



REQUEST FOR PROPOSALS

TO TRANSPORT COMPOSTABLE MATERIALS
FOR THE
SONOMA COUNTY WASTE MANAGEMENT AGENCY

Proposals due 3:00 p.m. on August 4, 2014

Submit proposal to:
Patrick Carter, Department Analyst
Sonoma County Waste Management Agency
2300 County Center Drive, Suite B100
Santa Rosa, CA 95403

1. INTRODUCTION

1.1 Definitions

This section contains definitions that are used throughout this RFP.

AGENCY. The Sonoma County Waste Management Agency, a joint powers authority composed of the County of Sonoma and the nine incorporated jurisdictions within Sonoma County: Cloverdale, Cotati, Healdsburg, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma, and Windsor.

Central Disposal Site. A solid waste disposal facility owned by the County of Sonoma, located at 500 Mecham Road, Petaluma, CA.

Compost Facility. A facility with a current solid waste facility permit from the California Department of Resources Recycling and Recovery for accepting and processing compostable materials.

Compostable Material. Any organic material that when accumulated will become active compost.

County. The County of Sonoma, a political subdivision of the State of California.

PROPOSER. An person or entity submitting a proposal under this Request for Proposals.

RFP. This Request for Proposals to transport compostable materials for the Sonoma County Waste Management Agency.

Transfer Stations: Permitted Solid Waste Transfer Stations owned by the County of Sonoma, including Annapolis (33549 Annapolis Road, Annapolis), Central (500 Mecham Road, Petaluma), Guerneville (13450 Pocket Road, Guerneville, CA), Healdsburg (166 Alexander Valley Road, Healdsburg), and Sonoma (4376 Stage Gulch Road, Sonoma) transfer facilities.

1.2 Background and Overview of Requested Services

The Sonoma County Waste Management Agency (AGENCY) is seeking proposals from interested and qualified contractors for transport and delivery of compostable materials to permitted composting facilities.

Slightly less than 100,000 tons per year of compostable material is currently accepted at the Central Disposal Site compost facility operated by the AGENCY for processing, composting, and sale of finished product. The County's contractor currently transports compostable material from the Transfer Stations to the Central Disposal Site composting facility. This contract will expire upon notice from the County to Republic Services that the Master Operating Agreement is effective.

However, it is anticipated that the compost facility may be forced to close or reduce operations due to regulatory requirements. Depending on the ultimate outcome of the regulatory process, the AGENCY may be able to operate its current compost facility during a portion of the year. Although uncertain, it appears that at least some portion of the compostable materials currently processed at the Central Disposal Site will need to be composted elsewhere beginning October 1, 2014. The AGENCY may require transport and delivery services either on a seasonal or continual basis.

This RFP is designed to solicit flexible pricing proposals based on three potential transportation scenarios, each on both a seasonal or annual basis:

- Scenario 1: The selected PROPOSER would provide for transport of material from each of the Transfer Stations to the Central Disposal Site. Note: Scenario 1 would only occur if the compost facility is permitted to continue its operations on a continual or seasonal basis.

- Scenario 2: The selected PROPOSER would collect all compostable materials from the Transfer Stations, deliver the materials to the Central Disposal Site for size reduction processing by the AGENCY/a third-party contractor, and then reload the processed materials onto an outhaul truck for delivery to an AGENCY-approved Compost Facility or Facilities.
- Scenario 3: The selected PROPOSER would collect and transport all compostable materials from each of the Transfer Stations to an AGENCY-approved Compost Facility or Facilities.

PROPOSERS should include a list of proposed Compost Facilities to accept compostable materials generated in Sonoma County, the available capacity of each facility, the cost per ton of compostable material to transport to each facility, and the associated tipping fee for each facility. Prior to receiving a final award under this RFP, the Selected PROPOSER must submit a final agreement for disposal of the compostable materials at the proposed Compost Facility or Facilities.

The Agency will select one of the three scenarios above depending upon the outcome of the regulatory process related to the Central Disposal Site. Thus, the selected contractor will be asked to undertake contractual obligations for only one of the above listed scenarios.

2. GENERAL INFORMATION

The general guidelines for preparing a response to this RFP are explained in this section.

2.1 Questions

All questions pertaining to this RFP must be directed to:

Patrick Carter, Department Analyst
Sonoma County Waste Management Agency
2300 County Center Drive, Suite B100
Santa Rosa, CA 95403
fax: 707/565-3701 e-mail: patrick.carter@sonoma-county.org

Questions must be submitted no later than 3:00 p.m. on **August 4, 2014**; no response will be made to questions submitted after this date. An addendum to this RFP will be prepared in response to any questions received. To enable receipt of the addendum by email, each PROPOSER is solely responsible for providing its email address by **July 18, 2014** to the contact above. The AGENCY cannot assure that every entity receiving a RFP will receive the addenda. All addenda shall become part of the Agreement documents, and all PROPOSERS are bound by such addenda, whether or not received by the PROPOSER.

2.2 AGENCY Contact for Information

All requests for additional information regarding this RFP should be directed to the AGENCY's Department Analyst, noted above in Section 2.1. **Do not directly contact other AGENCY staff or members of the Board of Directors. Individuals or organizations that do so may be disqualified from further consideration.** AGENCY will recognize only those responses to inquiries issued in writing by AGENCY in Addendum form as binding modifications to this RFP.

2.3 General RFP Agreements

This RFP shall not be construed by any party as an agreement of any kind between the AGENCY and such party. Any award of a contract shall be subject to the approval of the AGENCY's Board of Directors.

This RFP does not obligate the AGENCY to accept any proposal, negotiate with any proposer, award an

Agreement, or proceed with the development of any project or service described in response to this RFP. The AGENCY has no obligation to compensate any proposer for its expense of preparing its proposal and participating in this procurement process.

Submission of a proposal shall constitute acknowledgment, acceptance of and commitment to provide the proposed services in accordance with all the terms and conditions contained in this RFP, its attachments, addenda, or clarifications and the draft service agreement, unless an exception to particular terms and conditions is expressed in writing in the proposal. The proposals are to be firm for a period of 180 days from the date the proposal is submitted. Proposals may not be altered after submittal, except in response to AGENCY's request for clarification.

The AGENCY shall have the right (but not the obligation) to perform an investigation and review of each proposer's ability to perform the work required. Each proposer must agree to cooperate with such investigation. Such cooperation by proposers shall include, but not be limited to, the verification of the proposer's capability and experience in the provision of services and any other component of work that may be required under this procurement.

The AGENCY hereby notifies all proposers that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract related to the provision of services under the Agreement on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law.

The AGENCY makes a concentrated effort to ensure any addenda issued relating to this RFP are distributed to all interested parties. It shall be the proposer's responsibility to inquire as to whether any addenda to the RFP have been issued. Upon issuance by the AGENCY, all addenda are part of the proposal. Signing the Proposal Authorization and Acknowledgement Form, EXHIBIT C, shall constitute acceptance of all addenda.

2.2 Confidentiality

AGENCY has made a determination in accordance with Section 6255 of the Government Code that all Proposals submitted in response to this RFP shall not be made public by AGENCY until the time AGENCY is considering award of a contract for the services. In addition, AGENCY has made a determination in accordance with Section 6255 of the Government Code that all PROPOSER proprietary financial information which is specifically identified by the PROPOSER as "confidential" shall not be made public by AGENCY and shall be returned to each PROPOSER, unless otherwise required by law. In the event a PROPOSER wishes to claim other portions of its proposal exempt from disclosure under the Public Records Act, the PROPOSER must clearly identify those portions with the word "confidential" printed on the lower right-hand corner of the page, along with a written justification as to why such information should be exempt from disclosure. Blanket designations of "confidential" shall not be effective. The PROPOSER'S designation of information is not binding on the AGENCY, and AGENCY will make a decision based upon applicable laws. AGENCY shall notify PROPOSER of any requests for disclosure under the Public Records Act. If the PROPOSER wishes to prevent the disclosure of such material, the PROPOSER shall bear the sole burden of seeking review in a court of competent jurisdiction. In addition, PROPOSER shall defend and indemnify AGENCY from any claims and/or litigation relating to a claim of confidentiality.

Proprietary or confidential data must be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. The cost of services shall not be designated as proprietary or confidential information.

2.3 Appeals Process

Should any PROPOSER dispute the AGENCY's determinations and findings during the RFP process, such PROPOSER shall give the AGENCY written notice of the matter in dispute within five (5) days of PROPOSER's first knowledge of the decision or determination. The PROPOSER shall thereafter, within ten

(10) days of PROPOSER's first knowledge of the AGENCY decision or determination in dispute, provide AGENCY with a complete and comprehensive "Statement of Dispute" that discusses all the reasons why the PROPOSER disputes the AGENCY's determination or decision and submit all documentary evidence relied on by the PROPOSER. The Statement of Dispute must meet the following conditions and requirements:

- a. The Statement of Dispute must contain a complete statement of the factual and legal basis for the protest.
- b. The Statement of Dispute must specifically refer to the exact portions of the RFP, which form the basis for the protest, and all documentary evidence relied upon.
- c. The Statement of Dispute must include the name, address and telephone number of the person representing the protesting party.
- d. The party filing the Statement of Dispute must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest, which may be adversely affected by the outcome of the protest. Such parties shall include all other PROPOSERS, who shall have seven (7) calendar days to respond to the Statement of Dispute.

The AGENCY will review the Statement of Dispute, and may elect to hold an administrative hearing thereon, and may request PROPOSER to produce such further evidence as AGENCY deems material to a decision on the issue, after which time AGENCY will issue a determination which shall be final. The procedure and time limits set forth in this paragraph are mandatory and are the PROPOSER's sole and exclusive remedy in the event of protest and failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code Claim or legal proceedings. Failure to strictly follow this procedure shall waive any further rights to dispute the AGENCY's decisions and determinations made during the RFP process.

3. PROCEDURES FOR SUBMITTAL AND AWARD PROCESS

3.1 Submittal Rules

Proposals must be presented in accordance with the information requested in Section 4, Proposal Requirements. Other relevant information that the PROPOSER feels is appropriate may be included. The following rules shall apply:

1. All proposals shall be submitted in writing and be in accordance with the requirements of this Request for Proposals. No facsimile or emailed proposals will be accepted.
2. Three (3) copies of the proposal shall be submitted to the AGENCY no later than **3:00 p.m.** on the time clock located at 2300 County Center Drive, Suite B-100, Santa Rosa, California, on **August 4, 2014**. The package of proposals must be clearly labeled on the outside with the name and the address of the firm submitting the proposal with the words: "Compostable Materials Transport Proposal" in the address. One of the copies of the proposal shall be unbound to allow for ease of copying. Proposals must be addressed and delivered to the AGENCY contact found in Section 2.1 above.
3. PROPOSERS shall label one of the copies "Original", which shall govern in the event of any inconsistency among copies of the proposal. This original copy shall be bound.
4. Each proposal shall be printed on 8 1/2" by 11" paper, double-sided where appropriate, or if larger paper is required, it must be folded to 8 1/2" by 11". Paper should be at least 30% post-consumer recycled content.

5. Each proposal shall include all information required by this RFP and any subsequent addenda.
6. Proposals received after the required submittal date will be rejected and will be returned unopened. The AGENCY will not, in any manner, be liable or responsible for any late delivery of proposals.

3.2 Rights of the AGENCY

PROPOSERS shall submit an appropriately signed Exhibit C – Proposal Authorization and Acknowledgement Form stating that the PROPOSER agrees with the rights of the Agency as described below. The AGENCY shall have the right to:

1. Award an agreement for services described in this RFP.
2. Reject all proposals and not award an agreement.
3. Reject any proposal.
4. Select a proposal other than the lowest cost/highest payment proposal.
5. If during the course of negotiations with a selected PROPOSER, the AGENCY determines in its sole discretion that an acceptable Agreement cannot be negotiated, the AGENCY reserves the right to suspend negotiations with that PROPOSER and begin negotiations with another PROPOSER. Also, the AGENCY reserves the right to undertake simultaneous negotiations of the final Agreement with more than one PROPOSER.
6. Waive defects and/or irregularities in any proposal.
7. Request from any PROPOSER at any time during the evaluation process, clarification of any information contained in the proposal.
8. Request “Best and Final” offers.
9. Conduct interview(s) with any PROPOSER(s).
10. Negotiate terms and conditions that are different from those described in this RFP and Agreement.
11. Contact references provided and seek information from any client with which the PROPOSER has done business.
12. Perform appropriate environmental review.
13. Take other such action that best suits the needs of the AGENCY and/or its citizens.

PROPOSERS are notified that the costs of preparing and submitting proposals and the risks associated therewith shall be borne solely by the PROPOSER. No compensation will be provided to PROPOSERS for work performed or costs incurred during the preparation, submittal or evaluation of Proposals neither for the negotiation or execution and delivery of an Agreement awarded as a result of this RFP.

3.3 Award Process

a) Proposal Evaluation.

The AGENCY will review and evaluate all proposals deemed responsive. To receive proper consideration, the proposal must meet the requirements of this RFP. The AGENCY shall evaluate each proposal in accordance with the Proposal Evaluation Criteria set forth in Exhibit B. The evaluation process will provide credit only for those capabilities and advantages that are clearly stated in the written proposal. In other words, advantages that are not stated will not be considered in the evaluation process.

Proposers whose proposals include a significant failure to comply with the RFP may be eliminated from the evaluation process. The AGENCY'S evaluation process will involve representatives from AGENCY Staff. The AGENCY may also include representative(s) from outside the AGENCY organization which may include attorneys, consultants, and/or employees from other agencies.

It is the intent of the AGENCY to objectively evaluate the proposals received. The assignment of a score to a particular qualitative element is necessarily subjective and may result in a range of scores from different evaluators. The AGENCY anticipates using the weighted evaluation criteria set forth in Exhibit B in that evaluation process.

Note that when the AGENCY evaluates the rate and cost proposals, the AGENCY will examine the reasonableness of the rates and costs.

Any award shall be based on the proposal judged as providing the best value in meeting the interest of the AGENCY and the objectives of the project. The AGENCY reserves the right to make the selection of PROPOSER(s) based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the PROPOSER to perform the services set forth herein.

b) Submittal of Insurance Documents.

Prior to award of the Agreement, the successful PROPOSER shall furnish the AGENCY with Certificates of Insurance clearly evidencing all required insurance and endorsements. The successful PROPOSER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the successful PROPOSER, its agents, representatives, employees or subcontractors.

c) Disposal Agreements between PROPOSER and Compost Facilities (Scenarios 2 and 3).

If the Agency, in its sole discretion, chooses to proceed with Scenario 2 or Scenario 3, then the successful PROPOSER shall furnish the AGENCY with a copy(ies) of a signed agreement(s) for disposal of the Compostable Materials at the proposed Compost Facility or Facilities prior to award of the Agreement.

d) AGENCY Environmental Review.

Prior to award of the Agreement, the AGENCY will consider the environmental impacts of the selected proposal and complete appropriate environmental review under the California Environmental Quality Act (Cal. Pub. Resources Code § 21000 *et seq.*).

e) Signing and Approval of Agreement for Organic Materials Transport Services.

Prior to award of the Agreement, the selected PROPOSER must sign the Agreement for Organic Materials Transport Services, the form of which is attached hereto as Exhibit D.

4. PROPOSAL REQUIREMENTS

A proposal shall be complete and concise and should be prepared in substantial conformance with the format and order described below to assist in the review process. *A proposal that omits or inadequately addresses any of the topics below may be rejected.*

Please submit the following information:

a) Complete a Letter of Submission:

The proposal must contain a submission letter that contains the PROPOSER's unconditional acceptance of the performance obligations set forth in the RFP. An officer of the proposing entity authorized to bind the PROPOSER to the proposal terms must sign this letter.

The Letter of Submission shall also include a description of the ownership of the proposing company, including, but not limited to:

- Official name and address. Indicate the type of entity and list its officers (e.g. corporation, partnership, sole proprietorship). Indicate the date and place of incorporation or organization.
- If entity is a joint venture, submit a current copy of the joint venture agreement or contract.
- Federal Employer I.D. Number
- Complete name, mailing address, phone number, fax number and email address (if available) of the person to receive notices and who is authorized to make decisions or represent the company with respect to this RFP.

b) Prepare an Implementation Plan and Budget: The PROPOSER must submit an Implementation Plan and Budget that will achieve the proposed Scope of Services described in Exhibit A. The Implementation Plan and Budget should respond to each of the evaluation criteria listed in Exhibit B. Exhibit B instructs PROPOSERS as to the AGENCY's expectations for the project and how proposals will be evaluated. Please ensure that responses are complete.

c) Qualifications and Experience of Proposer.

The proposal must include a description the PROPOSER's experience relevant to the requested services and qualifications and resumes of key personnel that will be assigned to the management of the Agreement.

PROPOSER should provide a minimum of two (2) California governmental clients that the AGENCY may contact to conduct a reference check regarding provision of the proposed service.

If the PROPOSER cannot provide all of the information requested in this Section 4.1.c., then the PROPOSER must provide descriptions of similar work performed for other clients. In either case, the description shall list the:

- Dates and a description of the services that were provided;
- Names and responsibilities of the team members involved with the referenced work; and
- Name, address, and telephone number of a contact person of each client who would be most familiar with the services provided.

d) Complete Exhibit C: Proposal Authorization and Acknowledgement Form. Each proposal must include a Proposal Authorization and Acknowledgement Form (Exhibit C) signed by an authorized representative of PROPOSER, acknowledging its willingness to sign the Agreement to Transport Organic Materials attached hereto as Exhibit D, unless modified pursuant to the

procedures set forth in this RFP. PROPOSER shall identify in its proposal any proposed modifications to the Agreement in the response to Exhibit C.

- e) **Insurance.** The proposal must demonstrate the ability to submit proof of the required insurance as set forth in the Form Agreement (Exhibit D). Prior to award of the Agreement, the successful PROPOSER shall furnish the AGENCY with Certificates of Insurance clearly evidencing all required insurance and endorsements. If PROPOSER wishes to change specific insurance terms, these exceptions must be noted in the response to Exhibit C.

5. SCHEDULE

<u>Date</u>	<u>Action</u>	<u>Responsible Party</u>
July 10, 2014	Distribution of RFP	AGENCY
July 18, 2014	Submit Addenda Distribution Information	PROPOSER
July 18, 2014	Submit Written Questions	PROPOSER
August 4, 2014	Proposals Due (3:00 p.m.)	PROPOSER
August 20, 2014	Award of Agreement (tentative)	AGENCY

6. ATTACHMENTS

- Exhibit A: Scope of Services
- Exhibit B: Proposal Evaluation Criteria
- Exhibit C: Proposal Authorization and Acknowledgement Form
- Exhibit D: Form of Agreement – Agreement for Organic Materials Transport Services

Exhibit A Proposed Scope of Services

PROPOSER's plan shall include cost information for all three scenarios described below:

Scenario 1: PROPOSER transports Compostable Material from Transfer Stations to the Central Disposal Site. This scenario is similar to the status quo.

Scenario 2: PROPOSER transports all unprocessed Compostable Material from the Transfer Stations to the Central Disposal Site. The Compostable Material would be processed by the AGENCY/a third-party contractor for size reduction at the Central Disposal Site. PROPOSER would then transport the processed Compostable Material from the Central Disposal Site to the AGENCY-approved Compost Facility or Facilities.

Scenario 3: PROPOSER transports all Compostable Material directly from each Transfer Station to an AGENCY-approved Compost Facility or Facilities. The Compostable Material would be unprocessed compostable material and would not undergo any volume reduction prior to transport to an AGENCY-approved Compost Facility.

For Scenario 2 and Scenario 3, PROPOSER must submit a plan, including a list of Compost Facilities to accept Compostable Materials generated in Sonoma County, the available capacity of each facility, the cost to transport to each facility, and the associated tipping fee for each facility.

Proposals must demonstrate their ability (i.e. sufficient personnel and equipment) to collect and transport at least 100,000 tons per year of Compostable Material.

Exhibit B: Proposal Evaluation Criteria

Please provide brief answers to the following questions in the proposal's Implementation Plan:

Question 1 (30 points): Compostable Material Transport Approach

Please describe your recommended approach to properly handle the compostable material on behalf of the AGENCY. This would include assurances of adequate capacity with specific Compost Facilities, the tipping fee at each facility, and proposed method for determining cost inflators for fuel, etc.

- Procedures for identifying and handling hazardous waste disposed in organic materials collected in the performance of these services. The plan shall describe: identification and screening procedures; notification plan; disposal plan; and, employee training program.
- Plan for minimizing contamination of organic materials.
- Plan for preventing spills.
- Equipment to be utilized (i.e. equipment/vehicle description, number, types, cost, capacity, average load per vehicle, axle load, age, etc.) all of which must be reasonably expected to provide service throughout the term of the Agreement.
- Manufacturer's specification for collection vehicles.
- Standard crew size (e.g., driver, helper).
- Location for equipment and personnel staging.
- Maintenance facilities location.
- Preventive maintenance program for equipment.
- Office location for management and administration.
- Personnel training (including, but not limited to, operational training, safety training programs, compliance with EEO and ADA, and training-meeting frequencies).
- Describe whether proposer has or plans to implement CNG or LNG fueled vehicles or some other technology resulting in similar or reduced air emissions.

Question 2 (30 points): Experience with Solid Waste Transport

Please describe previous experience performing solid waste transport for cities, counties, or other local or state government jurisdictions.

Question 3 (40 points): Scope of work and budget

Please complete a sample scope of work and budget specific to this project which includes budget allocations for each scenario described in Exhibit A. AGENCY expects a detailed matrix of costs for the three Scenarios, not a single cost per ton for each scenario.

Question 4: Are there any exceptions or changes to the requested services or contract language?

Does the PROPOSER have any exceptions or changes to the requested services or contract language? Please note requested changes in the response to Exhibit C. (An excessive number of requested changes to the contract language will be disfavored and may be a basis for non-awarding of the Agreement.)

Proposal Authorization and Acknowledgement Form

NAME OF PROPOSER _____

ORGANIZATION _____

1. The undersigned is a PROPOSER under this RFP and possesses the legal authority to submit this Proposal.
2. The undersigned is authorized to conduct all negotiations for and legally bind the PROPOSER in all matters relating to this Proposal submittal.
3. The undersigned has reviewed, understands, is able to comply with and agrees to be bound by the conditions described in this Proposal Authorization and Acknowledgement Form (Exhibit C) and this RFP.
4. The undersigned certifies that this Proposal is irrevocable until _____, 2014 (minimum of 120 days from submittal).
5. The undersigned acknowledges that the Agency reserves the following rights and options related to proposals submitted in response to the RFP:
 - Award an agreement for services described in this RFP.
 - Reject all proposals and not award an agreement.
 - Reject any proposal.
 - If during the course of negotiations with a selected PROPOSER, the AGENCY determines in its sole discretion that an acceptable Agreement cannot be negotiated, the AGENCY reserves the right to suspend negotiations with that PROPOSER and begin negotiations with another PROPOSER. Also, the AGENCY reserves the right to undertake simultaneous negotiations of the final Agreement with more than one PROPOSER.
 - Waive defects and/or irregularities in any proposal.
 - Request from any PROPOSER at any time during the evaluation process, clarification of any information contained in the proposal.
 - Conduct interview(s) with any PROPOSER(s).
 - Negotiate terms and conditions that are different from those described in this RFP and Agreement.
 - Contact references provided and seek information from any client with which the PROPOSER has done business.
 - Perform appropriate environmental review.
 - Take other such action that best suits the needs of the AGENCY and/or its citizens.

Proposal Authorization and Acknowledgement Form (continued)

6. Please select one:

_____ The undersigned has carefully reviewed the forms of Agreement contained in the RFP and is prepared to agree to the terms and conditions stated therein.

_____ The undersigned has carefully reviewed the forms of Agreement contained in the RFP and is prepared to agree to the terms and conditions of the forms with the proposed modifications attached hereto. (PROPOSER must attach any proposed modifications to the forms of Agreement.)

Print Name: _____

Title: _____

Organization: _____

Telephone: _____

Facsimile: _____

E-Mail Address: _____

Signature: _____

Date: _____

AGREEMENT FOR ORGANIC MATERIALS TRANSPORT SERVICES

This agreement ("Agreement"), dated as of _____, 2014 ("Effective Date") is by and between the Sonoma County Waste Management Agency, (hereinafter "Agency"), and _____, a [include description of Contractor, e.g., "a California Corporation", etc., if appropriate] (hereinafter "Contractor").

RECITALS

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

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

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

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

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

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

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

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

AGREEMENT

1 Definitions

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

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

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

"Agency Contract Manager" means the Agency's Executive Director or their designee. The Contract Manager may designate certain individuals or agents of the Agency as the Agency Contract Manager for

specific issues, projects, or requirements. In the event of a dispute between a designee and Contractor, the Contract Manager's determination shall be final.

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

"Collection" (or variation thereof) means the act of collecting Organic Materials from the Transfer Stations.

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

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

"Contractor" means [insert description] and its officers, directors, employees, agents, companies, and Subcontractors.

"Contractor's Proposal" means the proposal submitted by Contractor and received on [date] by the Agency in response to the Agency's RFP, which are included as Exhibit E and are incorporated by reference. Should any conflict arise between the Contractor's Proposal and this Agreement, the Agreement shall control.

"Disposal" or "Dispose" (or variation thereof) means the final disposition of Organic Materials at a Disposal Site.

"Disposal Site" means a facility for ultimate Disposal of Organic Materials. The facility must have a current solid waste facility permit from the California Department of Resources Recycling and Recovery for accepting and processing Organic Materials. The Agency-approved Disposal Site(s) are listed in Exhibit C.

"Effective Date" means [insert date matching above].

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

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) CERCLA; (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25110 et seq., 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

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

thereunder.

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

“**Organic Materials**” means those materials that will decompose and/or putrefy. Organic Materials include green waste and food scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with food scraps, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard.

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

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

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

“**Processing Site**” means any plant or site used for sorting, cleansing, treating or reconstituting Organic Materials to make such material available for beneficial use that is approved by the Agency.

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

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

“**State**” means the State of California.

“**Subcontractor**” means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this Agreement.

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

“**Transfer Station**” means a permitted facility owned by the County of Sonoma utilized to temporarily store, separate, recover, convert or otherwise process Organic Materials, and to load Organic Materials into transfer vehicles for Transport to the Disposal Site or an Approved Processing Site.

“**Transportation**” (or variation thereof) means the act of transporting or state of being transported.

2 Representations and Warranties of the Contractor.

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

2.2 No Litigation. To the best of Contractor’s knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court

or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

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

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

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

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

3 Scope of Services.

3.1 Contractor's Specified Services: Organic Materials Collection and Transportation. This Agreement is entered into for the purpose of Collecting Organic Materials from the Transfer Stations and Transporting such materials to the Agency-approved Processing Sites and/or Disposal Site(s). Contractor shall perform services as defined in Exhibit A, Scope of Services.

Contractor shall select Disposal Site(s) and secure sufficient capacity to Dispose of Organic Materials Collected under this Agreement, subject to Agency approval. Contractor shall provide the Agency Contract Manager, upon request, with documentation demonstrating availability of such capacity. Contractor shall pay all costs associated with Transporting Organic Materials to the Processing Sites and/or Disposal Sites as well as any Disposal costs. The Disposal Site(s) selected by Contractor not approved and listed in Exhibit C shall be approved in writing by the Agency Contract Manager at least ninety (90) days prior to use of such site(s). The Agency shall not compensate the Contractor for any increased Transportation and Disposal costs associated with the use of Disposal Site(s) different from the Disposal Site(s) approved as of the Effective Date.

The exact date of the implementation of the County and Republic Services, Inc's Master Operating Agreement is unknown as of the time of the execution of this Agreement. As the Master Operating Agreement affects need for Contractor's services, the Contractor shall not commence work until receiving a Notice to Proceed.

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

3.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Agency determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Agency, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Agency to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge

until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Section 6; or (d) pursue any and all other remedies at law or in equity.

3.4 Assigned Personnel.

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

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

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

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

3.6 Ownership of Organic Materials. Once Organic Materials are deposited by Contractor at a Disposal Site or Processing Site, such materials shall become the property of the Owner or operator of the facility.

4 Payment.

4.1 Contractor shall be paid _____ for services rendered in accordance with tasks detailed in Section 3.1 above and in Exhibit A and B, upon monthly submission of progress reports, verified claims and invoices. Payments shall be made in the proportion of work completed based upon progress reports to total services to be performed.

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

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

5 Term of Agreement.

5.1 The term of this Agreement shall be from Effective Date to February 1, 2017 unless terminated earlier in accordance with the provisions of Section 6 below.

6 Termination.

6.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, Agency shall have the right, in its sole discretion, to terminate this Agreement by giving thirty (30) days written notice to Contractor.

6.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Agency may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

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

7 Collection Standards

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

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

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

8 Vehicle Specifications.

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

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

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

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

9 Record Keeping and Reporting.

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

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

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

10 Indemnification.

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

foregoing indemnity is intended to operate as an Agreement pursuant to Section 42 USC §9607(e) of CERCLA and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify Agency from liability.

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

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

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

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

11 INSURANCE

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

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

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

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

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

11.1.5 Pollution Legal Liability insurance.

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

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

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

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

11.2.4 Employee Blanket Fidelity Bond: \$500,000 per employee, covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside); or, Commercial Crime Insurance with limits of liability of not less than \$1,000,000 per occurrence.

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

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

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

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

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

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

11.4.3 Employee Blanket Fidelity Bond or Commercial Crime Insurance should be endorsed to name the Agency as a loss payee.

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

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

11.6 Verification of Coverage. Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct the agent to provide the Agency with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the Agency before work commences. Upon request of Agency, Contractor shall immediately furnish Agency with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

11.7 Required Endorsements.

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

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

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

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

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

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

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

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

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

been named as an insured."

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

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

11.9 Other Insurance Requirements

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

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

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

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

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

11.10 PERFORMANCE BOND. On or before the Effective Date of this Agreement, Contractor shall file with the Agency a bond, payable to the Agency, securing the Contractor's faithful performance of its obligations under this Agreement and such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall

be five million dollars (\$5,000,000). The bond shall be executed by a corporation authorized to issue surety bonds in the State, with a financial condition and record of service satisfactory to the Agency.

12 Liquidated Damages

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

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

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

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

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

Before assessing Liquidated Damages, Agency Contract Manager shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. The Agency Contract Manager may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. Agency Contract Manager may, within ten (10) calendar days after issuing the notice, request a meeting with Contractor. Agency Contract Manager may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. Agency Contract Manager will provide Contractor with a written explanation of his or her determination on each incident(s) and non-performance prior to

authorizing the assessment of Liquidated Damages under this Section 12.4. The decision of Agency Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

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

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

13 Additional Covenants of Contractor.

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

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

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

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

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

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

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

14 Miscellaneous Provisions.

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

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

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

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

The partial or complete interruption or discontinuance of Contractor's services caused by one or more of the events described in this Section shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder

for any of the causes listed in this Section for a period of thirty (30) calendar days or more, the Agency shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) calendar days notice to Contractor unless Contractor has demonstrated, by the thirtieth (30th) calendar day, to the satisfaction of the Agency that the Contractor will resume services no later than the sixtieth (60th) day following the date service was interrupted or discontinued by Contractor.

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

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

Agency: Sonoma County Waste Management Agency
Attention: Patrick Carter
2300 County Center Drive, Suite B 100
Santa Rosa, CA 95403
Phone: (707) 565-3687
FAX: (707) 565-3701

Contractor: Name
Attention:
Address: Phone:
City, State Zip Fax:

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

14.5 No Waiver of Breach. The waiver by 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.

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

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

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

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

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

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

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

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

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

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

AGENCY: SONOMA COUNTY WASTE MANAGEMENT AGENCY

By: _____
Chair

CONTRACTOR:

By: _____

Name: _____

Title: _____

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

By: _____
Executive Director, SCWMA

APPROVED AS TO FORM FOR AGENCY:

By: _____
Agency Counsel

EXHIBIT A
SCOPE OF SERVICES

[TO BE INCLUDED IN FINAL AGREEMENT]

EXHIBIT B

BUDGET

[TO BE INCLUDED IN FINAL AGREEMENT]

EXHIBIT C
LIST OF APPROVED DISPOSAL SITES

[TO BE INCLUDED IN FINAL AGREEMENT]

EXHIBIT D
AGENCY RFP

[TO BE INCLUDED IN FINAL AGREEMENT]

EXHIBIT E
CONTRACTOR'S PROPOSAL

[TO BE INCLUDED IN FINAL AGREEMENT]