

**Draft Only**

\_\_\_\_\_ **WASTE/RECYCLING  
FACILITY OPERATION, TRANSPORT AND  
DISPOSAL AGREEMENT**

**DRAFT**  
2023

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**DRAFT**

**OBERLIN ROAD SOLID WASTE/RECYCLING  
FACILITY OPERATION, TRANSPORT  
AND DISPOSAL AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between **COUNTY OF SISKIYOU**, hereinafter called "County" and \_\_\_\_\_, hereinafter called "Contractor".

**WHEREAS**, pursuant to Siskiyou County Code Section 5-1.27, the Board of Supervisors of the County of Siskiyou, hereinafter called "Board", has determined that the public health, safety and welfare are best served by providing for the collection and disposal of residential and commercial garbage, rubbish and solid waste matter; and

**WHEREAS**, in the past various commercial haulers have transferred residential and commercial garbage, rubbish and solid waste matter collected in the County and in cities within the County to the facility previously known as the (Yreka or Black Butte) Landfill; and

**WHEREAS**, such landfill may be closed and County wishes to ensure there is a facility to receive residential and commercial garbage, rubbish and solid waste; and

**WHEREAS**, County has constructed a temporary transfer/recycling facility known as the Oberlin Road Solid Waste/Recycling Facility in the Yreka area to provide for the collection, transport and disposal of residential commercial garbage, rubbish and solid waste; and

**WHEREAS**, Contractor has operated the \_\_\_\_\_ Solid Waste/Recycling Facility pursuant to an agreement entered into on July 1, 2023 and County has exercised an option to renew the agreement for one five-year period; and

**WHEREAS**, County is desirous of entering into an agreement with Contractor to provide both operation of the transfer/recycling facility and transport of garbage, rubbish and solid waste to, and disposal at, a permitted sanitary landfill.

**WITNESSETH:**

That the parties hereto mutually agree to the terms and conditions hereinafter set forth.

**1.0 DEFINITIONS**

**TRANSFER/RECYCLING STATION**

An area for temporary storage of solid waste and recyclables designed for public dumping along with transfer hauler accessibility. Operation of the transfer/recycling station includes gate house and scales.

## **TRANSPORT**

The act of transporting waste from the transfer/recycling station to an approved landfill.

## **DISPOSAL**

Land filling of permitted waste in an approved landfill.

## **PERMITTED WASTE**

Wastes such as discarded materials from dwelling places, households, apartment houses, stores, office buildings, restaurants, hotels, institutions, and all commercial establishments, including waste or discarded food, animal and vegetable matter, paper, cardboard, wood, concrete, appliances, furniture, cans, glass, ashes, and boxes. Permitted waste also includes special waste, inert waste, commercial waste, residential waste, green waste and recyclables.

## **UNPERMITTED WASTE**

The term "unpermitted" waste as used includes hazardous waste, contaminants which might be injurious to personnel engaged in solid waste handling, including but not limited to liquids, auto bodies, acids, explosives, radioactive materials and septic tank pumping, and shall include any materials that may be prohibited from dumping by the regulations of the California Regional Water Quality Control Board, the California Integrated Waste Management Board, California Department of Toxic Substance Control, EPA, Enforcement Agency (Public Health) or any other public agency, or by operations of law, or wastes recycled or prohibited by County and the accepting landfill.

## **SPECIAL WASTE**

Tires, Paint, Freon appliances, electronic waste (e-waste), universal waste (u-waste), used oil, batteries, construction and demolition waste.

## **INERT WASTE**

Inert waste or debris is solid waste and recyclable materials that are source separated or separated for reuse and do not contain hazardous waste (as defined in CCR, Title 22, Section 66261.3 et seq.) or soluble pollutants at concentrations in excess of applicable water quality. Inert debris may not contain any putrescible wastes. Gravel, rock, soil, sand and similar materials, whether processed or not, that have never been used in connection with any structure, development, grading or other similar human purpose, or that are uncontaminated, are not inert debris. Such materials may be commingled with inert debris.

"Type A inert debris" includes but is not limited to concrete (including steel reinforcing bar embedded in concrete), fully cured asphalt, crushed glass, brick, slag, ceramics, clay and clay products. Type A inert debris is waste that does not contain soluble pollutants at concentrations in excess of water quality objectives and has not been treated in order to reduce pollutants.

## **ELECTRONIC WASTE (E-WASTE)**

Electronic wastes (e-wastes) are generated from homes and the workplace and contain



hazardous substances like lead and mercury. Electronic waste includes, but is not limited to, cathode ray tube (CRT) devices (including televisions and computer monitors); LCD desktop monitors; laptop computers with LCD displays; LCD televisions; plasma televisions; portable DVD players with LCD screens; and electronic devices.

**UNIVERSAL WASTE (U-WASTE)**

Universal wastes (u-wastes) are hazardous wastes that are generated by several sectors of society, rather than a single industry or type of business. Universal waste includes, but may not be limited to, batteries, fluorescent tubes (lamps), mercury wastes (thermometers and toys), and non-empty aerosol cans.

**COMMERCIAL WASTE**

Waste generated by accounts that are not residential.

**RESIDENTIAL WASTE**

Waste generated by accounts that are primarily dwelling units.

**GREEN WASTE**

Brush, lawn clippings, tree trimmings and other organics that will decompose and result in compost.

**RECYCLABLES**

The following materials, at a minimum, shall be considered recyclables: tin, appliances (white goods), ferrous and non-ferrous metals, aluminum, glass, cardboard, newspapers, wood wastes, metal cans (vegetable, fruit, bean, etc.) and electric motors.

**RECYCLABLE COMMINGLED MATERIALS**

Defined and segregated into the following categories: #1 polyethylene terephthalate (PET) plastic, #2 high density polyethylene (HDPE) plastic, #3 polyvinyl chloride (PVC) plastic, #4 low density polyethylene (LDPE) plastic, #5 polypropylene (PP) plastic, #6 polystyrene (PS) plastic, #7 other - any plastic not falling in the above categories. The above plastics shall be recycled as the market and infrastructure allows.

**2.0 SCOPE OF WORK**

To operate a County furnished transfer/recycling station and scale house located in that area known as Yreka, arrange for recycling of separated recyclables and recyclable commingled materials delivered to the station, receive and transport permitted waste, and dispose of permitted waste at a County approved landfill.

**3.0 TERM**

This Agreement shall become effective on July 1, 2023, and shall continue in effect until June 30, 2025, unless terminated earlier in accordance with Sections 21.0 or 22.0. At County's option, this Agreement may be extended \_\_\_\_\_

year periods upon terms and conditions to be negotiated at each renewal period. If County elects to exercise this right, it shall give Contractor written notice at least ninety (90) days prior to the expiration of the original term or any extension(s) thereof. If negotiations are not completed prior to the expiration date of the then current term, unless otherwise mutually agreed to between the parties, said agreement shall be deemed terminated and all obligations of the parties shall cease, save and except those obligations set forth in Section 37. During the period of negotiation, County shall have the right to advertise and solicit bids from other parties for operation of the Oberlin Road Solid Waste/Recycling Facility.

Notwithstanding the foregoing and the provisions of Section 22, after one year has expired from the commencement date of this Agreement, County, at its sole and absolute discretion, shall have the right to terminate said agreement upon thirty (30) days written notice, with or without cause.

#### 4.1 OPERATION OF TRANSFER/RECYCLING STATION

**General Provisions** - County has provided a temporary transfer station

A.

facility, and, in its discretion, may provide a permanent transfer station similar to those shown in **Exhibit A**. With respect to the temporary or permanent transfer station, the Contractor will be responsible to pay all associated utility costs, including but not limited to portable restrooms, electricity, phone service, water and heaters. All facilities shall be kept clean and provided with the necessary supplies at all times. The restroom shall be made available for use by the public. The Contractor shall staff this transfer station as needed to provide safe and efficient operations and uninterrupted service when open to the public. The Contractor shall use equipment as needed to prevent damage to the facility, to load waste from the tipping floor to the container. Contractor will be responsible for any structural damage caused by Contractor's mishandling of the waste when loading waste from the tipping floor to the containers. The Contractor shall also inspect waste as collected to assure only permitted waste is accepted. The Contractor is responsible for all maintenance, startup and utility costs associated with transfer station operations.

Commercial waste received shall be weighed at the scale house and the haulers will be charged by the Contractor in accordance with County established fees. However, the gate attendant reserves the right to weigh any load, including self-haulers, which appear to have a density greater than 300 lbs/cy, in which event, the charge will be a per ton fee. The Contractor shall record such weights in accordance with the weighing protocol set forth in **Exhibit B**. The Contractor shall provide weight slips from the disposal site.

The Contractor is responsible for all maintenance, startup and utility costs

associated with the scales and scale house operation.

- B. Receipt of Permitted Waste** - During transfer/recycling station receiving hours, Contractor shall only accept permitted waste. Contractor shall assume ownership of and title to all materials delivered to the station. Nothing in this Agreement shall be construed to mean that County guarantees that delivered materials shall comprise permitted waste or that County guarantees to deliver or cause to be delivered any specified tonnage of permitted waste. Contractor warrants that it will use its best efforts to identify and reject any materials other than permitted waste.
- C. Screening and Removal of Unpermitted Waste** - Contractor shall not accept unpermitted waste at the transfer/recycling station. Contractor acknowledges that it has indemnified County for releases of hazardous waste. Contractor may implement an unpermitted waste exclusion program in accordance with permits and applicable law in order to attempt to prevent acceptance of unpermitted waste at the transfer/recycling station. The terms and conditions of this program are subject to approval by the County. However, implementation of any such program shall not relieve Contractor of such indemnification obligations. Contractor shall remove all unpermitted waste from the tipping floor for safe disposal by Contractor at the Contractor's expense.
- D. Used Oil Facility** - Contractor shall operate in accordance with state law a used oil facility and receive from the public used oil, free of contaminants, during operating hours. Upon request, the public shall be paid four cents (\$.04) per quart for recycling oil at the facility. Reimbursement from the State shall be Contractor's responsibility. Cost incurred by Contractor for removal of non-contaminated used oil by a licensed used oil recycler shall be paid by Contractor. County agrees to provide for Contractor's use a double containment 1,000-gallon tank (or equivalent) onsite for storage of used oil received from the public.
- E. Hours of Operation/Office Hours** - The site shall be open to the public five days a week, including one weekend day, as set by the County, except New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day and Christmas Day. The days of operation need not be five (5) consecutive days. Operating hours shall be an eight (8) hour period as set by the County. When the closure on New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day or Christmas Day would result in closure of the transfer/recycling station for two consecutive days, the transfer/recycling station shall be open on the next succeeding day.

Contractor shall maintain an office at the \_\_\_\_\_ Solid Waste/Recycling

Facility open during transfer/recycling station receiving hours and equipped at a minimum with telephone and fax service and sufficient staff to address complaints.

- F. User Fees** - Contractor shall collect user fees in effect as of the date of award of this agreement and in accordance with Siskiyou County Code Sections 5-1.30.1, 5-6.102, and 5-6.104 attached hereto as **Exhibit 1B**. All fees collected at the scale house shall be retained by Contractor as full compensation for the work described in this Agreement. Contractor shall provide receipts to the public for all transactions. All office supplies required for the collection of County and Contractor user fees will be the responsibility of Contractor. All tire fees collected shall be retained by Contractor as full compensation for recycling of all tires. Contractor shall accept tires on rims. Contractor may provide for removal of rims for additional fees approved by County. Income from the sale of salvage items shall be retained by Contractor.

No fees may be charged by Contractor other than those approved by the County.

- G. Frequency of Loading and Removal** - Contractor shall not allow any waste to remain on the tipping floor overnight or on site for more than 72 hours total or any lesser period as may be required by applicable law, including permits.

- H. Inert Waste Cell** – Currently included in the operational permit at the Yreka Landfill is an inert cell. Past practice has been to allow inert waste to be placed at this special location and to charge the customer the loose volume fee rather than by weight. Current regulations do not require daily cover in this area. The Contractor shall continue this practice. The location of the inert cell may change as the existing landfill is someday formally closed. The County will be responsible for any one-time construction costs that may be required to establish the new inert cell, however, the Contractor shall be responsible for the ongoing maintenance requirements.

- I. Maintenance and Testing Scales** - Contractor shall maintain, test, and calibrate the scales in accordance with Business and Professions Code Section 12100 et seq. or at least once a year, at the Contractors expense. Prior to any test, Contractor shall provide at least one-day notice to County unless such test is conducted by the State or other regulatory entity without advance notice to Contractor. Contractor shall promptly provide County with copies of test results.

Contractor shall further test and calibrate the scales within three days of receiving a written request by County. If such test results indicate that the scale or scales complied with applicable law, County will reimburse

Contractor the direct costs of such tests. If such test results indicate that the scale or scales did not comply with applicable law, Contractor shall pay the direct costs for such tests as well as the cost for all maintenance and repairs required to bring the scales into compliance with applicable law. In addition, all weight measurements recorded and contract prices calculated, charged, and paid, as the case may be, from the date of such request until such time as the scales are in compliance with applicable law, shall be adjusted and corrected consistent with the results of such test.

## 5.0 PERMITTED USES

Contractor shall not use or permit the use of the \_\_\_\_\_ Solid Waste/Recycling Facility for any purpose other than that contemplated by this Agreement without written consent of County. Contractor shall not store on site any equipment or materials that are not necessary for the operation of the work contemplated by this Agreement.

## 6.0 GENERAL TERMS AND CONDITIONS

- A. Turnaround Time of Waste Collection Vehicles** - Contractor shall ensure that vehicles delivering permitted waste do not disrupt the flow of traffic. Contractor shall manage traffic to separate self-haulers from commercial vehicles and protect Contractor's employees who are working on the tipping floor from all vehicles delivering materials.
- B. County Right to Inspect Facilities** - County shall have the right, but not the obligation, to observe and inspect \_\_\_\_\_ Solid Waste/Recycling Facility operations. In connection therewith, County and its representatives authorized by County shall have the right to access the \_\_\_\_\_ Solid Waste/Recycling Facility at any time and speak to any of Contractor's employees; provided that they shall comply with Contractor's reasonable safety and security rules and shall not interfere with the work of Contractor or its subcontractors. Upon County request, Contractor shall make specified personnel available to accompany County employees on inspections. Contractor shall ensure that its employees cooperate with County and respond to County's inquiries.
- C. Security** - Contractor shall maintain security at the site during the term of the Agreement reasonably adequate to protect County's property including buildings and equipment. Contractor will be responsible for ensuring the gate is locked when the station is not open to the public and that the security lights provided are operational and properly maintained. The County will not be responsible for vandalism to Contractor owned equipment.
- D. Repair and Maintenance of Facilities** - Contractor shall diligently maintain

the \_\_\_\_\_ Solid Waste/Recycling Facility in good working order and make any needed repairs in a timely manner. Such work shall include cleaning and painting the buildings, maintaining spare parts inventory, and generally performing periodic maintenance. Contractor shall maintain the aesthetic appearance of the \_\_\_\_\_ Solid Waste/Recycling Facility. Contractor shall provide snow removal and ice control services as necessary on the access roads and to all other areas needed on site for the safe and efficient operation of the facility. The Contractor shall use appropriate snow removal equipment that will not damage the road surface. Ice control measures shall include chemical applications as needed to ensure the public areas are ice free. Chemicals used shall be first approved by the County. The Contractor will not be responsible for normal surface treatment of the asphalt concrete but will be responsible for damage done by Contractor's negligence. The County highly recommends rubber guards on the bucket blade.

- E. Equipment, Fueling and Maintenance of Equipment** - Contractor shall provide equipment as needed to operate the facility in a safe and efficient manner. Fueling on site shall be done in accordance with applicable State and local regulations. Maintenance of equipment on site may be allowed if it is done in a manner acceptable to County and does not result in contamination of any soils.
- F. Personnel** - Contractor shall hire and train qualified and competent employees including managerial, supervisory, clerical, maintenance, and operating personnel in numbers necessary and sufficient to perform Contractor's obligations under this contract. Contractor shall train its staff to perform their work in a safe and efficient manner and ensure that each staff person treats permitted users, including self-haulers, County representatives, commercial haulers and other members of the public with courtesy. Contractor shall comply with applicable laws prohibiting employment discrimination including equal employment opportunity requirements. County shall have the right to require the removal of any of Contractor's employees who are habitually wanton, profane, negligent or discourteous in the performance of their duties. The \_\_\_\_\_ Solid Waste/Recycling Facility shall be staffed on a full time basis (not less than three (3) employees) when the facility is open to the public. The Contractor shall complete the Personnel and Subcontractor Schedule included as **Exhibit C**.
- G. Non-Prevailing Wage Determination** - The Contractor will not be required to pay prevailing wage for the operation of the transfer/recycling station. A copy of this determination is included as **Exhibit D**.
- H. Emergency Operations** - The Contractor shall not be required to have an emergency generator on site. However, in the event of electrical failure, the

Contractor shall make every attempt to continue normal operations in a safe and effective manner.

- I. **Safety** - Contractor acknowledges that worker safety and fire prevention is of critical importance to the County and shall conduct transfer/recycling station operations in a safe manner, in accordance with applicable law, and standard practices in the waste management industry. Contractor will require that all personnel wear safety equipment as required by applicable law. Contractor will train all employees in safety procedures. Contractor shall direct traffic at the site to assure safe travel, unloading, and exiting. Contractor shall provide and maintain all necessary and appropriate fire control equipment, tanks, pumps, fire hoses and extinguishers. The Contractor shall require employees to wear uniforms that are kept neat and convey professional appearance to the public. Uniforms shall display the name of the Contractor and the employee name.
- J. **Non-Resident Contractor** - The State of California Franchise Tax Board requires that whenever payments are made to a non-resident, independent contractor in excess of \$1,500 for services rendered, 7 percent (7%) of the gross amount must be withheld. A non-resident is anyone who is not a resident of California. A corporation is also subject to the withholding requirements if it is neither incorporated nor qualified to do business in the State of California. Unless the Franchise Tax Board has authorized a reduced rate or waiver of withholding and County is provided evidence of such reduction/waiver, all non-resident contractors will be subject to the withholding. It is the responsibility of Contractor to submit the Waiver Request (Form 588) to the Franchise Tax Board as soon as possible in order to allow time for the Franchise Tax Board to review the request.
- K. **Complaints** - Contractor shall promptly and politely respond to complaints, including complaints from County's collection haulers, County staff, or the public at large, related to Contractor's performance or non-performance and use reasonable business efforts to resolve such complaints. Contractor shall keep a log of all complaints, whether such complaint was written or oral. The complaint log shall indicate the date and time of such complaint, the nature of the complaint, the name of the complainant, to whom the complaint was made and what action was taken, if any, to address the complainant's concerns. A copy of this complaint log shall be furnished to County on a monthly basis commencing with the first full month of operation under this Agreement and continuing thereafter for the entirety of this Agreement or any extensions thereof.
- L. **Accidents and Emergencies** - Contractor shall retain responsibility for all injuries, accidents, and other mishaps associated with its performance obligations including personal injury resulting in in-patient or out-patient

medical treatment, death, or damage to any real or personal property. Contractor shall promptly report personal injury or personal property damage to County orally, followed by written notice within three working days, including details of witness statements, if any.

Contractor shall develop and institute an emergency operations plan and amend from time to time as necessary but no less than annually, following opportunity for County review and comments. Contractor shall design such plan to mitigate and correct hazards that may arise due to accident or disruption of transfer/recycling station operation, transport or disposal services including property damage and traffic disruption and shall include any business plan for emergency response to the release or threatened release of hazardous material in accordance with applicable law.

The parties shall designate persons who shall be available on a twenty-four-hour basis, including their telephone numbers, as named in **Exhibit E**.

**M. Possessory Interest Taxation Notice** - Notice is given, pursuant to the provisions of Section 107.6 of the Revenue and Taxation Code, that Contractor's interest in this agreement may constitute a possessory interest and that said interest or interests may be subject to a possessory interest property tax or similar tax. Payment of all such taxes will be the sole responsibility of Contractor.

**7.1 NUISANCES**

**A. Litter, Vectors, and Large Animals** - Contractor shall maintain the transfer/recycling site in a neat and orderly condition so as to discourage rodents and insects, cleaning permitted waste from the site at least daily or as frequently as necessary to comply with this section. In the event of apparent vector activity and/or if directed by County, Contractor shall immediately or in no event within more than 24 hours, implement additional vector control measures sufficient to remedy the vector nuisance at no additional costs to County.

Contractor shall be responsible for all cleanup of litter and debris on site and along roads near the site, including waste left at the site entrance gate. Contractor shall use reasonable business efforts to minimize the blowing of litter.

Contractor is responsible for making reasonable efforts to discourage large animals and other pests from feeding or staying on site.

**B. Odor** - To minimize odors, Contractor will direct all users to discharge permitted waste inside the building. Contractor shall load all permitted waste



having potential for causing odor into containers expeditiously upon receipt thereof.

- C. Noise** - Contractor shall muffle all on-site vehicles/equipment operated by Contractor as required by applicable law.
- D. Dust** - Contractor shall diligently suppress dust as required by applicable law to protect the health and safety of all persons on site including users and Contractor=s employees.

## **8.0 OPERATIONS AND MAINTENANCE MANUAL**

The Contractor shall submit to the County for review and approval an Operation and Maintenance Manual in accordance with **Exhibit F**. On or before July 1 of each year following the Agreement date, Contractor shall review the Operations and Maintenance Manual and revise it to reflect any changes in transfer/recycling station operation procedures during the previous year and submit a copy thereof to County. Such changes shall be reviewed and approved by County prior to implementation of such change(s).

## **9.0 SPECIAL WASTE**

Contractor shall handle special wastes in accordance with County and State requirements.

## **10.1 SALVAGING AND RECYCLING**

- A.** Salvaging and recycling shall be done by Contractor only. All items shall be removed from the site in accordance with County and State requirements. Recycling shall be conducted by Contractor regardless of profitability. Recycled materials shall be removed as frequently as necessary to maintain areas for safe public dumping. The following materials, at a minimum, shall be recycled by the Contractor: tin, appliances (white goods), ferrous and non-ferrous metals, aluminum, glass, cardboard, newspapers, and wood wastes. The public shall be directed by Contractor to designated unloading areas for disposal of salvage and recyclables.
- B.** Revenue generated from the sale of recyclables may be retained by Contractor.
- C.** The parties to this agreement intend and hereby agree that their relationship shall be that of independent contractors and specifically with respect to the sale of recyclable materials. Nothing contained herein shall be construed to create any employment, partnership, joint venture, co-ownership or agency relationship between the parties, and Contractor shall not by any action allow

any presumption to arise that a relationship of partnership or agency exists between the parties.

- D. Contractor shall not make any warranties or representations to a purchaser of recyclables regarding the recyclable materials and shall indemnify and hold County harmless from any claims from and against all liabilities to which any of them may be subjected by reason of or resulting directly or indirectly from the sale of recyclables by Contractor to third party purchasers.

## 11.1 TRANSPORT/CONTAINER REQUIREMENTS

- A. **Container Availability** - Contractor shall make ready and available containers and tractor/trailers necessary for operation and transport of all permitted waste. Contractor shall acquire, supply, operate, maintain, repair, and replace containers at its own cost and expense which are compatible with the transfer/recycling station.

Contractor shall transport loaded containers from the transfer/recycling station to the disposal facility and return such unloaded containers to the transfer/recycling station with sufficient regularity and frequency to maintain container availability necessary to comply with odor requirements and applicable law including limitations on the storage of permitted waste. Contractor shall minimize storage of permitted waste at the transfer/recycling station and avoid creation of any nuisance.

Contractor shall keep on site, or readily available, a rubber tired piece of equipment that will exchange waste containers as needed, to provide uninterrupted service for use of the facility by the public.

- B. **Litter Prevention** - Contractor shall enclose, cover, and/or seal all containers as necessary to contain permitted waste and prevent spilling or scattering of permitted waste during transportation. If any material is spilled or scattered, Contractor shall pick up the material within twenty-four (24) hours. If Contractor does not pick up such material within such period County may, but is under no obligation, pick it up or cause it to be picked up and offset County's direct costs thereof from the contract price.
- C. **Additional Waste Containers** - Contractor shall also provide waste containers at a convenient location to expedite overflow customers, elderly, or those customers who may experience difficulty backing in to the normal tipping floor.
- D. **Container Storage and Maintenance** - Contractor may park, store, maintain, and repair containers on the site provided Contractor shall ensure

that such containers do not interfere with or pose any hazard to user's vehicles entering and exiting the transfer/recycling station and site. Storage of containers or other equipment on site will be limited to that needed for the safe and efficient operation of this work.

- E. Equipment, Fueling and Maintenance of Equipment** - Contractor shall provide equipment as needed to transport waste in a safe and efficient manner. Fueling on site shall be done in accordance with applicable State and local regulations. Maintenance of equipment on site may be allowed if it is done in a manner acceptable to County and does not result in contamination of any soils. All equipment used in the permanent transfer station shall have rubber tracks or tires. Push buckets and blades shall have installed rubber guards to prevent metal from contacting the concrete tipping floor.
- F. Transportation Permits** - Contractor shall secure and maintain all permits required for transport services by applicable law. As of the date hereof, Contractor has identified and listed such permits in **Exhibit G** and shall promptly update such exhibit to reflect any changes therein. Contractor shall supply County with copies of any such permits (including prior permits, current permits, or proposed renewals thereof) promptly upon request and maintain a file copy on site at all times.
- G. Fees and Fines** - County is not responsible for fees or fines assessed including but not limited to overweight fees and traffic violations in the transportation of permitted waste.

## 12.1 DISPOSAL FACILITY

- A.** Contractor shall transport containers from the transfer/recycling station to the disposal facility, dispose of the contents thereof at the disposal facility, and return containers to the transfer/recycling station. As of the commencement of operations, the disposal facility to be used by Contractor is Dry Creek Landfill near Medford, Oregon or Anderson Landfill near Anderson, California, or any other permitted disposal facility acceptable to County. Transports to the disposal facility shall be of sufficient regularity and frequency so as to maintain container availability at the transfer/recycling station. Nothing in this Agreement shall excuse Contractor's obligation to provide such disposal services. Should uncontrollable circumstances render the disposal facility unavailable, Contractor shall take all reasonable steps to dispose of waste received at the transfer/recycling station until said facility becomes available. Contractor shall comply with the unloading and disposal protocols required by the disposal facility including receiving and weighing containers, maintaining manifests and bills of lading, hazardous waste load checking, tipping, spreading and compacting permitted waste, covering

permitted waste, and returning containers.

- B.** Contractor shall dispose of waste at a facility that complies with the provisions of the Federal mandated Subtitle D Landfill requirements, individual State requirements, and all applicable legal requirements with regard to receiving and handling waste disposal. Contractor shall ensure disposal capacity at the disposal facility sufficient, at a minimum, to provide disposal services to County for at least sixteen (16) years, the maximum term of this Agreement, with extensions pursuant to Section 3.0. Disposal facility specifications shall be approved by the County and shall include a description of liner, leachate detection, collection, removal and treatment, gas extraction, surface water, erosion control, and other systems. The County has reviewed the following two sites and believes they meet the required specifications: Anderson Landfill near Anderson, CA and the Dry Creek Landfill near Medford, OR.

In the event Contractor is not the operator of the disposal facility receiving such waste, Contractor shall obtain evidence from the operator of said landfill that it complies with the provisions of the Federal mandated Subtitle D Landfill requirements and individual State requirements. Such evidence shall be furnished to County upon the commencement of this Agreement and thereafter on the anniversary date for the entire term of this Agreement and any extensions thereof.

- C.** Contractor shall secure and maintain all permits for disposal services required by applicable law. Contractor shall complete **Exhibit H**, Disposal Permits, and shall supply County with copies of any such permits promptly upon execution of this Agreement.

Contractor shall also secure and maintain copies of the annual inspection conducted by the North Coast Regional Water Quality Control Board (NCRWQCB) and provide same to County.

**D. Disposal Facility Closure and Post-Closure Care**

- 1. Sole Contractor Responsibility** - Contractor hereby releases County from any obligation to provide for closure or post-closure funding and care of a disposal facility used pursuant to A or B above regardless of the accuracy or adequacy of such estimates. Contractor shall defend, indemnify, and hold harmless County therefore in accordance with Section 15.
- 2. County as Third Party Beneficiary** - Contractor shall name County a third party beneficiary of all indemnification provisions of Contractor by disposal facility subcontractors under disposal facility subcontracts.

Contractor shall make disposal facility subcontracts assignable, without cost adjustments, to County in the event of default by Contractor.

## 13.1 RECORDS AND REPORTING

### A. Records

1. **General Requirements** - Contractor shall maintain at its office at the transfer/recycling station or other place acceptable to County full and complete accounting books and records or copies thereof, prepared in accordance with generally accepted accounting principles, reflecting its revenues and expenses of fulfilling its performance obligations. Contractor shall make operational and business records available to County during transfer/recycling station receiving hours. County may audit such books and records at its own expense upon five (5) working days notice.

Contractor shall keep daily, accurate and complete records as set forth in **Exhibit I** in paper, electronic, magnetic, or other media in sufficient detail to allow Contractor to calculate and County to corroborate the amount of contract price, any damages, and other amounts hereunder, and to determine compliance with performance guaranties and all other provisions hereof. All computations, records, files, plans, correspondence, reports, drawings, designs, data, and photographs prepared by or possessed by Contractor relating to performance obligations shall be considered the property of County and upon County's written request, Contractor shall furnish such records to County no later than ten days after request thereof. Contractor shall preserve copies of such records for the entire term of this Agreement, any extensions thereof, and for a period of five years following termination of the Agreement. Unless requested sooner by County as set forth above, Contractor shall, upon termination of this agreement, deliver copies of all such records and other materials to County, which obligation shall survive the termination hereof in accordance with Section 37.

2. **Financial, Weight and Volume Records Audits** - On or before August 1 of each contract year Contractor, at its sole cost and expense, shall cause an audit of all volume records, transfer weight and corresponding tare weights for all transport vehicles and shall cause such auditor to provide County with a copy of such audit together with supporting documentation, within ten (10) days of the completion of such audit. Such audit shall be conducted by a Certified Public Accountant which has been agreed to by County,

County may observe such auditing procedures, confer with such accountant, and have access to Contractor's records.

3. **Records Retention** - During the term of this Agreement or any extension thereof, and continuing for a period of five years following termination of the Agreement, or any extension thereof, Contractor shall maintain or obtain records of all documentation applicable to disposal facility development, operation and maintenance, and closure and post-closure maintenance submitted by Contractor to or received by Contractor from any federal, state or local governmental agencies, including Contractor's annual reports to regulatory agencies, operation, closure and post-closure plans, results of monitoring tests, any citations, permit violations and assessed penalties or fines, and regulatory inspection reports.

**B. Reports** - Contractor shall submit to County a monthly transfer/recycling station operations report containing the information listed in **Exhibit J**, Monthly Reports Requirement. Contractor shall supply County with additional information and documentation within thirty days of County's request describing the information requested with reasonable specificity. County shall notify Contractor within thirty (30) days after receipt of such report or within thirty (30) days after receipt of any additional requested information of any dispute as to the accuracy of the report. On or before September 1 of each contract year, Contractor shall submit to County a transfer/recycling station operations report summarizing the monthly reports for the previous contract year in a format satisfactory to County.

**C. Inventory** - Attached as **Exhibit K** is Contractor's inventory showing all Contractor's personal property and any fixtures including Contractor-owned equipment and containers Contractor intends to use in transfer/recycling station operations, and transport and disposal services, including type, capacity, approximate age, leases, or other documents that encumber or limit Contractor's interest in such property, and other information requested by County.

## 14.1 INSURANCE

### A. Types of Insurance Coverage

Contractor shall procure and maintain for the duration of the contract 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 Contractor, his agents, representatives, employees or subcontractors:

1. Insurance Services Office Commercial General Liability coverage

(Occurrence Form CG0001 185 or Insurance Services Office Form Number GL 0002) covering Comprehensive General Liability and Insurance Service Office form Number GL 0404 covering Broad Form Comprehensive General Liability.

2. Insurance Services Office Business Auto Coverage Form Number CA 0001 0187 covering Automotive Liability, Code 1 “any auto”.
3. Workers Compensation Insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

**B. Minimum Liability Limits**

1. **General Liability:** Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is issued, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrent limits.

The insurance required by this subsection shall include:

- (a) Premises operations;
- (b) Independent Contractor’s Protective;
- (c) Products and Completed Operations, protecting against possible liability resulting from use of recyclable materials by another person;
- (d) Personal Injury Liability with Employment Exclusion deleted
- (e) Broad Form Blanket Contractual with no exclusions for bodily injury, personal injury or property damage

2. **Automobile Liability:** Two Million Dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.
3. **Worker’s Compensation and Employers Liability:** Worker’s Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$2,000,000 per accident.

**C. Policy Endorsements** - The following endorsement must be attached to the policy:

The County of Siskiyou, its agents, officers, and employees shall be named as additional insured with regard to general liability and automobile coverages. The Contractor’s insurance coverage shall be primary insurance as respect to the County and accepting landfill, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by

the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute to it.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the County.

**D. Deductibles and Self-Insured Retention** - Any deductibles or self-insured retention must be declared to and approved by the County. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the County, its officers, officials, employees and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**E. Acceptability of Insurers** - Insurance is to be placed with insurers admitted to do business in the State of California and possess at least a Best's A: VII rating or be with a company acceptable to the County of Siskiyou. The policy shall not contain the so-called "x", "c" or "u" exclusions.

The cost of providing insurance shall be at Contractor's expense. Evidence of all insurance and additional insured endorsement shall be furnished to County at the time Contractor executes this Agreement. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

**F. No Liability for Loss or Damage** - In the event Contractor's equipment located on the premises is damaged, irrespective of the cause, or in the event Contractor is unable to perform the obligations hereunder due to the events set forth in Section 27, County shall not be liable therefore and Contractor shall have no claim or right against County for the costs of repair, replacement, or loss of business. This clause is intended as a complete release of liability in favor of County, including without limitation all claims whether known or unknown, liquidated or unliquidated, contingent or absolute. Contractor has knowledge of and understands the terms and effect of California Civil Code Section 1542, and voluntarily waives the benefit of the terms of that statute.

## 15.1 INDEMNIFICATION AND DEFENSE

**A. Indemnification** - Contractor shall indemnify and hold harmless County and County's related parties (defined in Section 16) and each and every one of them from and against all liabilities (defined in Section 16) to which any of them may be subjected by reason of or resulting directly or indirectly from



actions or inactions of Contractor or Contractor's related parties (defined in Section 16) performed or occurring under or in connection with this Agreement, except for County's actions, whether or not such liabilities are litigated, settled, or reduced to judgment and whether or not such liabilities are caused in part by any wrongful or negligent act, error or omission of any party indemnified hereunder; provided that if a final decision or judgment or settlement approved by County allocates liability by determining that any portion of damages awarded is attributable to a wrongful or negligent act, error, or omission of County and/or County's related parties, County shall pay such portion of damages.

**B. Defense** - Contractor shall defend with legal counsel acceptable to County any action, claim, or suit which asserts or alleges any liabilities as defined in Section 16 whether well founded or not, arising or resulting in whole or in part, directly or indirectly, from actions or inactions of Contractor or Contractor's related parties as defined in Section 16 or of County and/or County's related parties as defined in Section 16 performed or occurring under or in connection with this Agreement. County reserves the right to retain at its own cost and expense co-counsel and Contractor shall direct Contractor's counsel to assist and cooperate with such co-counsel with respect to such defense.

**C. Hazardous Waste** - Without limiting Contractor's obligation to indemnify County in accordance with Subsection B above, Contractor shall indemnify, hold harmless, protect, and defend County with legal counsel acceptable to County or co-counsel selected by County at Contractor's sole cost, from and against all liabilities as defined in Section 16, paid, incurred, or suffered by, or asserted against County in a judicial, administrative or regulatory forum, or otherwise, whether well founded or not, arising or resulting in whole or in part, directly or indirectly, from actions or inactions of Contractor or Contractor's related parties as defined in Section 16 or of County and/or County's related parties for any condition of the transfer/recycling station, (including the land upon which such transfer/recycling station is located,) containers (including transfer trucks, or other vehicles transporting such containers), related to hazardous or toxic substances, including any one or more release or threatened release of any materials (including hazardous waste), excepting known pre-existing conditions, if any. This indemnity by Contractor is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 to insure, protect, hold harmless and indemnify County from liabilities in accordance with this Section. County does not waive or surrender any other indemnity or remedy available to it under applicable law and Contractor shall be strictly liable to County for hazardous materials conditions including any repair, cleanup, or detoxification thereof or preparation and implementation of any removal, remedial, response, closure, or other plan with respect

thereto as required by applicable law.

## 16.0 DEFINITIONS FOR PURPOSES OF DEFENSE AND INDEMNIFICATION

**“County and County’s Related Parties”** includes County and its members, and their elected officials, officers, employees, contractors, subcontractors, consultants, agents, assigns and volunteers and each and every one of them.

**“Liabilities”** means liabilities, lawsuits, claims, judgments, demands, clean-up orders, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss, penalties, and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorney’s fees (whether County’s or Contractor’s staff attorneys or outside attorneys) and court costs, whether under State or Federal law except for liabilities caused by the sole negligence or willful misconduct of the indemnified party.

**“Contractor Activities”** means Contractor’s performance obligations including loading of permitted waste into containers, operation and supervision of Contractor’s equipment activities; load checking to prevent unpermitted waste from entering containers; operation and supervision of container storage and movement on site; transporting of permitted waste to disposal facility; environmental impacts of transportation, operation and supervision of disposal facility; environmental impacts of disposal facility; and all other activities of Contractor or Contractor related parties in connection with this Agreement.

**“Contractor and Contractor’s Related Parties”** includes Contractor, guarantor, and their respective officers, directors, shareholders, members, partners, agents, employees, subcontractors, consultants, licensees, invitees, or affiliates.

**“Affiliates”** means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, Contractor where construction or interpretation of A control shall be governed by Rule 144 of the Securities Act of 1933. Contractor shall use best efforts, or cause such persons to use best efforts, to provide County’s legal counsel all reasonably necessary information relevant to such persons including proper and legal corporate names and relationship (or lack thereof) to Contractor articles of incorporation, certificates of good standing, and other documentation related directly or indirectly to alleged liabilities.

## 17.1 BONDS

**A. Performance Bonds** - Contractor shall secure and throughout the term hereof maintain in full force and effect a performance bond in an amount not less than Five Hundred Thousand Dollars (\$500,000) or a combination of

bonds, and/or cash and/or an instrument of credit from one or more financial institutions subject to regulation by the Federal government and pledging that the funds secured by the instrument of credit are on deposit and guaranteed for payment, which together meet this performance security obligation with respect to transfer/recycling station operation, transport services, and disposal services. Contractor shall procure such bond from a surety admitted to do business in the State of California and the bond shall be in the form attached hereto as **Exhibit L**. The instrument of credit shall be in a form acceptable to County.

Simultaneously with the annual or other renewal of such bond, or a substituted bond, Contractor shall file with County evidence of such renewal. If an instrument of credit constitutes a portion of the performance security obligation, said instrument of credit shall provide that such funds are to remain available for the life of this agreement, unless said instrument of credit is replaced with a bond in lieu of the instrument of credit.

County may review performance bond coverage levels every five years commencing from the date of this Agreement. In connection with such review, Contractor shall provide County with quotes on the increased (or decreased cost), if any, associated with County's request for adjusted levels or amounts of coverage. Upon request of County, Contractor shall provide documentation including letters from its bond brokers that any such increased (or decreased) premium cost is attributable solely to the requested adjusted levels or amounts of such coverage and shall adjust the per ton contract price. Such price adjustment shall become effective on the first monthly price invoice date occurring after Contractor pays the adjusted premium. Contractor shall secure and maintain the directed levels or amounts of coverage within sixty days of County's direction thereof.

- B. Labor and Materials Bond** - Contractor shall secure and throughout the term hereof maintain in full force and effect a labor and materials bond in an amount not less than One Million Dollars (\$1,000,000.00) with respect to transfer/recycling station operation, transport services, and disposal services. Contractor shall procure such bond from a surety admitted to do business in the State of California and such bond shall be in the form attached hereto as **Exhibit M**. Simultaneously with the annual or other renewal of such bond or securing of substitute bond, Contractor shall file with County evidence of such renewal.

## 18.1 CRIMINAL ACTIVITY

Should Contractor, its subcontractors hereunder, or any of their respective employees, officers or directors have criminal conviction of any offense relating to solid waste activities from a court of competent jurisdiction with respect to any of the

following:

- A. Civil fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement,
- B. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency in that officer or director's or Contractor's employee's official capacity,
- C. Embezzlement, racketeering, false claims, false statements, forgery, falsification, or destruction of records, obstruction of justice, receiving stolen property, or theft,
- D. Conviction for any other crime indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contractor or its officers or directors,

or, should Contractor or any of its respective officers or directors have made an admission of guilt or pled nolo contendere to the conduct described in A-D above, which is a matter of record, then Contractor shall give County notice of such event and each employee, officer, or director, as the case may be, of Contractor or its subcontractors responsible for such proscribed conduct shall be promptly replaced and shall not be employed, hired, or retained in any other business relationship with County. Contractor shall have fifteen days—notice and opportunity following such conviction to present evidence in mitigation thereof and on and after such fifteenth day if such employee, officer or director is not promptly terminated or replaced, sanctions, temporary suspensions, or any other condition deemed appropriate short of termination shall be imposed by County as it shall deem proper.

County further reserves the right to pursue any and all appropriate remedies that may be available to it including, but not limited to, false claims actions.

## 19.1 CONTRACT PRICE/PAYMENT PROCEDURES

- A. **Contract Price** - The Contractor shall pay the County a base rate of [number form] [written form to be paid in two equal payments in September and May of each year. In addition to this base payment, the Contractor shall pay the County (insert number percentage) (insert written percentage) of the user fees collected by the Contractor at the solid waste facility. Payments shall be paid at the end of fourth quarter (June 30) payment must be received by July 15.

The remaining retained user fees shall be deemed compensation for all of Contractor's direct costs and indirect costs, including tipping fees at the landfill, plus profit of fulfilling and complying with its performance obligations for operation of the Transfer/Recycling Station, scale house, transport of

waste and disposal of waste including labor (inclusive of fringe benefits), costs of recycling, administration, telephone/telefax, fuel and utilities, equipment and container repair and maintenance, container and Contractor-owned equipment replacement, building maintenance and repair, supplies, audit costs, insurance and bonds, and taxes. Contractor will not solicit or accept any money or other compensation, including gratuities, from any other person with respect to its performance obligations, except as otherwise provided herein.

- B. Payment Procedure** – Payment shall be made in accordance with the schedule detailed in Section 19A. Siskiyou County General Services Department, 190 Greenhorn Road, Yreka, CA 96097.
- C. Payment Implications** - Contractor agrees that any payment under Section 19A shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, subcontractors, agents, and consultants for the services performed hereunder nor shall such payment be deemed to be an assumption of responsibility or liability by County for any defect or error in such services.

## **20.0 FAILURE TO MEET PERFORMANCE OBLIGATIONS**

If Contractor does not perform in accordance with the terms contained in this Agreement, it shall pay County compensatory damages as set forth below. County may offset them from any additional compensation that may be payable by County to Contractor under the terms of this Agreement. If Contractor does not perform its performance obligations and fails to cure non-performance within a thirty (30) day period following notice by County or if any other Contractor defaults defined in Section 21B occur then County may exercise its remedies listed in Section 21C, including terminating this Agreement in whole or in part, suspending this Agreement, assessing compensatory damages, seeking specific performance of Contractor's performance obligations, or bringing suit against Contractor. County may also terminate or suspend the Agreement upon the additional events listed in Section 22A. Upon termination, Contractor is obligated to vacate the transfer/recycling station and remains liable to pay outstanding damages in accordance with Section 22C(2). During suspension of the Agreement, County retains the right to perform Contractor's performance obligations in accordance with Section 22B.

## **21.1 COMPENSATORY DAMAGES, DEFAULTS AND REMEDIES**

### **A. Failure to Meet Certain Performance Obligations**

- 1. Certification** - On or before the 15<sup>th</sup> day of each month during the term of this Agreement or any extension thereof, Contractor shall certify to County that it has met its daily performance obligations for

the preceding calendar month together with supporting documentation and calculations. If Contractor cannot so certify Contractor shall pay compensatory damages, as follows:

- (a) Any consequential fines and penalties assessed on County, including those by the California Integrated Waste Management Board and other regulatory agencies, resulting from Contractor's failure to meet requirements of permits and applicable law with respect to transfer/recycling station operations, transport services and/or disposal services
- (b) Any damages, loss, liability, penalty, and fines incurred by County as a result of any declaratory or injunctive relief action claimed by a third party as a result of Contractor's failure to meet its daily performance obligations.

If Contractor does not pay any such damages set forth in (a) or (b) above to County within fifteen (15) days after written notice to Contractor by County, County may (i) withhold such amounts from any additional compensation monthly payments that may be due Contractor or (ii) declare a Contractor default.

## **B. Default**

Each of the following shall constitute an event of default hereunder:

1. **Failure to Transfer, Transport and/or Dispose of Permitted Waste.** Contractor fails to accept all permitted waste delivered to the transfer/recycling station or transport to, and dispose of such waste at disposal facility for more than three consecutive days subject to allowable rejection thereof in accordance with Section 4.
2. **Bankruptcy, Insolvency, Liquidation.** Contractor files a voluntary claim for debt relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

A court having jurisdiction enters a decree or order for relief in respect of this Agreement in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter

in effect, or Contractor consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets or orders the winding up or liquidation of the affairs of the Contractor.

3. **Breach of Representations or Warranties.** Any representation or warranty of Contractor is untrue as of the date or bring down thereof Contractor knowingly makes, causes to be made, or condones the making of any false entry in its books, accounts, records, and reports hereunder.
4. **Compensatory Damages.** Failure of Contractor to pay any compensatory damages as may be due pursuant to the provisions of Section 21A.
5. **Equal Opportunity Employment.** Contractor fails to comply with equal employment opportunity requirements.

**C. Remedies Upon Default**

Upon occurrence of a Contractor default, County shall have the following remedies, together with any other remedies available at law or in equity:

1. **Termination:** to terminate this Agreement by giving Contractor notice as stated in Section 22A.
2. **Suspension:** to suspend this Agreement in accordance with Section 22A and, at County's option, perform Contractor's obligations hereunder in accordance with Section 22B.
3. **Damages.**
4. **Injunctive Equitable Relief.**

**D. Waiver** - Either party's waiver of any breach or default shall not be deemed to be a waiver of any other breach or default including ones with respect to the same obligations hereunder. The subsequent acceptance by either party of any damages or other money paid by the other party shall not be deemed to be a waiver by such party of any pre-existing or concurrent breach or default. Failure to object to a breach or event of default is not and shall not be construed as a waiver of such provision.

- E. Force Majeure** - Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an “Act of God” (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, labor unrest of other than the party’s employees (including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action), or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse. A party claiming excuse under this section must (i) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (ii) notify the other party in writing within five (5) days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform. The party claiming excuse under this section shall use its best efforts to remedy its inability to perform as quickly as possible.

## 22.1 SUSPENSION OR TERMINATION

- A. County’s Right to Suspend or Terminate** - County shall have the right to terminate this Agreement or direct Contractor to cease performing any portion of its performance obligations upon thirty (30) days prior written notice upon the occurrence of any of the following events:
1. Contractor Default.
  2. Nonperformance by Contractor for two (2) days or more, even if excused by Force Majeure.
  3. Criminal Activity of Contractor: Contractor fails or is unable to replace persons engaged in any behavior as set forth in Section 19.
  4. Dishonesty: Contractor fails to follow honest, fair and equitable business practices in a manner and according to the industry standards.
  5. Maintenance of equipment in violation of the requirements set forth in Sections 6E and 11E.

Suspension or termination shall not give rise to a cause of action by Contractor against County.

- B. County’s Right to Perform** - If County suspends this Agreement or any portion of Contractor’s performance obligations due to a Contractor default, County may perform or contract for the performance of any or all of Contractor’s performance obligations. If County’s performance costs, including procurement of labor, equipment, and materials and all other expenses necessary to perform such performance obligations but excluding any damages paid in accordance with Section 21 , exceed the amounts which could have been payable to Contractor hereunder had Contractor fully



performed, then Contractor shall pay the amount of such excess to County. County may also make claim against any performance bond.

CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION HEREOF IN ACCORDANCE WITH SECTION 37.

**C. Contractor's Obligations Upon Termination**

1. **Vacate Transfer/Recycling Station and Return County Property -**  
Upon effectiveness of notice of termination from County in accordance with Section 22A Contractor shall immediately vacate the Oberlin Road Solid Waste/Recycling Facility and deliver possession to County, together with all furnishings, equipment, spare parts, patents, licenses and personal belongings of County; maintenance and supply contracts; contractor permits; operations and maintenance manuals; and all records relating to transfer/recycling station development and transfer/recycling station operations. Contractor=s and Contractor's affiliates, employees, and subcontractors shall cooperate with County and regulatory authorities in effectuating the transfer of permits to County including executing documents, attending meetings, and providing administrative support.

Contractor shall further leave the site and transfer/recycling station in clean and functional condition operable by other persons.

THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT IN ACCORDANCE WITH SECTION 37.

2. **Pay Outstanding Damages -** Contractor shall pay County any damages including damages accrued and payable during the then current contract year or portion thereof which would have otherwise become payable.

CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION HEREOF IN ACCORDANCE WITH SECTION 37.

**23.0 REMEDIES CUMULATIVE**

County's remedies are not exclusive and County's exercise of one such right shall not constitute an election of remedies. Rather they shall be in addition to any and all other legal and equitable rights and remedies that County may have, including a legal action for damages, including incidental, consequential and/or special damages.

## 24.0 CONTRACTOR SERVICE ASSETS UPON TERMINATION

At the expiration or earlier termination of this agreement, Contractor, at its own expense, shall cooperate fully with County as necessary, to ensure an orderly transition to any and all new service providers. Contractor hereby grants to County a license to use any equipment or material on site which may be necessary for such transition on a temporary basis. Said temporary license shall be available to County for a period not in excess of thirty (30) days.

## 25.1 ADMINISTRATION OF AGREEMENT

**A. Contractor is Independent Contractor** - The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by County and not as an officer or employee of County nor as a partner of or joint venture of County. No employee or agent of Contractor shall be deemed to be an employee, agent, subagent or servant of County. Contractor shall have the exclusive control over the manner and means of performing its obligations hereunder. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Neither Contractor nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to County employees. Nothing herein shall be construed as creating the duty of County to supervise or control the acts or omissions of Contractor or any person performing performance obligations hereunder.

**B. Subcontractors** - Contractor has listed all its subcontractors as of the date of execution hereof in **Exhibit C**. Contractor shall notify County of any proposed changes or additions thereto. Contractor acknowledges that the identity of its subcontractors, if any, for Oberlin Road Solid Waste/Recycling Facility operation, transport services, and/or disposal services were of utmost importance to County in County's evaluation of Contractor's response to the request for proposals and selection of Contractor, and County reserves the right to approve or disapprove of any such named subcontractors in its sole discretion. Upon County approval thereof, such named subcontractors shall also be listed in **Exhibit C**. The terms of any subcontracts or any agreements related to Contractor's performance obligations shall not conflict with the terms hereof nor prevent or inhibit Contractor's timely and full performance hereunder.

Contractor shall coordinate, schedule, manage and supervise its officers, employees, and subcontractors. Contractor shall remain responsible to County for any errors, deficiencies or failure of its officers, employees and subcontractors to fully and timely meet performance obligations. Contractor shall timely pay all subcontractors, material men, suppliers and employees

engaged to perform performance obligations in accordance with their terms and conditions of any agreement between such person and Contractor.

In an emergency, upon immediate telephonic or other oral notice to County followed promptly by written notice, Contractor may engage additional or substitute subcontractors for up to seven consecutive days provided at the expiration of such seven days engagement of such additional or substitute subcontractors may be continued only if County consents thereto. All subcontractors shall be licensed as required under applicable law to perform their subcontracted work. Contractor shall remain liable for the full and complete performance of its obligations hereunder.

**C. Parties in Interest** - Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the parties and their representatives, successors, and permitted assigns.

**D. Binding on Successors** - The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

## 26.1 ASSIGNMENTS AND AMENDMENTS

**A. County Assignment** - County may assign this Agreement to another entity succeeding to the major portion of County's solid waste management rights and obligations if in the exercise of reasonable judgment County determines that such assignee is financially capable of meeting County's obligations hereunder.

**B. Contractor Assignment** - Contractor or Contractor's guarantor shall not assign its rights or delegate or otherwise transfer its obligations hereunder to any other person without the prior written consent of County granted in its sole discretion. Any such assignment made without the consent of County shall be void. Contractor shall submit its request for County consent to County together with documentation County may request. For the purpose of this Section, assign includes:

1. Selling, exchanging, or otherwise transferring to a third party effective control of Contractor or Guarantor management (through sale, exchange or other transfer or outstanding equity interests of Contractor or guarantor or otherwise) or any of Contractor's or guarantor's assets dedicated to performance obligations in any single transaction or cumulative in multiple transactions at different times unless such assets are promptly replaced with assets of greater or equal value and equivalent function.

2. Issuing new equity interests or selling, exchanging, or otherwise transferring ten percent (10%) or more of the then outstanding equity interests of Contractor or guarantor in any single transaction or cumulatively in multiple transactions at different times to a person other than the shareholders owning said equity interests as of the date hereof. Upon execution of this contract, Contractor shall provide County with the names of its current owners, partners, and/or shareholders.
3. Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction or transactions which results or result, either individually or cumulatively, in a change of ownership or control of Contractor or guarantor;
4. Any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of any execution, being levied against this Agreement, appointment of a receiver taking possession of any of Contractor's or guarantor's property, or transfer occurring in the event of a probate proceeding;
5. Any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership or change or control of Contractor's or guarantor's.

#### **27.1 DESTRUCTION OF PREMISES**

In the event the transfer/recycling station premises, or any part thereof, are at any time damaged or destroyed by fire, casualty or other cause, then said facilities shall be restored or rebuilt, or not restored or rebuilt, in accordance with the following terms and conditions, to wit:

- A.** If the premises are damaged or destroyed to the extent of 50 percent or more of the replacement cost thereof, County shall have the right to terminate this Agreement by giving notice to Contractor within thirty (30) days after the date of the occurrence and thereupon the term of this Agreement shall expire on the thirtieth day after such notice is given and the Contractor shall vacate the premises and surrender the same to County.
- B.** If the premises are damaged or destroyed to the extent of less than 50 percent of the replacement cost thereof, or if the County determines to restore or rebuild the premises and if the insurance proceeds payable as a result of said damage or loss are sufficient for the purpose, the County shall, restore the premises to as good a condition as the premises were in

immediately prior to such destruction of damage. If the insurance proceeds exceed the cost of such restoration or rebuilding, the excess shall be retained by the County.

- C.** If the County determines to restore the premises pursuant to subparagraph (B) above and the insurance proceeds are not sufficient to cover the cost of restoration or rebuilding, then the following alternatives shall be available:
1. County may within thirty (30) days from the date of such damage or destruction notify Contractor in writing of its election to terminate this Agreement, in which event all insurance proceeds shall be retained by the County; or
  2. County may notify the Contractor in writing of its election to restore or rebuild the premises, and the County, at its own cost and expense to the extent that the insurance proceeds are not sufficient for the purpose, shall restore and rebuild the premises to the same condition as the premises were in prior to such damage or destruction. Contractor shall have no right to retain user fees or to receive any additional compensation that may be payable to it by County under Section 19A until the facility is operable and Contractor undertakes to perform the duties hereunder. Contractor shall have no obligation to pay any additional compensation that may be payable from it to County under Section 19A until the facility is operable and Contractor undertakes to perform the duties hereunder.

**28.0 NOTICES, CONSENTS, APPROVALS, ETC.** - All demands, directions, selections, option exercises, orders, requests, proposals, comments, acknowledgments, approvals, consents, certifications, waivers, agreements, and other communications made hereunder shall be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

County: Siskiyou County General Services  
190 Greenhorn Road  
Yreka, CA 96097

Contractor:

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

## 29.1 PARTY REPRESENTATIVES

- A. County Representative** - Responsibility to act on behalf of County may be delegated to the Director of General Services as the County may direct in writing. Should the County delegate such responsibility to the General Services Director, their statements, representations, actions, and commitments shall fully bind County to the extent permitted by applicable law.
- B. Contractor Representative** - Contractor acknowledges that it is important to County to have a Contractor representative at the transfer/recycling station who is authorized and empowered by Contractor to serve as liaison between Contractor and County and make operational decisions with respect to Oberlin Road Solid Waste/Recycling Facility operations. Responsibility to act on behalf of Contractor is hereby delegated to the person or persons named in **Exhibit N** as amended from time to time, including at least one person assigned to the transfer/recycling station and such person=s or persons=statements, representations, actions, and commitments shall fully bind Contractor. All oral directions or instructions and notices given by County to such named persons shall bind Contractor as if delivered to Contractor personally.

## 30.0 JURISDICTION/ VENUE

This Agreement has been executed and delivered in the State of California, and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in Siskiyou County and that County shall be the County for venue in any action or proceeding that may be brought or arise in connection with this Agreement.

## 31.0 COMPLIANCE WITH APPLICABLE LAW

Contractor shall perform all of its performance obligations hereunder and shall cause its subcontractors to perform performance obligations hereunder in accordance with accepted practice for comparable facilities, sound management and operations practice, the Operations and Maintenance Manual, applicable law (including permits), the provisions hereof, and covenants, conditions and restrictions pertaining to the site. Contractor shall be solely liable for all fines and penalties that may be imposed on Contractor to the extent that such fines and penalties are the result of Contractor's violations of applicable law (including contractor permits).

## 32.0 COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall at all times in all respects comply with all environmental laws and any amendments thereto affecting Contractor's use and operations on the premises,

including all federal, state and local laws, ordinances and regulations relating to Hazardous Material. Contractor shall provide County with copies of Material Safety Data Sheets (MSDS) from the manufacturer on each product. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local government authority, the State of California or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is (1) defined as "Hazardous Waste", "Extremely Hazardous Waste" or "Restricted Hazardous Waste" under Section 25115, 25117 or 25122.7 or listed pursuant to Section 25140 of the California Health and Safety Code (Hazardous Waste Control Law); defined as a "Hazardous Substance" under Section 25316 of the California Health and Safety Code, (Carpenter-Presley-Tanner Hazardous Substance Account Act); (3) defined as a "Hazardous Material" or "Hazardous Substance" or "Hazardous Waste" under Section 25501 of the California Health and Safety Code (Hazardous Materials Release Response Plans and Inventory); (4) defined as a "Hazardous Substance" under Section 25281 of the California Health and Safety Code (Underground Storage of Hazardous Substances); (5) petroleum or petroleum containing compounds; (6) asbestos; (7) listed under Article 9, or defined as Hazardous Wastes or Extremely Hazardous pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4 Chapter 20; (8) designated as a "Hazardous Waste" pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317); (9) defined as "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 USC Section 6901 et seq (42 USC Section 6903); or (10) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601 et seq. (42 USC Section 9601).

### **33.0 GUARANTY**

Concurrently with its execution of this contract, County may, at its sole discretion, require Contractor, or its parent company, or holding company, to furnish a guaranty of its performance under this agreement in a guaranty agreement acceptable to County.

### **34.1 AGREEMENT INTERPRETATION**

**A. Integration.** - This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the parties with respect to such transactions including those contained in the request for proposals and Contractor's proposal. The proposal submitted to County by Contractor and information submitted to County supplementary thereto, if any, on which County has relied in entering into this Agreement does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements

made, in light of the circumstances in which they were made, not misleading.

- B. Governing Law** - This Agreement shall be governed by and construed and enforced in accordance with the laws of the State without giving effect to the State's principles of conflicts of laws.
- C. Execution in Counterparts** - This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.
- D. Authorization to Execute** - County warrants that the Chair of the Board of Supervisors and Clerk have been duly authorized to execute this Agreement on behalf of County. Contractor warrants that the person executing this Agreement has been duly authorized by Contractor to do so on behalf of Contractor.
- E. Severability** - If any clause, provision, subsection, or section hereof or exhibit hereto shall be ruled invalid by any court of competent jurisdiction, then the parties shall:
1. Promptly meet and negotiate a substitute for such Agreement provision which shall, to the greatest extent legally permissible, effect the intent of the parties therein;
  2. If necessary or desirable to accomplish preceding item (1) above, apply to the court having declared such invalidity for a judicial construction of the substituted portion of this Agreement; and,
  3. Negotiate such changes in, substitutions or additions to the remaining provisions hereof as may be necessary in addition to and in conjunction with preceding items (1) and (2) above to effect the intent of the parties in the invalid Agreement provision.

The invalidity of such Agreement provision shall not affect any of the remaining provisions hereof and this Agreement shall be construed and enforced as if such invalid Agreement provision did not exist.

### **35.0 DUE DILIGENCE**

Parties acknowledge that County may be subject to fines for failure to cause the transfer/recycling station to be operated and permitted waste to be transported in accordance with applicable law and that waste management is a public health and safety concern. Contractor shall exercise due diligence in the performance of any of the terms and conditions of this Agreement in a manner so as to avoid assessment of any such fines. Any such fines, penalties, assessments or costs of



any nature to which County may be subject as a result of Contractor's failure to exercise due diligence shall be the responsibility of Contractor.

### **36.0 FURTHER ASSURANCES**

Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

### **37.1 SURVIVAL OF CERTAIN PROVISIONS**

All representations and warranties of the parties herein, and all indemnifications provided for herein, and any other rights and obligations of the parties expressly stated to survive the termination of this Agreement, shall survive such termination, including:

- A. Contractor's release of County from liability for closure and post closure obligations with respect to the Contractor-owned disposal facility and Contractor's providing financial assurances therefore, all in accordance with Section 12D
- B. Delivery by Contractor of all records and other materials to County upon termination of the Agreement in accordance with Section 13A.
- C. Delivery by Contractor of equipment, and clean and functional site and Oberlin Road Solid Waste/Recycling Facility upon termination of the Agreement in accordance with 22C1 ; and
- D. Payment of any amounts due and owing by either party to the other party at the time of termination, including amounts owed in accordance with Sections 19, 22B, 22C(2) and indemnification in accordance with Section 15.0.

### **38.0 ACTIONS OF COUNTY IN ITS GOVERNMENTAL CAPACITY**

Nothing herein shall be interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity.

### **39.0 CONTRACTOR'S OBLIGATIONS PERFORMED AT ITS SOLE EXPENSE**

As compensation for performing its performance obligations Contractor shall perform its performance obligations for the compensation expressly provided for herein.

### **40.0 EXERCISE OF OPTIONS**

Except as otherwise provided, the parties' exercise of any approval, disapproval, option, discretion, election, or choice hereunder shall be reasonable unless this

Agreement specifically provides that such exercise is in each respective party's independent, sole, exclusive, or absolute control, discretion, or judgment.

**41.0 NO PERSONAL LIABILITY**

This Agreement is not intended to create or result in any personal liability for any elected official, employee, agent or contractor of County or its members. This Agreement shall not be construed to create or result in such liability.

(Signatures Continued on Next Page)

DRAFT

IN WITNESS WHEREOF, County and Contractor have executed this agreement on the dates set forth below, each signatory represents that he/she has the authority to execute this agreement and to bind the Party on whose behalf his/her execution is made.

COUNTY OF SISKIYOU

Date: \_\_\_\_\_

\_\_\_\_\_  
BRANDON A. CRISS, CHAIR  
Board of Supervisors  
County of Siskiyou  
State of California

ATTEST:  
LAURA BYNUM  
Clerk, Board of Supervisors

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

CONTRACTOR: name of contractor

Date: \_\_\_\_\_

\_\_\_\_\_  
[Contractor Signatory Name and  
Designate official capacity in the business]

Date: \_\_\_\_\_

\_\_\_\_\_  
[Contractor Signatory Name and  
Designate official capacity in the business]

License No.: \_\_\_\_\_

(Licensed in accordance with an act providing for the registration of contractors)

Note to Contractor: For corporations, the contract must be signed by two officers. The first signature must be that of the chairman of the board, president or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer or assistant treasurer. (Civ. Code, Sec. 1189 & 1190 and Corps. Code, Sec. 313.)

TAXPAYER I.D. \_\_\_\_\_

ACCOUNTING:  
Fund    Organization    Account    Activity Code (if applicable)

Encumbrance number (if applicable):

If not to exceed, include amount not to exceed: