments is attached to this Addendum.

- What is the current gate rate or tipping fee for Yard Waste, wood waste and vegetative food waste?

Gate rates for the Central Disposal Site are at:

http://www.recyclenow.org/disposal/fee_central_disposal.asp

Gate rates for the other Sonoma County Transfer Stations are at:

<http://www.recyclenow.org/disposal/transfer.asp>

Vegetative food waste is currently charged the yard debris gate rate.

- Does the authority receive any of the revenue from the sales of products?

As part of the agreement with Sonoma Compost Company, the SCWMA receives 50% of revenue derived from the sale of products in excess of the guaranteed revenue to Sonoma Compost Company.

Compilation of Agreement with Sonoma Compost Company and Amendments

ORGANIC MATERIAL PROCESSING,
COMPOSTING AND MARKETING SERVICES
AGREEMENT BY AND BETWEEN
THE SONOMA COUNTY WASTE MANAGEMENT AGENCY,
THE COUNTY OF SONOMA, AND
SONOMA COMPOST COMPANY

September ____ , 1999

Compilation of Agreement with Sonoma Compost Company and Amendments

TABLE OF CONTENTS

1. DEFINITIONS	2
2. SCOPE OF SERVICES	6
2.1 Receiving, Weighing and Handling	6
2.1.1 Accounting for Materials Delivered	6
2.1.2 Acceptance of Materials	6
2.1.3 Determination of Acceptability of Materials	6
2.2 Minimum Processing Services and Flow	7
2.3 Disposal of Contaminants	7
2.4 Time of Operation	7
2.5 Employee Training	7
2.6 Standard of Care; Compliance with Laws	7
3. TERM OF AGREEMENT	8
3.1 Term	8
3.2	8
4. COMPENSATION FOR SERVICES	8
4.1 Compensation	8
4.1.1 Compensation for Yard Debris	9
4.1.2 Compensation for Wood Debris	9
4.1.3 Notice Requirements	9
4.2 Adjustments in Compensation	9
4.2.1 Annual Adjustments	9
4.2.2 Unforeseen Events Concerning Environmental Regulations	9
4.2.3 Changes in Market Prices	10
4.2.4 Revenue from Finished Products	10
4.3 Determination of Compensation	10
4.4 Agency Product Distribution	10
4.5 Taxes	10
4.6 Liability for Compensation	11
4.7 Purchase of Compost By-Products	11
5. PROCESSING FACILITY	11
5.1 Facility Design	11
5.2 Facility Improvements	12
5.2.1 Minimum Requirements	12
5.2.2 Working Surface Improvements	13
5.3 Facility Operation	13
5.3.1 Processing	13
5.3.2 Housekeeping; Storage	13
5.3.3 Health and Safety	13
5.3.4 Testing	14
5.3.5 Operating Plan	14
5.3.6 Educational Opportunities	14
5.3.7 Environmental Requirements	14

Compilation of Agreement with Sonoma Compost Company and Amendments

5.4 Facility Maintenance	14
5.4.1 Maintenance Obligations of Contractor; Submission and Approval of Maintenance Plan	14
5.4.2 Maintenance of Working Surface	15
5.4.2.1 Existing Concrete Working Surface	15
5.4.2.2 New Concrete Working Surface	15
5.4.3 Maintenance of Perimeter Road	15
5.4.4 Storm Water Management	15
5.4.5 Utilities	15
6. FINISHED PRODUCT STANDARDS	16
6.1 Production of Finished Products	16
6.2 Process Testing	16
6.3 Finished Product Standard	16
7. CONTAMINANTS	16
7.1 Separation of Contaminants	16
7.2 Hazardous Materials	16
8. MARKETING PLAN	17
8.1 Approval of Marketing Plan	17
8.2 Deviations from Approved Marketing Plan	17
9. ACCOUNTING AND RECORDS	17
9.1 Maintenance and Audit of Reports	17
9.2 Over-payments to Contractor	18
9.3 Under-payments to Contractor	18
9.4 Inspection of Accounts and Records	18
10. REPORTS	18
10.1 Daily Reports	18
10.2 Monthly Reports	18
10.3 Annual Reports	20
10.4 Final Report	20
10.5 Reports Required by Law	21
11. CONTRACTOR REPRESENTATIONS	21
11.1 Organization and Good Standing	21
11.2 Authority and Authorization	21
11.3 Litigation	21
11.4 Binding Obligation	21
12. INSURANCE; PERFORMANCE BOND	22
12.1 Insurance Requirements	22
12.1.1 Workers' Compensation	22
12.1.2 Commercial/Comprehensive General Liability	22
12.1.3 Automobile	22
12.1.4 Environmental Materials Liability	23
12.1.5 Documentation	24
12.1.6 Policy Obligations	24

Compilation of Agreement with Sonoma Compost Company and Amendments

12.1.7 Material Breach	24
12.2. Faithful Performance Bond	24
13. NOTICE	25
13.1 Notices	25
13.1.1 Method of Delivery	25
13.2 Refuse, Unclaimed or Undeliverable Notices	25
13.3 Addresses	25
14. INDEMNIFICATION	26
15. EVENTS OF DEFAULT; REMEDIES	26
16. EXPIRATION OF AGREEMENTS	28
16.1 Normal Expiration	28
16.2 Termination of Agreement	28
16.3 Condition of Facility	28
17. ARBITRATION	28
18. ATTORNEYS' FEES	29
19. GENERAL PROVISIONS	29
19.1 Assignment	29
19.1.1 Assignment by Contractor	29
19.1.2 Assignment by Agency	30
19.2 Amendments	30
19.3 Nondiscrimination	30
19.4 No Waiver of Breach	30
19.5 Construction	30
19.6 No Third Party Beneficiaries	30
19.7 Applicable Law and Forum	31
19.8 Captions	31
19.9 Merger	31
19.10 Time of Essence	31

LIST OF EXHIBITS

Facility Map	Exhibit "A"
List of Operating Equipment, including New Rolling Stock	Exhibit "B"
Payment Matrix	Exhibit "C"
Household Hazardous Waste Accepted by Sonoma County	Exhibit "D"
Proposed Marketing Plan	Exhibit "E"

Compilation of Agreement with Sonoma Compost Company and Amendments

ORGANIC MATERIAL PROCESSING, COMPOSTING AND MARKETING SERVICES AGREEMENT BY AND BETWEEN THE SONOMA COUNTY WASTE MANAGEMENT AGENCY, THE COUNTY OF SONOMA, AND SONOMA COMPOST COMPANY

Amendment 1A

Amendment 1B

Amendment 2

Amendment 3

Amendment 4

Amendment 5

Amendment 6

Amendment 7

Amendment 8

This Agreement is made and entered into this _____ day of _____, 1999, by and between the SONOMA COUNTY WASTE MANAGEMENT AGENCY, a joint powers agency, the COUNTY OF SONOMA, a political subdivision of the state of California, and SONOMA COMPOST COMPANY, a California general partnership. Agency, County and Contractor are sometimes collectively referred to as the "parties" and singularly, a "party." Unless otherwise stated, all terms shall have the meanings ascribed to them in Section 1 below.

RECITALS

WHEREAS, Agency desires to continue its Yard Debris Composting and Wood Debris Diversion Program (the "Program") for the handling and processing of segregated Yard Debris and Wood Debris diverted from the solid waste stream; and

WHEREAS, Contractor represents that it directly has the necessary experience and expertise to receive municipal Yard Debris and Wood Debris, process such materials into marketable products, and market the products; and

WHEREAS, Contractor is willing to operate and maintain a Yard Debris composting and Wood Debris diversion processing facility to receive, handle, and process Agency Yard Debris and Wood Debris for a fee and market the products therefore; and

WHEREAS, Agency and Contractor desire to fulfill part of Agency's obligation to divert recyclable materials from landfill disposal by converting Agency's Yard Debris and Wood Debris into valuable commodities thus enhancing the environment and preserving our natural resources; and

WHEREAS, an initial study and mitigated negative declaration have been prepared for the Program in accordance with the California Environmental Quality Act; and

WHEREAS, the County adopted the mitigated negative declaration on March 24, 1992 and a Notice of Determination was filed; and

WHEREAS, Agency and Contractor desire to enter into this Agreement whereby Contractor shall perform Yard Debris composting and Wood Debris diversion processing services related to Agency's Yard Debris Composting and Wood Debris Diversion Program.

Compilation of Agreement with Sonoma Compost Company and Amendments

NOW, THEREFORE, Agency, County and Contractor do hereby agree as follows:

A G R E E M E N T

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meaning set forth below. Any term may be used in the plural or past tense.

“Aeration.” Aeration shall mean the process of exposing composting material to oxygen in the air.

“Agency.” Agency shall mean the Sonoma County Waste Management Agency, a joint powers agency comprised of the following members: County of Sonoma, City of Santa Rosa, City of Petaluma, City of Rohnert Park, City of Cotati, City of Healdsburg, City of Cloverdale, City of Sonoma, City of Sebastopol and Town of Windsor.

“Agency Representative.” Agency Representative shall mean a person or persons assigned by the Agency to manage or oversee the Program.

“Alternative Daily Cover.” Alternative Daily Cover (ADC) shall mean material used as an alternative to six (6) inches of soil to cover each day’s refuse that meet performance standards defined in Section 20690 of Title 27 of the California Code of Regulations. ADC must be approved by the LEA. As of the Effective Date, the Central Disposal Site is permitted to use shredded green waste and synthetic plastic covers for ADC.

“Alternative Daily Cover (ADC)” ADC is any material, other than soil, that is approved by the Local Enforcement Agency to be utilized as daily cover material for landfilled solid waste.

“C&D Grinding Site” The grinding site is an approximate 1.5 acre site directly south of Contractor’s compost windrow area and east of the area currently designated at the Central Disposal Site for scrap metal recycling, as designated on Exhibit A-2.

“Central Disposal Site.” Central Disposal Site shall mean the landfill located on 500 Mecham Road, west of Cotati, which is operated by the County.

“Collector.” Collector shall mean the contractor or contractors who perform collection services for Yard Debris and Wood Debris pursuant to agreements with the Agency’s members.

“Compost.” Compost shall mean stable humus-like product of the composting process that results from having the organic components of the Yard Debris metabolized to a relatively stable intermediates (i.e., the material can be stored without producing a nuisance or can be applied to the soil and not inhibit vegetative development).

“Compost By-Products.” Compost By-Products shall mean organic and inorganic materials remaining after the composting process suitable for Alternative Daily Cover at the Central Disposal Site.

“Composting.” Composting shall mean the controlled biological decomposition of organic

Compilation of Agreement with Sonoma Compost Company and Amendments

solid waste.

“Construction and Demolition Debris (C&D)” C&D is building materials or solid waste from construction, deconstruction, remodeling, repair, cleanup, or demolition operations that are not **“Hazardous.”** For the purposes of this Agreement, this term includes, but is not limited to, lumber, painted wood, wallboard, and roofing material.

“Contaminants.” Contaminants shall mean any material not normally produced from gardens or landscapes including, without limitation, brick, rocks, gravel, large quantities of dirt, concrete, sod, and non-organic wastes (i.e., non-recyclable metal, glass or plastic). Contaminants shall not include any Hazardous Materials.

“Contract Year.” Contract Year shall mean the twelve (12) month period from the Start Date, in any calendar year of the term of the Agreement, to the Start Date anniversary in the next calendar year.

“Contractor.” Contractor shall mean Sonoma Compost Company, a California general partnership.

“Contractor Improvements.” Contractor Improvements shall mean the improvements made to the Facility by Contractor which are more specifically depicted on Exhibit A attached hereto and incorporated herein.

“County.” County shall mean the County of Sonoma, a political subdivision of the State of California.

“CPI.” CPI shall mean the Consumer Price Index for All Urban Consumers for San Francisco-Oakland based on the year 1982-1984 = 100 as published by the U.S. Department of Labor’s Bureau of Labor Statistics.

“Dimensional Lumber” Dimensional lumber is one type of processed wood used for building, manufacturing, landscaping, and packaging.

“East Canyon Expansion.” East Canyon Expansion shall mean that certain landfill expansion project described in the Environmental Impact Report certified by the Board of Supervisors on December 8, 1998.

“Effective Date.” Effective Date shall mean _____, 1999.

“Facility.” Facility shall mean the Yard Debris composting and Wood Debris diversion processing facility located at the Central Disposal Site as more particularly depicted on Exhibit A attached hereto and incorporated herein.

“Finished Products.” Finished Products shall mean wood chips, mulch, compost, and other usable and/or marketable products produced from Yard Debris and Wood Debris.

“Finished Product Revenue.” Finished Product Revenue shall mean the sum of the revenue from Wood Debris Products and Yard Debris Products.

“FOB.” FOB shall mean the value of Finished Products at the Central Disposal Site (i.e.,

Compilation of Agreement with Sonoma Compost Company and Amendments

excluding any transportation costs associated with deliveries to offsite markets).

“Guaranteed Revenue.” Guaranteed Revenue shall mean the revenue collected by Contractor through sale of Finished Products and used to directly offset the operating charges for the Program.

“Hazardous Materials.” Hazardous Materials shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as “hazardous” or “toxic” under any federal, state, local or administrative agency ordinance or law or any material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant, present or potential hazard to human health or safety or to the environment if release into the environment, or any regulation, order, rule or requirement adopted thereunder, as well as any formaldehyde, polychlorinated biphenyl, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids liquefied natural gas or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. section 3011, et seq.

“LEA.” LEA shall mean the Local Enforcement Agent representing and certified by the California Integrated Waste Management Board to enforce state solid waste facility regulations.

“Marketing Plan.” Marketing Plan shall mean the marketing plan submitted by Contractor and approved by Agency in accordance with Article 8 below.

“Mixed Organic Materials.” Mixed Organic Materials shall mean a mixture of Wood Debris and Yard Debris.

“New Rolling Stock.” New Rolling Stock shall mean mobile equipment used for the organic material processing and composting operations newly purchased in order to perform those services.

“Other Haulers.” Other Haulers shall mean individuals or entities, other than Collectors, who deliver Yard Debris and/or Wood Debris to the Central Disposal Site.

“Operating Days.” Operating Days shall mean all days of the year except New Years Day, Easter Sunday, Independence Day, Labor Day, Thanksgiving and Christmas Day.

“Operating Equipment.” Operating Equipment shall mean the equipment supplied by the Contractor and located at the Facility which is more specifically described in Exhibit B attached hereto and incorporated herein.

“Operating Term.” Operating Term shall mean the period of time from the Start Date to July 18, 2005.

“Operating Term.” Operating Term shall mean the term from the Start Date to July 18, 2010.

“Operating Term.” Operating Term shall mean the term from the Start Date to July 15, 2012.

“Pallets” For the purposes of this Agreement, pallets are flat, square, portable platforms with runners of lets, made of wood, used to move or store cargo or freight.

Compilation of Agreement with Sonoma Compost Company and Amendments

“Post-Operating Term.” Post Operating Term shall mean the period of time from July 19, 2005 to November 15, 2005.

“Post-Operating Term.” Post-Operating Term shall mean the period of time from July 19, 2010 to November 15, 2010.

“Post-Operating Term.” Post-Operating Term shall mean the period of time from July 16, 2012 to November 15, 2012.

“Pre-Operating Term.” Pre-Operating Term shall mean the period of time between the Effective Date and the Start Date.

“Prepared Yard Debris.” Prepared Yard Debris shall mean green plant debris including grass clippings, leaves, prunings, weeds, branches, brush, portions of wood and other forms of organic waste generated from landscapes and gardens. Prepared Yard Debris shall contain no more contaminants than material prepared and directed to the Organic Materials Processing, Composting, and Marketing Program. To insure appropriate particle size, all Prepared Yard Debris shall be processed through a grinder with a three inch by five inch (3"x 5"), or equivalent, bottom opening. Prepared Yard Debris shall be processed exclusively for delivery to the City of Santa Rosa Laguna Subregional Compost Facility, excluding those materials processed for composting at the Central Disposal Site.

“Prepared Yard Debris.” Prepared Yard Debris shall mean green plant debris including grass clippings, leaves, prunings, weeds, branches, brush, portions of wood and other forms of organic waste generated from landscapes and gardens. Prepared Yard Debris shall be processed through a grinder to reduce the delivered yard debris to particles and then shall be passed through a screen to remove foreign material (non-organic) contaminants and producing an average particle size of one and one-half inches (1 1/2").

“Prepared Yard Debris.” Prepared Yard Debris shall mean green plant debris including grass clippings, leaves, prunings, weeds, branches, brush, portions of wood and other forms of organic waste generated from landscapes and gardens. Prepared Yard Debris shall be processed through a grinder to reduce the delivered yard debris to particles and then shall be passed through a screen to remove foreign material (non-organic) contaminants and producing an average particle size mutually agreeable for use by the City of Santa Rosa as a bulking agent for composting the biosolids remaining after treatment of sewage.”

“Program.” Program shall mean the Agency’s Yard Debris Composting and Wood Debris Diversion program for diverting material from the solid waste stream by receiving and processing Yard Debris and Wood Debris into Finished Products.

“RWQCB.” RWQCB shall mean the North Coast Regional Water Quality Control Board.

“Reuse Service” Reuse service is the recovery of a material, such as dimensional lumber and pallets, for sale for uses similar or identical to its originally intended application.

“Speciality Products.” Speciality Products are new products which entail labor or mechanical processing in excess of that entailed in the manufacture of Finished Products or which involve distinct types of additives or amendments not used in Finished Products described in the Marketing Plan.

Compilation of Agreement with Sonoma Compost Company and Amendments

“Start Date.” Start Date shall mean July 19, 2000.

“TPD.” TPD shall mean tons per day.

“Test Products.” Test Products are products undergoing a market test prior to inclusion in the marketing plan as Speciality Products.

“Vegetable Waste” Vegetable waste is any part of a plant that is customarily eaten, and is not developed from a flower, that may be composted in a home composting bin or added to the green waste bin for composting at a centralized composting facility.

“Windrow.” Windrow shall mean an elongated pile of Composting material.

“Wood Debris.” Wood Debris shall mean dimensional lumber, pallets, shipping dunnage, and similar discarded wood materials.

“Wood Debris Products.” Wood Debris Products shall mean products made from the woody fractions of Yard Debris or Wood Debris which have been mechanically reduced in size and screened for use as various finished bedding, mulch, soil amendments, decorative uses or as fuel to generate electricity.

“Yard Debris.” Yard Debris shall mean green plant debris including grass clippings, leaves, prunings, weeds, branches, brush, tree portions not exceeding five (5) feet in length or twelve (12) inches in diameter and other forms or organic waste generated from landscapes and gardens.

“Yard Debris Products.” Yard Debris Products shall mean Yard Debris that has been processed to generate compost, mulch, or soil amendment.

2. SCOPE OF SERVICES.

2.1 Receiving, Weighing and Handling.

2.1.1 Accounting for Materials Delivered. All materials delivered by Collectors and Other Haulers for processing by Contractor shall be accounted for by the County at the Central Disposal Site. Such material will be categorized by the County into one of the following three categories: (1) Wood Debris; (2) Yard Debris; or (3) Mixed Organic Materials. The County will also account for the jurisdictional source for all material delivered to the Central Disposal Site. Wood Debris, Yard Debris and Mixed Organic Materials will be measured by weight or volume at the Central Disposal Site gate and will be delivered by Collectors and Other Haulers to the Contractor’s receiving area. The load volumes will be converted to tons using mutually agreed upon conversion factors. The conversion factors shall be tested with a frequency and methodology mutually agreed upon by the parties. The Yard Debris and Wood Debris proportional composition of Mixed Organic Materials shall be determined by using a composition analysis performed with a frequency and methodology that is mutually agreed upon by the parties. Until such time as the parties agree to perform a composition analysis, the initial proportions for Mixed Organic Material shall be ninety percent (90%) for Yard Debris and ten percent (10%) for Wood Debris.

Compilation of Agreement with Sonoma Compost Company and Amendments

2.1.2 Acceptance of Materials. Contractor shall accept all materials delivered to the Facility and shall process such materials into Yard Debris Products or Wood Debris Products. In the event that Contractor is unable to receive and process acceptable material, Contractor shall be responsible for the cost of removal, transport, disposal and any other costs incurred by the Agency to divert acceptable organic material to other locations as designated by the Agency Representative, provided, however, that Contractor shall not be responsible where Contractor's inability to receive and process such material is: (i) not caused by either the acts or omissions of Contractor, its employees or agents, or (ii) caused by events beyond Contractor's reasonable control.

2.1.3 Determination of Acceptability of Materials. In the event Contractor believes delivered material is unacceptable for processing due to the presence of Contaminants, Contractor shall first attempt to reach agreement with the individual Collector or Other Hauler who delivered such materials to the Facility. Should Contractor be unable to reach agreement with the particular Collector or Other Hauler responsible for delivering the Contaminants, Contractor shall set the disputed materials in an area adjacent to the processing area so that the Agency Representative can inspect the materials. The Agency Representative shall have forty-eight (48) hours to inspect such materials from the time the Agency Representative receives notice of the disputed materials. Agency Representative shall determine, in his or her sole discretion, the fractions of Wood Debris, Yard Debris and Contaminants. Once the Agency Representative has made such a written determination, Contractor shall be responsible for the appropriate disposition of the delivered material in a timely manner. Contractor reserves the right to reject Contaminated loads from entry onto the processing area of the Facility.

2.1.4 Processing Materials to be Used as ADC at the Central Disposal Site. . The County agrees to sort C&D materials suitable for use as ADC. The County also agrees to deliver the sorted and crushed material to an area of the landfill known as the "grinding area". It is understood that some of the materials may be sorted and crushed at the grinding site. After grinding, the County will remove the stockpiled from the grinding site and transport it to the area if the landfill that requires ADC.

Contractor agrees to provide the necessary equipment and labor to grind the C&D material to create a product suitable for use as ADC. The Contractor further agrees to use its equipment to push the ground C&D material into stockpiles. It is the intention of County and Contractor to process as much C&D material as the County can separate, sort and deliver to the grinding site.

2.1.4 Processing Delivery Materials to the Santa Rosa Laguna Subregional Compost Facility ("Laguna Facility"). Contractor shall process incoming materials into Prepared Yard Debris and shall deliver the maximum amount of materials acceptable to the Laguna Facility, but at least three hundred fifty (350) tons per week on average."

2.1.4 Processing Delivery Materials to the Santa Rosa Laguna Subregional Compost Facility ("Laguna Facility"). Contractor shall process incoming materials into Prepared Yard Debris per the Amendment to the Revised Organics Material Processing and Composting Services Agreement By and Among the Sonoma County Waste Management Agency, the City of Santa Rosa and Sonoma Compost Company, at least two hundred fifty (200) tons per week on average."

2.2 Minimum Processing Services and Flow. Contractor shall provide the necessary labor and equipment for the processing of all Yard Debris and Wood Debris accepted at the

Compilation of Agreement with Sonoma Compost Company and Amendments

Central Disposal Site, including without limitation, Yard Debris and Wood Debris accepted up to and on the last day of the acceptance of materials by the County, into Finished Products in accordance with this Agreement. In addition, Contractor shall be entitled to the first 125 tons daily of Yard Debris that is delivered to the Central Disposal Site. If sufficient tons of Yard Debris are delivered to the Central Disposal Site, Contractor shall be entitled to an average of 125 tons of Yard Debris per day on an annualized basis.

2.3 Disposal of Contaminants. Contractor, at Contractor's sole cost and expense, shall properly dispose of all Contaminants which remain after processing of Yard Debris and Wood Debris; provided, however, that Contractor shall be allowed to dispose of Contaminants at the Central Disposal Site at no cost to Contractor to the extent that such materials do not exceed one and eight-tenths percent (1.8%) of the monthly volume of materials processed by Contractor in any calendar month. Where Contaminants are disposed of at a disposal site other than the Central Disposal Site, Contractor shall dispose of such materials at its own cost and shall insure that the hauling operation for Contaminants is at all times performed in compliance with all federal, state and local permit requirements, laws and regulations.

2.3 Disposal of Contaminants. Contractor, at Contractor's sole cost and expense, shall properly dispose of all Contaminants which remain after processing of Yard Debris and Wood Debris; provided, however, that Contractor shall be allowed to dispose of Contaminants at the Central Disposal Site at no cost to Contractor to the extent that such materials do not exceed two percent (2.0%) of the monthly weight of materials processed by Contractor in any calendar month. Where Contaminants are disposed of at a disposal site other than the Central Disposal Site, Contractor shall dispose of such materials at its own cost and shall insure that the hauling operation for Contaminants is at all times performed in compliance with all federal, state and local permit requirements, laws and regulations.

2.4 Time of Operation. Contractor shall accept delivery of Yard Debris and Wood Debris between the hours of 7:00 a.m. and 4:00 p.m., seven days a week on all Operating Days.

2.5 Employee Training. Contractor shall train processing crews and office staff regarding the requirements of this Agreement before commencing operations. Contractor shall regularly conduct safety training of all employees, particularly those involved in equipment operation. Contractor shall conduct an education program which will train Contractor's employees in the identification of Hazardous Materials.

2.6 Standard of Care; Compliance with Laws. Agency has relied upon the special expertise and experience of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all its work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, including without limitation, health and safety requirements, labor requirements, and requirements (including permit conditions) of the California Regional Water Quality Control Board, the Bar Area Air Quality Management District, the California Integrated Waste Management Board, and the County, it being understood that acceptance of Contractor's work by Agency shall not operate as a waiver or release. It is expressly understood and acknowledged by Contractor, that subject to Section 4.2.2, Contractor shall be fully responsible for all environmental compliance related to the Facility or composting operations with the one exception that County and Agency shall be responsible for the approximate seven (7) acre concrete working surface installed by County and identified on Exhibit A. The extent of the County's and Agency's responsibility for the seven (7) acre concrete working surface shall be limited solely to the surface performing as designed (i.e., drains water and allows

Compilation of Agreement with Sonoma Compost Company and Amendments

clean sweeping of the aisles).

2.7. **Prevailing Wages:** Contractor shall pay to persons performing labor for “public works”, as such term is defined in Section 1720(a) of the Labor Code, an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and County to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed. Copies of the prevailing wage rate of per diem wages are on file at the Sonoma County Department of Transportation and Public Works office and will be made available to any person upon request.

Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of work or labor on such “public works” provided for in the Agreement, provision that subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code Section 1775(b)(1), Contractor shall provide to each subcontractor a copy of Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.

Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code Sections 1775, 1776, 1777.5, 1813 and 1815.

3. TERM OF AGREEMENT.

3.1 **Term.** The term of this Agreement shall commence on the Effective Date and terminate on November 15, 2005, unless terminated earlier in accordance with the provisions of Section 3.3, below.

3.1 **Term.** The term of this Agreement shall commence on the Effective Date and terminate on November 15, 2010, unless terminated earlier in accordance with the provisions of Section 3.2 below.

3.1 **Term.** The term of this Agreement shall commence on the Effective Date and terminate on November 15, 2011, unless terminated earlier in accordance with the provisions of Section 3.2 below.

3.1 **Term.** The term of this Agreement shall commence on the Effective Date and terminate on November 15, 2012, unless terminated earlier in accordance with the provisions of Section 3.2 below. Agency and County reserve the right to approve up to two (2) additional one-year extensions of Agreement beyond the November 15, 2012 termination date.

3.2 **Termination.** Agency may terminate or modify this Agreement: (a) for an Event of Default in accordance with the procedures set forth in Article 15; or (b) in the event a third party regulator orders a shut down of sixty (60) days or more of the Facility. County may terminate this Agreement if the East Canyon Expansion Project at the Central Disposal Site is not accepting refuse by ~~October 31, 2000~~ **October 1, 2001**, and the County needs the composting area for the landfilling of refuse, as determined in the County’s sole discretion; provided, however, that if

Compilation of Agreement with Sonoma Compost Company and Amendments

County terminates the Agreement, County shall reimburse Contractor for the unamortized portion of the concrete surface actually installed by Contractor (based on a five-year amortization schedule) and, at Contractor's request, County shall purchase Contractor's newly purchased rolling stock, identified in Exhibit B, at the lesser of: (i) its appraised fair market value; or (ii) the outstanding loan balance on the rolling stock.

3.2.1 Termination by Agency. Agency may terminate or modify this Agreement: (a) for an Event of Default in accordance with the procedures set forth in Article 15; or (b) in the event a third party regulator orders a shut down of sixty (60) days or more of the Facility
Termination by County. County may terminate this Agreement if the County needs the composting area for the landfilling of refuse, as determined in the County's sole discretion; provided, however, that County shall reimburse Contractor for the unamortized portion of the: (i) three (3)-acre concrete surface actually installed by Contractor pursuant to Section 5.2.3, based upon the straight-line amortization schedule set forth in Exhibit B-1; and (ii) "aerated static pile" system or other system installed by Contractor pursuant to Section 5.2.4, based upon the straight-line amortization schedule set forth in Exhibit B-2."

"3.2.2 Termination by County. County may terminate this Agreement if the County needs, as determined in the County's sole discretion: (a) the composting area for the landfilling of refuse or; (b) to implement final closure on the composting area of the landfill. County shall provide Agency and Contractor with at least six (6) months advance written notice before terminating the Agreement pursuant to this Section 3.2.2"

4. COMPENSATION FOR SERVICES.

4.1 Compensation. Contractor shall be paid for its services in accordance with the payment matrix which is attached hereto as Exhibit C (hereinafter referred to as the "Payment Matrix"). The applicable rate to use from the Payment Matrix to determine the amount of compensation depends upon the amount of materials received at the Facility each month. Agency shall pay Contractor within twenty five (25) days of receiving an invoice from Contractor in accordance with Section 10.2 below.

"4.1 Compensation. Contractor shall be paid for its services in accordance with the payment matrix which is attached hereto as Exhibit C-2 (hereinafter referred to as the "Payment Matrix"). The applicable rate to use from the Payment Matrix to determine the amount of compensation depends upon the amount of materials received at the Facility each month. Agency shall pay Contractor within twenty five (25) days of receiving an invoice from Contractor in accordance with Section 10.2 below."

4.1.1 Compensation for Yard Debris. Where Agency has not notified Contractor in writing as to Agency's desire to trigger a particular price rate for Yard Debris based on an expected volume of Yard Debris, Agency shall pay the rate identified for minimum tonnage of Yard Debris times the actual volume of Yard Debris delivered to the Facility. Agency may take advantage of the lower rates in the Payment Matrix by notifying Contractor that Agency expects that the Facility will receive more than 75 TPD of Yard Debris. By so notifying Contractor, Agency will be required to pay for the minimum amount of Yard Debris anticipated in the notice, notwithstanding that the Facility may not receive the minimum expected volume during such period. In addition, the parties hereby acknowledge that Contractor will be required to invest in

Compilation of Agreement with Sonoma Compost Company and Amendments

certain capital equipment in the event that the Agency gives notice to Contractor that it expects that the Facility will receive more than 75 TPD of Yard Debris. Therefore, upon such notification by Agency, Contractor will be required to complete Facility improvements to increase peak throughput capacity to 400 TPD, or a throughput capacity otherwise acceptable to Agency, within one hundred twenty (120) days and Agency will be required to compensate Contractor for a minimum 75 TPD per day of Yard Debris following notification and demonstration to Agency that necessary improvements have been completed. Once the necessary improvements have been made, the compensation for the remainder of the term of this Agreement shall be based on a volume of Yard Debris (excluding Prepared Yard Debris) in excess of 75 TPD, at a minimum, regardless of the actual volume of Yard Debris received at the Facility; provided, however, that if the actual volume of Yard Debris delivered to the Facility, or the actual volume processed, is less than 75 TPD due to a third party regulator restricting the amount of materials to be processed at the Facility, then compensation shall be based on the actual volume of materials that are processed.

“4.1.1 Compensation for Yard Debris. Where Agency has not notified Contractor in writing as to Agency’s desire to trigger a particular price rate for Yard Debris based on an expected volume of Yard Debris, Agency shall pay the rate identified for minimum tonnage of Yard Debris times the actual volume of Yard Debris delivered to the Facility. Agency may take advantage of the lower rates in the Payment Matrix by notifying Contractor that Agency expects that the Facility will receive more than 175 TPD of Yard Debris. By so notifying Contractor, Agency will be required to pay for the minimum amount of Yard Debris anticipated in the notice, notwithstanding that the Facility may not receive the minimum expected volume during such period. In addition, the parties hereby acknowledge that Contractor will be required to invest in certain capital equipment in the event that the Agency gives notice to Contractor that it expects that the Facility will receive more than 175 TPD of Yard Debris. Therefore, upon such notification by Agency, Contractor will be required to complete Facility improvements to increase peak throughput capacity to 400 TPD, or a throughput capacity otherwise acceptable to Agency, within one hundred twenty (120) days and Agency will be required to compensate Contractor for a minimum 175 TPD per day of Yard Debris following notification and demonstration to Agency that necessary improvements have been completed. Once the necessary improvements have been made, the compensation for the remainder of the term of this Agreement shall be based on a volume of Yard Debris in excess of 175 TPD, at a minimum, regardless of the actual volume of Yard Debris received at the Facility; provided, however, that if the actual volume of Yard Debris delivered to the Facility, or the actual volume processed, is less than 175 TPD due to a third party regulator restricting the amount of materials to be processed at the Facility, then compensation shall be based on the actual volume of materials that are processed.”

4.1.2 Compensation for Wood Debris. Compensation for Wood Debris depends upon the use of the Wood Debris Products and the amount processed. Agency shall compensate Contractor for Wood Debris on actual tonnage times the rate identified for the use of the Wood Debris Products.

4.1.3 Notice Requirements. Any notices regarding quantity changes given by Agency pursuant to Section 4.1.1 shall be given to Contractor at least forty-eight (48) hours prior to the date that Agency desires to modify the rate under the Payment Matrix and shall be delivered no more frequently than once a month. The new rate shall be deemed effective forty-eight (48) hours after Contractor receives such notice.

4.2 Adjustments in Compensation.

Compilation of Agreement with Sonoma Compost Company and Amendments

4.2.1 Annual Adjustments. The rates specified in the Payment Matrix shall be adjusted every twelve (12) months on the first anniversary of the Start Date. The adjustment shall be calculated by taking fifty percent (50%) of the net percentage change in CPI and increasing the rates set forth in the Payment Matrix by the same percentage; provided, however, that in no event shall adjustments in rates exceed three percent (3%) in any twelve (12) month period. In the event that the parties cannot agree on the amount of adjustment under this Section 4.2.1, the dispute shall be resolved in accordance with Section 17 of this Agreement.

4.2.2 Unforeseen Events Concerning Environmental Regulations. In the event that requirements imposed on the Facility by state or local agencies, that are the result of new or revised regulations or requirements proposed and enacted after the Start Date of this Agreement, cause Contractor to have to expend more than One Hundred Thousand Dollars (\$100,000) in the aggregate during the Operating Term, the excess over One Hundred Thousand Dollars (\$100,000) shall be considered pass through costs to the Agency; provided, however, that Agency shall have the right to renegotiate the terms of the Agreement if the new or revised regulations or requirements: (a) require the parties to expend more than One Million Dollars (\$1,000,000) during the first three (3) years of the Operating Term; or (b) are imposed during the final two (2) years of the Agreement, and the estimated amount of the pass through costs to the Agency will create significant impacts to the viability of the organics diversion program (i.e., proposed pass through costs result in a Ten and No/100 Dollar (\$10.00) or greater increase in the tipping fee). Contractor shall have the burden of proving to the Agency, the amount of expense incurred as a result of such new or revised regulation. If off-site improvements are required, the parties shall cooperate, and use due diligence in locating suitable off-site property. Should County own such suitable property, County shall cooperate in good faith to make such property available.

As of the Second Amendment Effective Date, all references to Exhibit C to the Agreement shall be deemed to refer to Exhibit C attached to this Amendment. (increase wood waste fees)

4.2.3 Changes in Market Prices. The parties estimated minimum market prices of \$27.00 per ton for Wood Debris and \$10.00 per ton of Yard Debris FOB Central Disposal Site Facility. In the event that actual average market prices are less than the above estimates for a period of at least six (6) months, as documented by invoices or other evidence acceptable to the Agency, Contractor and Agency shall renegotiate the Guaranteed Revenue formula for the respective material.

4.2.4 Revenue from Finished Products. Finished Product Revenue shall be accounted for and allocated between Wood Debris and Yard Debris materials in accordance with the approved Marketing Plan. All revenue generated will first be allocated to Guaranteed Revenue as illustrated in the Payment Matrix. Contractor and Agency shall equally share any revenue generated in excess of Guaranteed Revenue.

4.2.4 Revenue from Finished Products.

(1) Yard Debris and Wood Debris Products.

Finished Product Revenue shall be accounted for and allocated between Wood Debris and Yard Debris materials in accordance with the approved Marketing Plan. All revenue generated will first

Compilation of Agreement with Sonoma Compost Company and Amendments

be allocated to Guaranteed Revenue as illustrated in the Payment Matrix. Contractor and Agency shall equally share any revenue generated in excess of Guaranteed Revenue.

(2) Speciality Products.

Speciality Products will be described in the Marketing Plan submitted by the Contractor annually or more frequently for approval by the Agency. Speciality Products are new products which entail labor or mechanical processing in excess of that entailed in the manufacture of Finished Products or which involve distinct types of additives or amendments not used in Finished Products described in the Marketing Plan. Revenue allocation for Speciality Products will be identified for each individual Speciality Product in the Marketing Plan.

(3) Test Products.

Prior to including a product in the Marketing Plan as a Speciality Product, the Contractor will have the opportunity to market test products for viability. The Agency Director will be notified of market testing prior to release of Test Products and commencement of market test. Contractor may conduct a market testing for a maximum of four months with no revenue sharing obligation. Upon completion of successful test marketing of a product, Contractor and Agency Director will negotiate the revenue sharing formula. Payment of the Agency's share of revenue shall begin at the earliest of either: (1) four months after testing begins or (2) notification of the Agency by the Contractor that the product will be included in the next Marketing Plan. Contractor shall include the successful Test Product in the next Marketing Plan submitted to Agency for approval, in the sections pertaining to product description and allocation of revenue.

4.3 Determination of Compensation. Wood Debris and Yard Debris delivered for processing will be measured by the County at the Central Disposal Site gate. Material delivered by Collectors or Other Haulers identified as material gathered in a residential yard debris collection program will be weighed and accounted for as Yard Debris, with appropriate compensation to Contractor. Material delivered by Collectors or Other Haulers identified at the gate as Wood Debris will be weighed and accounted for as Wood Debris, with appropriate compensation to Contractor. A portion of the organic material delivered to the Program will be delivered as Mixed Organic Materials. Compensation for Wood Debris processing and Yard Debris processing for this material shall be based upon the proportional composition of Yard Debris and Wood Debris contained in the Mixed Organic Materials, which shall be determined in accordance with Section 2.1.1 above. The specific level of compensation for each fraction would be based on the Payment Matrix and any other applicable terms of this Agreement.

4.4 Agency Product Distribution. Contractor shall make available to the Agency ten percent (10%) of the Finished Products, as set forth in the Marketing Plan, for Agency use. Distribution shall be among Agency members at the Facility as agreed upon by a majority vote of the Agency. Finished Products allocated to Agency in accordance with this Section and not claimed within forty-five (45) days of notice by Contractor of its availability, shall be marketed by Contractor in the same manner as set forth in the Marketing Plan. In the event unclaimed materials are marketed by Contractor, Contractor shall account for revenue generated from such materials by allocating such revenue to the 50:50 revenue share with the Agency.

4.5 Taxes. Contractor shall be fully responsible for and agrees to pay for any and all lawful taxes, general and special assessments, and other charges of every description. Contractor shall make all such payments directly to the assessing authority, before delinquency and before

Compilation of Agreement with Sonoma Compost Company and Amendments

any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any, or all, of the above items, in installments (whether or not interest accrues on the unpaid balance), Contractor may, at Contractor's election, utilize the permitted installment method, but shall pay each installment, with any interest, before delinquency. It is expressly understood by the parties that Contractor shall be responsible for those taxes directly related to Contractor's operations and the revenue generated on Contractor's behalf. In no event shall Contractor be responsible for taxes directly related to County Improvements.

4.6 Liability for Compensation. Contractor hereby acknowledges that pursuant to Section 18 of Article 16 of the California Constitution, there are certain limits on the Members of the Agency incurring liability under this Agreement. Therefore, notwithstanding anything stated to the contrary herein, Contractor hereby understands, acknowledges and agrees to look solely to the special funds of the Agency which are generated from the collection of tipping fees for Agency programs. In no event shall County's or Agency's obligation to pay Contractor hereunder extend beyond the tipping fees collected by the Agency. It is the intent of the parties that the aforesaid limitation shall not apply to liability that arises from: (a) activities outside the scope of this Agreement; or (b) a breach of this Agreement by Agency that is unrelated to Agency's obligation to compensate Contractor. Agency covenants to take such action as may be necessary to include all monetary obligations due hereunder in its annual budget and annually appropriate an amount necessary to make such compensation payments. In addition, Agency shall have the right to cancel and terminate this Agreement at the end of any fiscal year of the Agency if the Agency is not authorized by state or federal law or regulation to appropriate moneys sufficient to pay the compensation required under this Agreement, provided however, that the parties have a reasonable belief that such future funding will not be forthcoming in the first half of the next fiscal year. The Agency may effect such termination by giving Contractor sixty (60) days prior written notice of termination unless the giving of such advance notice is impractical under the circumstances.

4.7 Purchase of Compost By-Products. During the Operating Term, County shall purchase Compost By-Products suitable for Alternative Daily Cover at the rate of One and 50/100 Dollars (\$1.50) per yard, provided, however, County shall not be required to purchase more than six thousand (6,000) cubic yards in any Contract Year. Contractor shall transport and place, at Contractor's sole cost, the Compost By-Products where directed by County, so long as the location is easily accessed by Contractor's trucks and is within the boundaries of the Central Disposal Site.

"4.7 Acceptance of Compost By-Products. During the Operating Term, Contractor shall deliver to County, without charge, Compost By-Products suitable for Alternative Daily Cover, provided, however, that County shall not be required to accept more than nine thousand (9,000) cubic yards in any Contract Year. Contractor shall transport and place, at Contractor's sole cost, the Compost By-Products where directed by County, so long as the location is easily accessed by Contractor's trucks and is within the boundaries of the Central Disposal Site."

"4.8. Grinding Services: Contractor shall be paid three hundred seventy five dollars (\$375.00) per hour for grinding services to process construction and demolition debris into alternative daily cover. Grinding services also include refueling time and time required to keep the grinding site under and around the grinder free material buildup. County shall pay Contractor invoices within thirty (30) days of receiving all invoices for the prior month from Contractor."

Compilation of Agreement with Sonoma Compost Company and Amendments

"4.9 Financial Offset for Transportation Costs. Contractor shall reimburse the Agency Ten Thousand and No/100 Dollars (\$10,000.00) each fiscal year to help offset the cost of transporting yard debris and wood waste from the County transfer stations to the Program at the Central Disposal Site. Contractor shall make bi-annual payments beginning sixty (60) days after the effective date of this Fifth Amendment to the Agreement."

5. PROCESSING FACILITY.

5.1 Facility Design. It is understood that Agency, County, and Contractor have collaborated on the design of the Facility and are hereby satisfied that it will perform as required, subject to the provisions of Section 5.4 below.

5.1.1 Existing Facility. Contractor hereby represents and warrants to Agency and County that it has reviewed the design of the Facility and is satisfied that, it will perform as required and accommodate the following throughput capacities (assuming Contractor is delivering the minimum amount of materials to the Laguna Facility as set forth in Section 2.1.4 above): (a) with the additional three (3) acre expanded area contemplated by Section 5.2.3, a throughput capacity of 200 tons per day based upon a monthly average and a peak throughput capacity of 480 tons per day; and (b) with the completion of the aerated static pile project or alternate project contemplated by Section 5.2.4, a throughput capacity of 300 tons per day based upon a monthly average and a peak throughput capacity of 480 tons per day.

5.1.2 Relocation of Facility. County shall have the right to relocate the Facility to a different area of the Central Disposal Site by giving at least one hundred (120) days prior written notice to Agency and Contractor. If County exercises its right to relocate the Facility, Contractor shall reimburse County for County's expenses to prepare a new concrete surface and extend necessary water and power lines to the relocated Facility, up to a maximum of Two Hundred Fifty Thousand Dollars (\$250,000).

5.2 Facility Improvements.

5.2.1 Minimum Requirements. Contractor shall not make any changes to the Facility that would impair any of the following design parameters:

"5.2.1 Minimum Requirements. Contractor shall not make any changes to the Facility that would impair any of the following design parameters:

(a) Throughput Capacity. The Facility shall have a throughput capacity of at least 200 TPD of total material during each operating day. The Facility design must incorporate allowances for scheduled maintenance and repair throughout the year. Facility design shall allow for a peak throughput capacity of 300 TPD.

(a) Throughput Capacity. The Facility shall have a throughput capacity of at least two hundred (200) tons per day (TPD) of total material during each operating day. The Facility design must incorporate allowances for scheduled maintenance and repair throughout the year. Facility design shall allow for a peak throughput capacity of four hundred eighty (480) TPD."

(b) Delivery Area. The tipping area for organic materials delivered by Collectors shall be designed to accommodate any common waste hauling vehicle (packer trucks, roll-offs, etc.) excluding tractor-trailers requiring delivery site hydraulic tippers. The Facility layout shall provide space separate from the primary tipping area where Collector vehicles and Other Hauler

Compilation of Agreement with Sonoma Compost Company and Amendments

vehicles can safely deposit Wood Debris and Yard Debris.

(c) On-site Storage. The Facility shall include adequate storage and transfer equipment for all other products generated as a result of the Composting process. The Facility shall have adequate site storage capacity to accept and store unprocessed organic material in the event of processing equipment failure and during routine equipment maintenance. The Facility receiving area will also have a designated site to temporarily store reusable lumber. The Facility shall provide load-out points for Finished Products and Contaminants. Contractor shall maintain the Finished Products storage areas. The storage areas shall be capable of accommodating, subject to the physical constraints of the size of the processing area provided to Contractor, a minimum of: (a) one month of Yard Debris Products at a delivery rate of 150 TPD; and (b) one month of Wood Debris Products at a delivery rate of 50 TPD. The Facility shall incorporate designated storage facilities and receiving areas, including associated processing equipment for nutrient source materials, if deemed necessary by the Contractor. The cost of such nutrient source storage and pumping/handling equipment shall be included in the Payment Matrix.

(d) Minimization of Odors. The Facility shall be designed to minimize odors, especially the migration of odors off-site to adjacent property. It is specifically acknowledged by the Agency, that by their nature, even well designed and operated aerobic composting facilities may occasionally generate odors, perceived by some to be offensive. The Contractor shall not be considered in default if offensive odors are generated occasionally, provided the Facility is operated according to the provisions of the Agreement and the requirements of applicable permits and regulations. In the event that offensive odors are generated occasionally which result in complaints and Contractor is operating the Facility in accordance with this Agreement and applicable permits and regulations, Contractor shall assist Agency and/or County in resolving such complaints.

(e) Fire Control Program. The design of the Facility shall be such that a fire control program can be implemented. The fire control program shall be implemented in accordance with requirements of the appropriate local fire agency, insurance underwriters requirements and all local rules.

(f) Product Test Area. The Facility shall include one or more product test plot areas where growth tests and soil improvement tests can be conducted.

(g) Engineering Standards. The Facility, including, without limitation, the Operating Equipment, shall be designed and constructed to comply with all applicable industrial codes and all applicable code requirements of the American Society of Mechanical Engineers and other technical societies, either as stated or as is standard in industry practice.

5.2.2 Working Surface Improvements. ~~On or before December 1, 2000, Contractor shall install concrete, or an equivalent surface approved by the RWQCB and the LEA, to the approximate fourteen (14) acres remaining on the working surface of the composting pad as more particularly described in Exhibit A.~~ On or before September 15, 2000, County shall regrade those certain 14 acres identified on Exhibit A so that a smooth surface acceptable for laying on a cement-treated base is created. On or before December 1, 2000, Contractor shall install a cement-treated base, or an equivalent surface approved by the RWQCB and the LEA, to the approximate 14 acres remaining on the working surface of the composting pad as more particularly described in Exhibit A.

Compilation of Agreement with Sonoma Compost Company and Amendments

"5.2.3. Additional Working Surface Improvements. In the event County does not exercise its right to relocate the Facility pursuant to Section 5.1.2 above, Contractor shall install concrete, or an equivalent surface approved by the RWQCB and the LEA, to the approximate three (3) acres adjoining the existing working surface of the composting pad as more particularly described in Exhibit A-1. Such work shall be completed within ninety (90) days of County's notice to Contractor that it does not intend to relocate the Facility. Contractor shall reimburse County for County's expenses to grade, compact, and otherwise prepare the area for installation of the concrete or equivalent surface, up to a maximum of One Hundred Thousand dollars (\$100,000.00)."

"5.2.4 Aerated Static Pile Pilot Project. Contractor shall undertake a pilot project using an "aerated static pile" system as soon as possible, weather permitting. If the "aerated static pile" system proves feasible, Contractor shall increase the size of the system sufficiently to allow the expanded composting site to process up to three hundred (300) TPD. If the "aerated static pile" system is not feasible, Contractor shall pursue other composting techniques, equipment, or systems that will effect a total throughput of three hundred (300) TPD."

5.3 Facility Operation. Contractor shall operate the Facility in accordance with the following minimum standards.

5.3.1 Processing. Contractor shall provide sufficient equipment for the efficient receipt, handling, and loading of Wood Debris, Yard Debris, reusable lumber, recyclable materials, and Contaminants. Contractor shall operate the Facility and provide equipment redundancy and replacement as necessary to ensure a smooth, continuous operation.

5.3.2 Housekeeping; Storage. Contractor shall conduct daily inspections of the Facility for litter, and as needed, Contractor shall clean up the litter at the Facility. To minimize internal and external dust, Contractor shall apply water to the Facility area to control dust. Contractor shall also supply systems for safety and public health protection, including without limitation, a fire control program and provision for vector control. The Compost shall be maintained in an aerobic condition to avoid odors produced by anaerobic conditions. Contractor shall ensure that all materials are only stored as specified in this Agreement. Unprocessed Yard Debris or Wood Debris shall be stored on-site for a maximum of four (4) days. Storage is only acceptable to the extent that satisfactory odor, vector, dust, and fire control measures are employed to eliminate nuisance, health, and safety problems. In the event Contractor fails to store materials in an acceptable manner as set forth in this Agreement, Contractor shall defend and indemnify Agency and County from all liability and expense resulting from such failure, including, without limitation, nuisance claims by neighboring land owners.

5.3.3 Health and Safety. Contractor shall operate the Facility so as to minimize potential health and safety problems for Contractor and County employees at the Central Disposal Site, users of the Center Disposal Site and neighboring properties. Contractor shall operate and maintain the Facility in a neat and orderly manner and shall police daily, or more frequently if necessary, to prevent litter from blowing off the grounds of the Facility.

5.3.4 Testing. Contractor shall be equipped with the necessary testing instruments and shall submit samples of finished product to a state certified laboratory in order to monitor the composting process as required by this agreement as well as applicable state requirements.

5.3.5 Operating Plan. Contractor shall submit within thirty (30) days of the Effective

Compilation of Agreement with Sonoma Compost Company and Amendments

Date, a detailed operating plan, to the Agency for its review and approval. Such plan shall cover, at a minimum, the following issues: (a) receipt and processing of organic materials; (b) handling of hazardous waste received; (c) site security; (d) management of nonorganic material residue and reject material; (e) provisions for handling peak season material quantities; (f) provision of equipment redundancy and replacement; and (g) an education plan element.

5.3.6 Educational Opportunities. The Facility shall be operated in a manner that will provide public education opportunities and other appropriate activities as described in the Operating Plan and as mutually agreed upon by the parties.

5.3.7 Environmental Requirements. Contractor shall ensure that operation of the Facility will be in compliance with all permit conditions issued for the Program, including without limitation, permits issued by the California Integrated Waste Management Board, the RWQCB, the Bay Area Air Quality Management District, and the County. Contractor shall be responsible for handling any and all inquiries and requests from the various regulatory agencies, including but without limitation, the California Integrated Waste Management Board, the RWQCB, the Bay Area Air Quality Management District, and the County. Notwithstanding anything stated to the contrary herein, a County representative shall be present at any scheduled Facility inspections by the RWQCB.

5.3.8 Equipment Damage. In the event Contractor's grinder is damaged by grinding inappropriate materials, as defined in Section 2.1.4, the Contractor shall immediately notify County and allow County to examine Contractor's grinder. If the County agrees that damage was caused by inappropriate materials, County agrees to reimburse Contractor for all repair costs. Contractor agrees to make all repairs as quickly and inexpensively as is reasonable possible. If necessary, County agrees to reimburse Contractor for the cost to hire a replacement grinder while repairs are being made, with the understanding that Contractor shall take all reasonable steps to minimize the need to contract for a replacement grinder.

5.4 Facility Maintenance.

5.4.1 Maintenance Obligations of Contractor; Submission and Approval of Maintenance Plan. Contractor shall be responsible for maintaining and repairing the Facility, including the working surface on a daily basis, with the exception of those maintenance responsibilities of the County as identified in Section 5.4.2 and 5.4.3 below. Such obligation shall include maintenance and repair to the Facility that is made necessary as a result of damage caused by third parties, except as specifically excluded in this Section 5.4. Contractor shall submit within ninety (90) days prior to the Start Date, a maintenance plan that details procedures for the routine maintenance of the Facility and the Operating Equipment, to the Agency for its review and approval.

5.4.2 Maintenance of Working Surface.

5.4.2.1 Existing Concrete Working Surface. The parties hereby understand and acknowledge that the working surface for the Facility will be placed on a landfill and as a result may be prone to maintenance problems resulting from settlement and subsidence that is typically associated with landfills. County shall be responsible for repairing problems with the approximate seven (7) acre existing concrete working surface, identified in Exhibit A, that are directly caused by settlement of the landfill or operation of the County heavy equipment. County's obligation shall be limited to maintaining such working surface so that it performs as designed (i.e., drains water and

Compilation of Agreement with Sonoma Compost Company and Amendments

allows clean sweeping of the aisles).

5.4.2.2 New Concrete Working Surface. Contractor shall be responsible for maintaining and repairing the remaining portion of the working surface (approximately fourteen (14) acres), including damage caused by landfill settling. Contractor shall be responsible for prevention of ponding on any area within the Facility, except the seven (7) acre existing concrete surface. Contractor shall be responsible for repairing problems with the new working surface that are directly related to the structural integrity or performance of the working surface.

"5.4.2.2 New Concrete Working Surface. Contractor shall be responsible for maintaining and repairing the remaining portion of the working surface (approximately fourteen (14) to seventeen (17) acres depending upon whether Contractor improves the additional three (3) acres as set forth in Section 5.2.3 above), including damage caused by landfill settling. Contractor shall be responsible for prevention of ponding on any area within the Facility, except the seven (7) acre existing concrete surface installed by County. Contractor shall be responsible for repairing problems with the new working surface that are directly related to the structural integrity or performance of the working surface."

5.4.3 Maintenance of Perimeter Road. Contractor shall be responsible for maintaining, repairing and replacing all roads within the Facility, except damage directly caused by County employees or contractors. Contractor shall notify County in writing, within forty-eight (48) hours of any damage cause by County employees or its contractors. Prior to the Start Date, County will grade and add rock and compact as necessary to provide all weather access. "Contractor shall be responsible for maintaining, repairing and replacing all roads within the Facility, except damage directly caused by County employees or contractors. Contractor shall notify County in writing, within forty-eight (48) hours of any damage cause by County employees or its contractors. Prior to the Start Date, County will grade and add rock and compact as necessary to provide all weather access. Notwithstanding the foregoing, however, County shall be responsible for constructing a new perimeter road in the event Contractor constructs the additional three (3)-acre concrete surface expansion pursuant to Section 5.2.3. Contractor shall be responsible for maintaining the new perimeter road after construction."

5.4.4 Storm Water Management. Contractor shall be responsible for maintaining and repairing all culverts, ditches, pipes and ponds within the Facility. Contractor shall not be responsible for providing repairs to the existing two sedimentation ponds due to catastrophic failure or structural flaws (e.g., failure to perform as intended). Maintenance of the ponds shall include regular removal of sediments in order to: (a) comply with regulatory requirements; and (b) ensure the ponds perform as designed. Prior to the Start Date, with approval of the RWQCB, County will make minor improvements to the first sediment pond so that it operates as a continuously draining pond. Contractor shall perform daily inspections of the drainage system during the winter season (e.g., October to May) to confirm that the system is functioning properly (e.g., ditches are clean). Contractor shall perform thorough ditch cleaning prior to October 15 of every year. Prior to the Start Date, County will make improvements to the culvert leading to the first sedimentation pond to provide adequate drainage.

5.4.5 Utilities. Contractor shall be responsible for maintaining, repairing and replacing all utilities within the Facility, except damage directly caused by County employees or contractors. Contractor shall notify County in writing, within forty-eight (48) hours of any damage caused by County employees or its contractors. County shall make repairs in a timely manner.

Compilation of Agreement with Sonoma Compost Company and Amendments

Prior to the Start Date, County will bring all utilities within the Facility up to standards appropriate for uninterrupted use by Contractor for the intended purpose.

6. FINISHED PRODUCT STANDARDS.

6.1 Production of Finished Products. Contractor shall produce marketable Finished Products on a continuous basis and in such a manner that a market for the total amount of Finished Products from the Yard Debris and Wood Debris received for processing at the Facility can be developed. The marketing and distribution of Finished Products, with the exception of the ten percent (10%) provided to Agency, shall be the sole responsibility of the Contractor and shall be in accordance with the approved Marketing Plan.

6.2 Process Testing. The Facility shall be equipped with the necessary analytical instruments and equipment to carry out the following, ongoing, routine composting process tests: (a) measuring moisture content; (b) temperature readings; and (c) other tests, mutually agreed upon by the parties, to optimize the marketability of the Finished Products as. Finished compost product testing and analysis shall include moisture content, organic and inorganic contaminants analysis, maturity/stabilization testing, macro- and micro-nutrient analyses, and microbiological tests which shall be performed by a qualified, independent laboratory. Agency reserves the right to observe sample collections and to collect samples of Finished Product for its own use.

6.3 Finished Product Standard. The finished compost product shall maintain physical and chemical specifications such as to: (a) achieve the results required under the Marketing Plan; and (b) comply with all applicable laws, ordinances, regulations and permit conditions.

7. CONTAMINANTS.

7.1 Separation of Contaminants. Contractor shall visually inspect each load of materials for Contaminants as the load is delivered to Contractor's processing area and shall proceed in strict accordance with this Agreement.

7.2 Hazardous Materials. If Hazardous Materials are contained in any of the materials that are accepted at the Facility, Contractor shall remove all identified Hazardous Material and shall immediately notify Agency. Where Contractor can identify the individual or entity responsible for bringing the Hazardous Materials to the Facility, Contractor may notify Agency Representative and request that the Agency proceed in accordance with the procedures set forth in the County of Sonoma Department of Public Works Household Hazardous Waste Exclusion Project. In the event Contractor and Agency are unsuccessful in getting the individual or entity responsible for delivering the Hazardous Materials to retrieve such materials and properly dispose of the same, Contractor shall be responsible for properly disposing of the Hazardous Materials and the portions of Yard Debris and/or Wood Debris that are contaminated, at Contractor's sole cost and expense, at an approved hazardous waste treatment, storage and disposal facility. It is expressly understood that the costs associated with the proper disposal of such Hazardous Materials shall be deducted from revenue prior to the calculations of shared revenue. In addition, Contractor may request that the County accept and store up to two hundred twenty (220) pounds of materials identified in Exhibit D in any Contract Year, provided, however, that the acceptable materials do not exceed five (5) pounds in any one day. Contractor shall be responsible for paying the standard rates charged for disposing of such materials that County stores pursuant to this Section 7.2 and such costs shall not be offset against Program revenue in any fashion. In the event Contractor fails to use reasonable diligence in identifying and/or disposing of Hazardous Materials, Contractor shall defend and indemnify Agency and County from all liability and expense resulting from such

Compilation of Agreement with Sonoma Compost Company and Amendments

failure.

7.3 Separation of Contaminants from C&D Feedstock. The County warrants that it will diligently strive to insure that contaminants that could damage Contractor's grinder or cause injury to Contractor's employees are removed from C&D feedstock prior to the grinding process. Such contaminants may include, but are not limited to, scrap metal, glass, rock, concrete, pressure treated wood, dirt, and sod.

8. MARKETING PLAN.

8.1 Approval of Marketing Plan. Contractor shall submit a detailed Marketing Plan to Agency for its review and approval at least one hundred twenty (120) days prior to the Start Date. The detailed Marketing Plan shall generally follow the plan proposed in Exhibit E attached hereto and incorporated herein, but with more extensive detail of the following issues: (a) definition of products to be sold; (b) allocation by percentage weight of products produced from Wood Debris and Yard Debris; (c) records to be generated on product sale revenue and distribution; and (d) allocation of revenue to Contractor and Agency. The approved Marketing Plan shall be revised by Contractor on an annual basis and submitted to the Agency no later than sixty (60) days prior to the commencement of the next Contract Year for its review and approval.

8.2 Deviations from Approved Marketing Plan. In the event Contractor deems it necessary to deviate from the approved Marketing Plan, in a manner resulting in a material change affecting revenue to the Agency or the diversion rate resulting from this Program under AB 939, Contractor shall first obtain Agency's prior written consent by submitting documentation to the Agency, at least fourteen (14) calendar days prior to a regular scheduled Agency meeting, which sets forth Contractor's justification for the need to deviate from the approved Marketing Plan. Agency shall consider such request and shall have the absolute discretion to determine, by majority vote, whether to allow Contractor to deviate from the approved Marketing Plan.

9. ACCOUNTING AND RECORDS.

9.1 Maintenance and Audit of Records. Contractor shall maintain, in its principal office in Sonoma County, full and complete accounting records, prepared in accordance with generally accepted accounting principles, separately reflecting Contractor's revenue and inventory from the receipt of Yard Debris and Wood Debris at the Facility. Contractor shall maintain its accounting records in a manner which clearly and separately identifies the revenues and inventory and separately identifies the tonnage of both Yard Debris and Wood Debris. Such records shall include, without limitation, shipping documents, receiving and delivery logs, invoices, and other documents for revenues and inventory. Such books and records shall be subject to audit and inspection by Agency and its authorized representatives, agents or employees, at any reasonable time as determined by Agency, at Contractor's principal office, for the primary purpose of reviewing operations, verifying tonnages disposed and processed, and substantiating payments made to Contractor by Agency. In the event such audit or inspection reveals that Contractor does not maintain adequate and separate records in accordance with the terms of the Agreement, Agency shall notify Contractor in writing of any alleged deficiencies in the accounting. Contractor shall have fifteen (15) calendar days to correct said deficiencies. If Contractor fails to correct said deficiencies to Agency's reasonable satisfaction, then Agency or its authorized representative, may create such adequate and separate records and Contractor shall reimburse Agency for the costs of such services. All records of Contractor that are not needed to verify compliance with this Agreement and to audit figures used in formula determinations shall be considered confidential

Compilation of Agreement with Sonoma Compost Company and Amendments

and the private property of Contractor. Contractor shall have a reciprocal right to audit County gate records and any other information that directly relate to performance under this Agreement and/or formula determinations.

9.2 Over-Payments to Contractor. In the event that an audit or inspection reveals that the amount of compensation paid to Contractor by Agency is greater than the amount actually due to Contractor under the terms of this Agreement, Contractor shall remit such excess compensation to Agency, including interest from the date of over payment at the rate of five percent (5%) per year, within thirty (30) days of invoice by Agency of such excess. If such reimbursement is not made by Contractor within the specified time period, Agency may deduct the monies due to Agency from Contractor's next monthly payment.

9.3 Under-Payments to Contractor. In the event an audit or inspection reveals an error on the part of Agency, such that the amount of compensation paid to Contractor by Agency is less than the amount actually due to Contractor under the terms of this Agreement, Agency shall remit to Contractor such compensation due, including interest from the date of under-payment at the rate of five percent (5%) per year, within thirty (30) days of invoice by Contractor of such under-payment. Interest shall not be due to Contractor if under-payment is due to an incorrect invoice submitted by Contractor or dispute over compensation adjustments.

9.4 Inspection of Accounts and Records. Contractor's accounting records as described above, shall be available at Contractor's principal office in Sonoma County at any time during regular office hours for inspection and/or audit by Agency or its authorized representatives, for a period of three (3) years following the termination of this Agreement.

10. REPORTS.

10.1 Daily Reports. Contractor shall have available for inspection by Agency Representative at the Facility daily logs that are used to support the information contained in all reports.

10.2 Monthly Reports. County shall prepare a tonnage report, on a monthly basis, which shall include information on the following categories of materials: total tons of Yard Debris delivered to the Facility, tons per day of Yard Debris, total tons of Wood Debris delivered to the Facility, tons per day of Wood Debris, total tons of Mixed Organic Materials delivered to the Facility, tons per day of Mixed Organic Materials, total tons of Wood Debris Products leaving the Facility, tons per day of Wood Debris Products, total tons of Yard Debris Products leaving the Facility, and tons per day of Yard Debris Products. The report shall also include copies of all receiving data record forms and weight tags for each load of Yard Debris, Wood Debris and Mixed Organic Materials. The tonnage report shall be distributed to Contractor within twenty five (25) days of the end of the particular month. Contractor shall submit a monthly report and invoice to the Agency Representative within fifteen (15) calendar days following the receipt by Contractor of the monthly tonnage report prepared by the County. The Agency Representative will review Contractor's monthly report and invoice, and notify Contractor of any deficiencies in writing within fifteen (15) working days of receipt of the report. Contractor shall have fifteen (15) working days from Contractor's receipt of notice of deficiencies to correct such deficiencies and resubmit the information to the Agency. The monthly report prepared by Contractor shall, at a minimum, include the following:

- (a) A summary of tonnages for each material received per day;

Compilation of Agreement with Sonoma Compost Company and Amendments

(b) Explanation of any changes from the operating plan including the type and amount of processing required by Finished Products. The Composting process report shall also include a brief discussion of operations including moisture addition, additives, amendments, temperature measurements and fluctuations, and type and frequency of aeration;

(c) A description of any highlights or anomalies associated with this data, including, weather, operations, equipment shutdowns, Yard Debris and Wood Debris material delivered and processed;

(d) Results of testing programs to include the results from laboratory tests, including the number of samples taken, the locations of samples taken, and analytical results from off-site laboratories and other laboratory analysis completed by the Contractor or subcontractors;

(e) A description of the sale and distribution of Finished Products including the types of materials sold, a shipment log showing date, time, product description and net weight of each load leaving the Facility. Although destination records shall be deemed confidential and shall remain in Contractor's possession, Agency shall have the right to review and inspect such records for purposes of verifying compensation records or other auditing functions. Retail small quantity (less than five (5) cubic yards) shall be exempt from individual load reporting and all reporting information shall be confidential and proprietary. A pricing structure showing all materials types as defined in the Marketing Plan and sold on a monthly basis;

(f) Quantities and weight tags (in tons and cubic yards) of Contaminants landfilled, recovered or recycled;

(g) Record of complaints regarding environmental concerns and Contractor's steps taken to research and resolve complaint;

(h) Record of other problems associated with the Facility and associated operations and considerations and accounts of what is being done to resolve the problem;

(i) Tonnage, volume and composition of Finished Products produced by type;

(j) Tonnage and volumes of Finished Products due to Agency and/or delivered to Agency by type.

Contractor shall submit two separate monthly invoices. One invoice shall be for processing and marketing Wood Debris and the other invoice shall be for processing and marketing Yard Debris materials. The invoices shall include at a minimum the following:

(a) Tonnage information provided by County in County's monthly tonnage report;

(b) Processing fees derived from the Payment Matrix and associated with the respective materials;

(c) Offsets to processing costs due to Guaranteed Revenue and Finished Product Revenue; and

Compilation of Agreement with Sonoma Compost Company and Amendments

(d) Total due to Contractor.

10.3 Annual Reports. Contractor shall submit annual reports to the Agency Representative within thirty (30) calendar days of the end of each Contract Year. The Agency Representative will review Contractor's annual report and notify Contractor of any deficiencies in writing within thirty (30) working days of receipt of the report. Contractor shall have thirty (30) working days from receipt of notice of deficiencies to correct such deficiencies and resubmit the report to the Agency. The annual report shall include, at a minimum, the following:

(a) A summary of the information contained in the monthly reports and total weight and volume of material processed;

(b) A discussion of the Program, along with measures taken to resolve problems, increase efficiency and increase quality of Finished Products; and

(c) A discussion of the markets for Finished Products and the types of marketing approaches used.

10.4 Final Report. Within thirty (30) calendar days of the end of the term of this Agreement, or within thirty (30) calendar days of the earlier termination of this Agreement, Contractor shall submit to Agency Representative a final report. Agency Representative will review Contractor's final report and notify Contractor of any deficiencies in writing within thirty (30) working days of receipt of the report. Contractor shall have thirty (30) working days from the receipt of notice of deficiencies to correct such deficiencies and resubmit the report to the Agency. The final report shall include at a minimum the following:

(a) A summary of all the preceding year's data and annual reports; and

(b) A discussion of the Program, including highlights, problems, and problem resolution.

10.5 Reports Required by Law. Contractor shall assist Agency in the preparation of all reports that are required under applicable law concerning the Program.

11. CONTRACTOR REPRESENTATIONS.

In order to induce Agency and County to enter into this Agreement, Contractor represents and warrants, as of the Effective Date, to Agency that the following statements are true, correct and complete:

11.1 Organization and Good Standing. Contractor is a duly formed general partnership and that Contractor is in good standing under the laws of the State of California, and that Contractor has all requisite power and authority to carry on the business of the Contractor, to enter into the Agreement and to consummate the transactions hereby contemplated.

11.2 Authority and Authorization. Contractor has requisite power and authority to enter into the Agreement and that the execution, delivery and performance of the Agreement have been duly authorized by the governing authority, if any, of Contractor and no other action is requisite to the execution, delivery and performance of the Agreement.

Compilation of Agreement with Sonoma Compost Company and Amendments

11.3 Litigation. There are no actions, suits or proceedings pending or threatened against or affecting Contractor in any court of law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality that might adversely affect the ability of any such person or entity to perform its respective obligations under the Agreement. In addition, Contractor represents and warrants there are no actions, suits, or proceedings pending or threatened against the Facility or operations thereof.

11.4 Binding Obligation. The Agreement has been duly authorized, executed and delivered and is valid and legally binding on Contractor.

12. INSURANCE; PERFORMANCE BOND.

12.1 Insurance Requirements. With respect to the performance of the work hereunder, Contractor shall take out prior to the Start Date and maintain at all times thereafter during the life of the Agreement, and shall require of all its subcontractors, consultants and other agents to maintain, the following policies of insurance:

12.1.1 Workers' Compensation. Workers' Compensation Insurance to cover its employees, with statutory limits as required by the Labor Code of the State of California. Each such policy shall be endorsed with the following specific language:

(a) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency and the County of Sonoma, by registered mail.

12.1.2 Commercial/Comprehensive General Liability. Commercial or comprehensive general liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said comprehensive or commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy.

(a) The Sonoma County Waste Management Agency, the County of Sonoma, their members, officers and employees, are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(c) The insurance provided herein is primary coverage to the Sonoma County Waste Management Agency and the County with respect to any insurance or self-insurance programs maintained by the Agency.

(d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency and the County of Sonoma, by registered mail.

Compilation of Agreement with Sonoma Compost Company and Amendments

12.1.3 Automobile. Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

(a) The Sonoma County Waste Management Agency, the County of Sonoma, their members, officers and employees, are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(c) The insurance provided herein is primary coverage to the Sonoma County Waste Management Agency and the County with respect to any insurance or self-insurance programs maintained by the Agency.

(d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency and the County of Sonoma, by registered mail.

12.1.4 Environmental Materials Liability. Environmental Materials Liability insurance for all activities of Contractor arising out of or in connection with this Agreement in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said policy shall be endorsed with the following specific language:

(a) The Sonoma County Waste Management Agency, the County of Sonoma, their members, officers and employees, are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(c) The insurance provided herein is primary coverage to the Sonoma County Waste Management Agency and the County with respect to any insurance or self-insurance programs maintained by the Agency.

(d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency and the County of Sonoma, by registered mail.

12.1.5 Documentation. The following documentation shall be submitted to the Agency:

Compilation of Agreement with Sonoma Compost Company and Amendments

(a) On or before the Effective Date, Contractor shall provide satisfactory proof that it will be able to obtain all of the insurance, including, endorsements, required hereunder by the Start Date.

(b) Properly executed Certificates of Insurance clearly evidencing all coverage, limits, and endorsements required above. Said Certificates shall be submitted ninety (90) days prior to the Start Date.

(c) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted with the Certificates of Insurance required under Section 12.1.5(b) above.

(d) Upon Agency's or County's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of such request.

12.1.6 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

12.1.7 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. Agency or County, at their sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Agency or County may purchase such required insurance coverage, and without further notice to Contractor, Agency may deduct from sums due to Contractor any premium costs advanced by Agency for such insurance. These remedies shall be in addition to any other remedies available to the Agency.

12.2. Faithful Performance Bond. Contractor shall provide the Agency with a faithful performance bond in the amount of \$1,000,000 in order to secure the Contractor's performance obligations under the Agreement. Such bond shall be executed by a surety company licensed to do business in the State of California. The initial term of the faithful performance bond shall be for one year commencing with the Start Date and shall be renewed on an annual basis until the termination of the Agreement. The condition of the foregoing bond shall be such that if Contractor shall well and truly perform the covenants, promises, undertakings and obligations under the terms of this Agreement, then the obligation of said bond shall be void; otherwise it shall remain in full force and effect. Agency shall be able to collect on said bond for discrepancies or other covered losses discovered up to the time when all Yard Debris and Wood Debris delivered to Contractor under the terms of this Agreement have been processed into Finished Products and all other obligations of Contractor under this Agreement have been satisfied. On or before the Effective Date, Contractor shall provide satisfactory proof that it will be able to obtain the faithful performance bond required hereunder.

13. NOTICE.

13.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.

13.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

(a) When personally delivered to the recipient, notice is effective on delivery.

Compilation of Agreement with Sonoma Compost Company and Amendments

(b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.

(c) When mailed by certified mail with return receipt requested, notice is effective two (2) days following mailing.

(d) When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective one day following mailing.

(e) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on transmission as long as (1) a duplicate copy of the notice is promptly given by certified mail, return receipt requested, or by overnight delivery, or (2) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by telex or fax shall be considered to have been received on the next business day if it is transmitted after 4 p.m. (recipient's time) or on a nonbusiness day.

13.2 Refused, Unclaimed, or Undeliverable Notices. Any correctly addressed notice that is delivered pursuant to Section 13.1.1(b), (c), or (d) that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

13.3 Addresses. Addresses for purposes of giving notice are set forth below:

CONTRACTOR:	Sonoma Compost Company 550 Mecham Road Petaluma, CA 94952
AGENCY:	Sonoma County Waste Management Agency 575 Administration Drive, Room 117A Santa Rosa, CA 95403
COUNTY:	County of Sonoma Department of Transportation and Public Works 575 Administration Drive, Room 117A Santa Rosa, CA 95403
COUNTY:	County of Sonoma Department of Transportation and Public Works 2300 County Center Drive, Suite B 100 Santa Rosa, CA 95403"

14. INDEMNIFICATION.

Contractor agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release County, Agency, their members, officers, agents and employees, from and against any and all actions, claims, damages, liabilities or expenses that may be asserted by any person or entity, including Contractor, arising out of or in connection with the performance of Contractor hereunder, whether or not there is concurrent negligence on the part of the Agency and/or County, but excluding liability due to the sole active negligence or sole willful misconduct of the Agency and/or County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation

Compilation of Agreement with Sonoma Compost Company and Amendments

payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts or other employee benefit acts. In addition, Contractor shall be liable to County, Agency and their members for any loss or damage to Agency or County property or Agency's members' property arising from or in connection with Contractor's performance hereunder.

15. EVENTS OF DEFAULT; REMEDIES.

Upon an event of default, Agency shall have the right to foreclose upon the performance bond and may elect at its option to terminate this Agreement, purchase the Operating Equipment and operate the Facility. These remedies shall not be exclusive and Agency shall have the right to seek specific performance of the Agreement. For purposes of this Agreement, an event of default shall be deemed to have occurred upon the happening of any one or more of the following events:

- (a) Failure of Contractor to accept Wood Debris and/or Yard Debris on more than:
 - (i) thirty (30) Operating Days during any twelve (12) month period; or
 - (ii) ten (10) or more consecutive Operating Days; provided, however, that any failure of the Contractor to accept materials due to problems directly caused by problems with infrastructure at the Central Disposal Site that County is specifically required to maintain under the terms of this Agreement, shall not be considered cause for default.
- (b) Failure of Contractor to operate the Facility in compliance with the terms of the Agreement.
- (c) Receipt by Contractor of any order or notice from any governmental agency that all or any portion of the Contractor Improvements or Operating Equipment have been or are proposed to be performed or used contrary to the terms of any law, ordinance or regulation, which order or notice is not complied with by Contractor within ten (10) days following the issuance thereof, provided that if such order or notice cannot be reasonably complied with within such ten (10) day period, an Event of Default shall not be deemed to have occurred unless Contractor fails to commence compliance within such ten (10) day period or to diligently and in good faith prosecute compliance thereafter, or to complete such compliance within thirty (30) days following written notice from the governmental agency of such order or notice; or to complete such within a lesser time period if the failure to do so would, in the reasonable determination of the Agency, cause Contractor to be unable to accept Wood Debris and/or Yard Debris for a period of ten (10) or more consecutive Operating Days.
- (d) Any failure on Contractor's part to comply with any other covenant or agreement contained in this Agreement (which does not constitute a breach of default that could become an event of default under any other subparagraph of this Section), which failure remains uncured for ten (10) days following written notice thereof by Agency, provided that if any such failure to comply or breach is capable of cure but cannot reasonably be cured within such ten (10) day period, an event of default shall not be deemed to have occurred unless Contractor fails to commence the cure of such failure or breach within such ten (10) day period or to diligently and in good faith prosecute the cure thereafter, or to complete such cure within thirty (30) days following written notice from Agency of such failure or breach.
- (e) (i) Contractor shall voluntarily commence any case, proceeding or other action (A) under the Federal Bankruptcy Code, as amended from time to time, or under any other existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, seeking to

Compilation of Agreement with Sonoma Compost Company and Amendments

adjudicate it a bankrupt or insolvent or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, custodian or other similar official for it or for all or any substantial part of its assets, or Contractor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Contractor any involuntary, proceeding or other action of a nature referred to in clause (i) of this subparagraph (g) which (A) results in the entry of an order for relief of any such adjudication or appointment or (B) remains unstayed and undismissed for a period of sixty (60) days; or (iii) there shall be commenced against Contractor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets, which results in the entry of an order for any such relief which shall not have been vacated, discharged or stayed or bonded pending appeal within thirty (30) days from the entry thereof; or (iv) Contractor shall take any action in furtherance of, or indicating its consent to approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) of this subparagraph (g); or (v) Contractor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or (vi) any termination or voluntary suspension of the transaction of business of Contractor, or any attachment, execution or other judicial seizure of all or any substantial portion of Contractor's assets which attachment, execution or seizure is not discharged within thirty (30) days.

(f) Any substantial change shall occur in the management or control of Contractor without the prior written approval of Agency.

(g) Any representation or disclosure made to the Agency by Contractor proves to be false or misleading in any material respect on the date as of which made.

16. EXPIRATION OF AGREEMENT.

16.1 Normal Expiration. Effective upon July 18, 2005, County shall stop accepting Yard Debris and Wood Debris. Contractor shall finish processing all existing material on site and to conclude its on-site operations during the Post-Operating Term. Agency shall pay Contractor for processing of materials delivered up to the date that County stops accepting such materials.

"16.1 Normal Expiration. Effective upon July 18, 2010, County shall stop accepting Yard Debris and Wood Debris. Contractor shall finish processing all existing material on site and to conclude its on-site operations during the Post-Operating Term. Agency shall pay Contractor for processing of materials delivered up to the date that County stops accepting such materials."

16.1 Normal Expiration. Effective upon July 15, 2011, County shall stop accepting Yard Debris and Wood Debris. Contractor shall finish processing all existing material on site and to conclude its on-site operations during the Post-Operating Term. Agency shall pay Contractor for processing of materials delivered up to the date that County stops accepting such materials

16.1 Normal Expiration. Effective upon July 15, 2012, County shall stop accepting Yard Debris and Wood Debris. Contractor shall finish processing all existing material on site and to conclude its on-site operations during the Post-Operating Term. Agency shall pay Contractor for processing of materials delivered up to the date that County stops accepting such materials.

16.2 Termination of Agreement. Should the Agreement be terminated early for an Event of Default, Contractor shall have seven (7) days to vacate the Facility.

16.3 Condition of Facility. At the normal expiration or earlier termination of the Agreement, Contractor shall surrender to Agency the possession of the Facility. Contractor shall

Compilation of Agreement with Sonoma Compost Company and Amendments

leave the surrendered Facility and any other property in good condition and repair, normal wear and tear excepted. At the expiration or sooner termination of the term, Contractor shall remove all of the Operating Equipment. The duty imposed by this provision includes, without limitation, the duty to leave the Facility safe and free from debris and hazards. All property that Contractor abandons shall, at Agency's election, become Agency's property at termination. If Contractor fails to surrender the Facility at the expiration or sooner termination of this Agreement, Contractor shall defend and indemnify Agency and County from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding contractor based on or resulting from Contractor's failure to surrender.

17. ARBITRATION.

Arbitration may be required for matters for which arbitration is mentioned in this Agreement or where this Section 17 is expressly referred to in this Agreement. For other matters, the party served with notice of arbitration may reject the notice by failing to respond to it, by giving notice of rejection, or by taking action inconsistent with arbitration. Arbitration is initiated and required by giving notice specifying the matter to be arbitrated. If action is already pending on any matter concerning which the notice is given, the notice is ineffective unless given from the expiration of ten (10) days after service of process on the person giving the notice. Arbitration shall be in conformity with and subject to applicable rules and procedures of the American Arbitration Association or JAMS/Endispute, as the parties may agree. If the American Arbitration Association or JAMS/Endispute are not then in existence or for any reason fail or refuse to act, the arbitration shall be in conformity with and subject to provisions of the California Code of Civil Procedure relating to arbitration as they stand amended at the time of the notice. The arbitrator shall be bound by this Agreement. Pleadings and any action pending on the same matter shall, if the arbitration is required or consented to, be deemed amended to limit the issues to those contemplated by the rules prescribed above. Each party shall pay half the cost of arbitration including arbitrator's fees. Attorneys' fees shall be awarded as provided in Section 18 of this Agreement. To the extent permitted by the rules of the American Arbitration Association, JAMS/Endispute, or, if applicable, the California Code of Civil Procedure, in effect at the time of the notice, the parties have hereby established their own rules for selecting arbitrators. There shall be one arbitrator appointed as follows:

(i) A panel of retired judges shall be provided by the American Arbitration Association or JAMS/Endispute. Each party may strike any names up to a maximum, if afforded to both parties would leave one arbitrator for appointment. If less than the maximum are struck, the American Arbitration Association or JAMS/Endispute shall randomly choose from the names remaining.

(ii) If the parties fail to choose an arbitrator, the appointment shall be made by the then presiding Judge of the Superior Court for Sonoma County, acting in his or her individual and non-official capacity, on the application of either party and on ten (10) days notice to the other party. The arbitrator shall issue written findings of fact and conclusions of law, in accordance with California law.

18. ATTORNEYS' FEES.

If either party brings any claim, suit, action or proceeding (including arbitration) against the other to enforce, protect, or establish any right or remedy arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

Compilation of Agreement with Sonoma Compost Company and Amendments

19. GENERAL PROVISIONS.

19.1 Assignment.

19.1.1 Assignment by Contractor. The experience and expertise of Contractor are material considerations for this Agreement. Contractor shall not assign or transfer, whether voluntarily, involuntarily, or by operation of law, its interest in this Agreement or any part thereof without the prior written approval of Agency. No such assignment or transfer for which Agency's prior written consent is required shall be valid or binding without said prior written approval, and then only upon the condition as such assignee or other successor in interest shall agree in writing to be bound by each and all of the covenants, conditions and restrictions of the Agreement. An attempted assignment or transfer not in compliance with the provisions of this Section 19.1 shall be grounds for Agency's termination of the Agreement. Consent to any assignment or transfer shall not be deemed a waiver of this requirement as to any subsequent assignment or transfer. As used in this Section the term "assignment" shall include a "more than 34% change in ownership of Contractor." A "more than 34% change in ownership of Contractor" shall mean, the transfer of the right to share in more than 34% of the profits of the general partnership or corporation.

19.1.2 Assignment by Agency. In the event that the Members of the Agency desire to dissolve the Agency, or the Agency otherwise ceases to exist, the County shall have the right, but not the obligation, to assume Agency's rights and obligations under this Agreement.

"19.1.3 Assignment by County. At its sole discretion, County may assign all of its rights and obligations under this Agreement."

19.2 Amendments. Only the Members of the Agency, by a majority vote, and the County Board of Supervisors may authorize extra or changed work or amend this Agreement. The parties expressly recognize that Agency and County personnel are without authorization to order extra or changed work or waive contract requirements. Failure of Contractor to secure Agency authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the compensation due to such unauthorized work and thereafter the Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without the express and prior written authorization of the Agency and County.

19.3 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, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

19.4 No Waiver of Breach. The waiver by Agency 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.

19.5 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

Compilation of Agreement with Sonoma Compost Company and Amendments

remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

19.6. 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.

19.7. Applicable Law and Forum. This Agreement shall be construed and interpreted according to California law and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

19.8. 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.

19.9. 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.

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

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of all parties.

“Agency”: SONOMA COUNTY WASTE MANAGEMENT AGENCY

By: _____
Sam Salmon, Chair

“County”: COUNTY OF SONOMA

By: _____
Chairman, Board of Supervisors

“Contractor”: SONOMA COMPOST COMPANY,
a California general partnership

By: _____

APPROVED AS TO FORM FOR AGENCY:

Agency Counsel

Compilation of Agreement with Sonoma Compost Company and Amendments

APPROVED AS TO SUBSTANCE FOR AGENCY:

Agency Director