

**OPERATIONS AND LEASE AGREEMENT
FOR
COMPOSTING FACILITIES**

THIS OPERATIONS AND LEASE AGREEMENT (the “Agreement”) is made and entered into on October _____, 2024, by and between the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT, a public entity duly organized pursuant to the provisions of California Health and Safety Code §§4170 *et seq.*, (the “District” or the “Owner”), and KEITH DAY COMPANY, INC., a California corporation, doing business as Gabilan AG Services (the “Operator” or “Tenant”), as follows:

Recitals

This Agreement is entered into with reference to the following facts and circumstances, which are hereby found and determined by the parties:

- A. The District owns and operates, under a Use Permit from the County of Monterey and a Solid Waste Facility Permit (SWFP) and Waste Discharge Requirement (WDR) Permit from the State of California, a three hundred fifteen (315) acre Class III sanitary landfill for the disposal of municipal solid waste and other acceptable waste streams. A portion of the permitted landfill disposal area has been set aside for the subject composting facility for the duration of this Agreement.
- B. The Operator, since 2009 under a year-to-year lease and rental agreement, has designed and been operating the District’s composting facility to process organic materials, including yard debris, clean wood and, most recently, food scraps upon the request of and for the benefit of the District and its member communities.
- C. A primary purpose and intent of the District and Operator to have entered into the preceding Lease was to facilitate their joint implementation of the General Order Waste Discharge Requirements for Composting Operation (Order WQ 2015-0121-DWQ) enacted in 2015 by the Regional Water Quality Control Board, for completion in 2021.
- D. The District authorized a capital expenditure of about \$2.5 million for improvements to the composting area site to accomplish the regulatory requirements of Order WQ 2015-0121-DWQ, and in recent years Operator has invested approximately \$3 million in capital equipment for its operations on the District’s site.
- E. The primary purpose and intent of the District and Operator in entering into this new Agreement is to address their separate and mutual interests for the long-term, sustainable business operations of the Composting Facility on behalf of the District’s Member Agencies and their communities, customers, and State policy goals and

regulations. This Agreement allows each party to make capital investments in the Compost Facility and have a 15 to 20 year capital recovery period relatively secured by this Agreement. The District has historically made capital investments in the land and Fixed Asset type elements of the Composting Facility. The Operator has historically made capital investments in equipment and Mobile Asset type elements. Note that processing or operations rates for the Compost Facility (those charged by the Operator to the District) are periodically negotiated by the two parties and include only the Operator's costs of operations (not the District's capital recovery costs for the District's capital investments or other costs).

- F. In recognition of, and initial compensation for, the establishment of this Agreement, which provides for a 15 year Base Term and a potential 25 year Total Term, the Operator agrees to the transfer of the Permit Ownership to the District and remain the Permit Operator on the permits. As such, following the permit transfer, the District will hold ownership of the Compost Permit as a public entity and in the public's interests. The Operator agrees to cooperate with and support the District's staff and consultants as they complete the administrative change in ownership process with CalRecycle and the Central Coast Water Quality Control Board.
- G. A secondary purpose and intent of the District and Operator to enter into this Agreement is to facilitate their joint implementation and completion of the CalRecycle Organic 6 (ORG 6) Grant and conversion of the Composting Facility from a Windrow Compost Method to a Covered Aerated Static Pile (CASP) Compost Method. This conversion of the operations method for the Composting Facility does not impact the Use Permit as there are no changes to the permit limitations or conditions except for reference to the type of composting method being used and updating the required operation plan documents accordingly for the CASP Method. At the District's regularly scheduled board meeting of July 19, 2024, the District's Board of Directors officially received the CEQA Categorical Exemption for the CASP Project from Denise Duffy & Associates, Inc..
- H. As a contract operations agreement or lease of an existing public facility (this Agreement) is categorically exempt from the California Environmental Quality Act ("CEQA") in accordance with CEQA Categorical Exemptions 15301.
- I. It is mutually agreed by the parties hereto that this Operations and Lease Agreement is based upon, and subject to, the following terms, covenants, conditions and provisions, and the Operator covenants, as a material part of the consideration of this Agreement, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Agreement is made and entered into upon the condition of such performance and compliance.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and Operator agree to the following terms and conditions:

Terms and Conditions

ARTICLE I. PREMISES AND TERM

1.02 Leased Premises. District, for and in consideration of the lease payments, covenants and conditions herein contained to be kept, performed and observed by Operator, does hereby lease to Operator, and Operator does hereby lease and accept from Owner, a parcel of real property, hereinafter referred to as the "Premises," consisting of approximately 30 acres, more or less, of the District's permitted sanitary landfill area of the District's property located near the Salinas River in unincorporated Monterey County lands west of the City of Salinas and north of the City of Marina, California. The specific location of which Premises are designated and outlined on the map of the landfill site and the Premises is attached as Exhibit A hereto, which is incorporated herein and initialed by both parties hereto. The specific acreage of the leased Premises shall be determined by a survey of the property, along with a legal description which is required for Operator's operating permit with the California Department of Resources Recycling and Recovery (CalRecycle). Any redesignations or changes in the specific location of the Premises during the term of this Agreement, or any extensions hereof, or any revisions in the total number of acres leased to the Operator, shall occur only with the prior written approval of the District's General Manager and the District's Board of Directors.

1.03 Term. The initial base term of this Agreement shall be fifteen (15) years, commencing on the date first written above. This Agreement may be extended, at the District's option, by five (5) years at a time and for no more than twice (e.g., 2 times) consisting of a combined period of ten (10) years in total, at terms and provisions of this Agreement or as otherwise mutually agreed upon in writing by the parties. District shall provide Operator with notice of District's exercise of its option to extend the term not later than 180 days prior to the conclusion of the initial base term and any extended term.

ARTICLE 2. LEASE PAYMENTS/RENT

2.01 Rent. Effective upon signing this Agreement, Operator agrees to and shall pay to District, at the District's office at 14201 Del Monte Boulevard, Monterey County (Salinas), California, 93908, or at Post Office Box 1670, Marina, California, 93933-1670, as payments and rent ("rent") for the Premises, the sum of \$4,000.00 per month, payable in advance on the first day of each month.

2.02 Adjustment of Rent. The rent provided for in paragraph 2.01 shall be increased as of July 1 each year during the initial or an extended term of this Agreement, starting with July 1, 2025, by the lesser of a) the rate of increase in the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose Region, for the prior calendar year period, or b) eight per cent (8%).

2.03 Interest on Late Rent Payments. If Operator defaults or is late in the payment of any monthly installment of rent due hereunder, such installment shall bear interest at the rate of ten per cent (10%) per annum from the day it is due until actually paid.

2.04 Holding Over. Any holding over by the Operator after the expiration of the initial or an extended term of this Agreement with the consent of the District shall be construed to be a tenancy from month-to-month at a monthly rental equal to 125% of the of the monthly rental for the final month of the previous term. Operator's occupancy during any period of holding over shall otherwise be on the same terms and conditions herein specified so far as applicable.

ARTICLE 3. UTILITIES AND TAXES

3.01 Operator to Pay Utilities. Operator shall pay all charges for water, heat, gas, electricity, telephone service, internet service, rubbish removal, portable toilet service and any and all other utility services of any kind and nature whatsoever, supplied to and used on the Premises, or any office trailer located off the Premises, throughout the initial or any extended term of this Agreement, including any connection fees. All utility lines shall be installed underground by Operator at Operator's expense, except where approved otherwise with the prior written permission of Owner. .

3.02 Operator to Pay Taxes. In addition to rent, Operator shall pay and discharge any and all taxes, general and special assessments and other charges of every description, including possessory interest taxes, which during the term of this Agreement may be levied upon or assessed against the Premises and all interests therein and all improvements and other property thereon. Provided, however, that Operator shall not be responsible or liable for any permanent improvement bonds or assessments which are not based upon or do not relate to the use made of the Premises by Operator. Operator is hereby specifically notified that although the District is a public entity not normally subject to property taxes upon its real property, the Premises leased hereby to Operator and Operator's possessory interest therein may well be subject to the payment of property taxes levied thereon by a governing agency, for which Operator shall be solely liable.

ARTICLE 4. USE AND OCCUPANCY

4.01 Use of Premises. Operator shall use the premises solely for the purpose of conducting and carrying on the business of composting organic materials, final product processing and packaging, the wholesale and retail sale of same, and for other uses normally incident thereto, such as landscape product sales and wallboard gypsum processing/recovery, and for no other purpose without first obtaining the prior written consent of the District. Operator agrees to utilize District's feedstock materials to the extent possible. Operator may also import feedstock materials consistent with the limitations contained in the facility permits. To the extent such imports may interfere with use of District's feedstock materials, District and Operator agree to discuss and resolve such issues. In no event may any imported feedstock materials that would otherwise be sent to the landfill be accepted by Operator for a tipping fee without the prior written consent of the District. The intent of these terms is that the Operator's activities do not compete with the District's market area activities and responsibilities.

4.02 Experimental Composting. As part of the consideration for the lease of the Premises to Operator, the Operator agrees that it will continue to make good faith efforts to experiment with the composting and possible reuse of natural wood and yard debris materials

materials, food scraps and other organic wastes as may be received by the District for possible diversion away from disposal at its landfill site.

4.03 Maintenance and Restoration. Operator shall, at its own cost and expense, keep and maintain the Premises, District owned equipment used by the Operator, and all improvements and facilities on the Premises in good order and repair and in as safe and clean a condition as they were when received from the District, reasonable wear and tear excepted, and upon termination of this Agreement or abandonment by Operator of the Premises, Operator shall restore the Premises to a reasonably similar condition as existed prior to Operator's entry thereon, and shall remove all improvements, personal property and stored composting materials therefrom except those improvement(s) that receive the District's written approval to remain. The District and Operator agree that the condition of the lease area shall be the condition that resulted from the 2021 site improvements that satisfied the requirements of the General Order WDR issued by the California Regional Water Quality Board and the Solid Waste Facility Permit issued by CalRecycle; or as may subsequently be established at the completion of the CASP implementation project.

4.04 Access to Premises. The District shall provide Operator with access to said Premises by means of an access road across District's property from Del Monte Boulevard (the old Highway 1), and such access road may be used by persons wishing to purchase from or conduct business with Operator during those hours that the District's disposal site is otherwise open to the public. Composting and any other business operations of Operator shall not be conducted in such a manner as to restrict the access to any of the District's remaining property. Operator shall provide the Owner with advance notice of Operator's, or Operator's subcontractor, use of the Premise outside of the District's public hours.

4.05 Operator Improvements. Operator acknowledges that the District is a public entity and that any improvements to District property represents a "public works" project for which all contractors/subcontractors must i) register as public works contractors, ii) have a contractor's license from the Contractors State License Board if their trade requires one, iii) carry workers' compensation coverage for all employees, iv) pay prevailing wages as published by the California Department of Industrial Relations, and v) have an active business license. When assigned and authorized by the Owner, the Operator shall be responsible for constructing all Operator improvements, including, without limitation, an all-weather working surface, contact water drainage and storage facilities, and stormwater drainage facilities. Operator shall be permitted to place a temporary industrial-type building on the premises and to pave the outside equipment work areas adjacent thereto, but only after first submitting the plans and specifications therefor to the District and obtaining District's written approval of same, which approval shall not be unreasonably withheld, and upon receiving the approvals and a building permit from the County of Monterey.

4.06 Drainage. Drainage from any improvements to or alterations of the Premises shall be engineered by Operator to be i) consistent with the General Order for Compost Facilities, ii) consistent with the design and permits issued for the Composting Facility, iii) separately manages and controls surface water that does not contact wastes (e.g., stormwater) from surface water that contacts waste materials (e.g., contact water), and iv) so that District's remaining lands are not adversely affected and so that surface flows over and above those generated by such land in its present unimproved state are retained in an engineered structure approved by the appropriate

permitting jurisdiction(s). Operator shall be responsible for maintaining the working surface grade to avoid the accumulation of standing water caused by creation of low spots or damage to the barrier layer in those areas of the site where the barrier layer is required.

4.07 Public Health and Safety. Operator shall supply systems for the protection of public health and safety, including without limitation, a materials storage management plan, a fire control program, a dust minimization and abatement program, odor control program, and provisions for vector control including, but not limited to, bird abatement. Operator shall operate the composting facility so as to minimize potential health and safety problems for employees of both Operator and District, other Operators, tour visitors, regulatory representatives, and users of the District's landfill site and neighboring properties. Operator shall operate and maintain the composting facility in a neat and orderly manner and shall monitor the area as frequently as necessary to prevent litter and dust from blowing off the premises of the composting facility.

4.08 Odor Control. Operator shall conduct the composting operation in such a manner as to minimize odors, especially the migration of odors to adjacent properties on and off the District's property. The compost material shall be maintained in an aerobic condition to avoid odors produced by anaerobic conditions. Operator shall utilize operational management practices to minimize or mitigate the generation of foul odors such as outlined in **Exhibit D** or as have been established as a reliable industry practice. Operator shall have an odor monitoring protocol which describes the proximity of possible odor receptors and a method for assessing odor impacts at the locations of the possible receptors. Operator shall maintain a complaint response protocol and a recording log to document any odor complaints received and the Operator's response activities and findings. Operator shall have a description of design considerations and/or projected ranges of optimal operation to be employed in minimizing odor, including method and degree of aeration, moisture content range of materials, feedstock characteristics, airborne emission production, process water distribution, pad and drainage permeability, equipment reliability, personnel training, weather event impacts, utility service interruptions, and any site specific concerns. Operator shall have a description of operating procedure for minimizing odor, including aeration, moisture management, feedstock quality, drainage controls, pad maintenance wastewater pond controls, storage practices, contingency plans, biofiltration, and tarping. Operator shall not be considered in default provided the facility is operated according to the provisions of this Agreement and the requirements of all applicable permits and regulations for the composting facility. In the event that offensive odors are generated occasionally which result in complaints and Operator is operating the facility in accordance with this Agreement and applicable permits and regulations, Operator and District shall work together in resolving such complaints by addressing the root cause that is found to be present at the Operator's compost site or in the Operator's compost operating procedures.

4.09 Waste and Nuisance Prohibited. Operator shall not commit or permit the commission by others of any waste on the Premises, shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code on the Premises, and shall not use or permit the use of the Premises for any unlawful purpose.

4.10 Dust Control. To minimize the generation of fugitive dust leaving the Premises, Operator shall apply water and/or environmentally acceptable suppression materials to the composting facility area, or undertake other dust mitigation measures including, but not limited to,

synthetic covers as necessary to control dust, or as necessary to maintain compliance with any Air District permits issued for the composting operations or as a general applicable provision not requiring a permit.

4.11 Fire Control. Operator shall have the composting facility designed by a licensed fire or life safety specialist such that a fire control program can be implemented by the Operator immediately following its construction. The fire control program shall be implemented in accordance with requirements of the local fire department providing fire protection and suppression services to the District's landfill disposal site ("JA", jurisdiction of authority), insurance underwriters requirements, the permits for the composting facility, and all applicable local, state, and federal rules.

4.12 Materials Storage Requirements. Long-term storage of compost materials is only acceptable to the extent that i) it does not interfere with the District's or other's activities, and ii) that satisfactory odor, vector, dust, and fire control measures remain present at all times or such measures are employed to eliminate nuisance, health and safety problems. In the event Operator fails to store materials in an acceptable manner as set forth in this Agreement, Operator shall defend and indemnify the District from all liability and expense resulting from such failure, including, without limitation, nuisance claims by neighboring land users and owners.

4.13 Environmental Requirements. Operator shall ensure that the operations of the composting facility are in compliance with all permit conditions issued for the facility, including without limitation, permits issued by the California Integrated Waste Management Board, the California Regional Water Quality Control Board, the Monterey Bay Unified Air Pollution Control District, and the County of Monterey. The District holds the Land Use Permit from Monterey County.

4.14 Educational Opportunities. Upon notice to the District, and with supervision by the District and Operator, Operator will allow public education opportunities to be conducted at the site with the District's prior approval and, in mutually agreed occasions, with the District's participation. Such opportunities may be arranged by either the Operator or the District.

4.15 Compliance with Permits and Governmental Authorities. Operator shall comply with and shall observe in its use of the Premises all requirements of all permits, governmental authorities, local, state, and federal, in force now or in the future, affecting the Premises or the Owner's landfill operations. As permits are issued to allow certain operations to be completed, Owner and Operator acknowledge that the Operator shall be fully responsible for conducting, recording, documenting, monitoring, and reporting of all compliance required activities defined by prevailing law, regulations, and the facility permits independent of the parties named on the permits. Owner representatives may from time-to-time provide review or consultation services to the Operator regarding new or proposed compliance requirements.

Owner and Operator acknowledge that the parties have collaborated during the past ten (10) years to develop certain operational practices and expectations of each other's activities related to the Composting Facility. In this Agreement, both parties desire to continue their respective operational practices until such time that the parties agree to making changes to those practices. Recently, the

parties have been collaborating on programs that the Member Agencies would use for their jurisdictional compliance with the SB1383 regulations. The Operator will continue to participate with the District and in the District's Member Agency requirement for their procurement of recovered organic waste products per the SB1383 regulations. Operator agrees to allow the District to purchase recovered organic waste products (compost or mulch) on behalf of the Member Agency jurisdictions utilizing a Direct Service Provider Agreement each calendar year.

SB1383 annual procurement targets for recovered organic waste products are set by CalRecycle for each Member Agency jurisdiction. The Operator will fulfil order(s) meeting the nine Member Agency jurisdictions' annual targets in-full, selling the compost to a customer(s) of the Operator's choice using a Direct Service Provider Agreement. The Operator can extend a discount to the customer in exchange for the customer's procurement of the compost on behalf of the Member Agencies. The District will in-turn purchase the compost on behalf of the Member Agencies at a \$5/ton rate (2024 basis) or as the mutually 'agreed to' rate approved in the future by the parties. A signed agreement and invoice recording the District's purchase will be provided monthly to the District from the Operator, and as an annual statement before the end of the calendar year.

4.16 Inspection by Owner. Operator, upon notice, shall permit the District or District's agents, representatives or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Operator is complying with the terms of this Agreement and for the purpose of doing other lawful acts that may be necessary to protect District's interest in the Premises under this Agreement.

4.17 Liens and Claims. Operator shall promptly pay when due all amounts payable for labor and materials furnished to Operator, so as to prevent any lien or other claim under any provision of law from arising against the District or the Premises and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

ARTICLE 5. INDEMNITY AND INSURANCE

5.01 a) No Liability of Owner for Operator's Acts. The District, its Board of Directors, officers, employees and agents shall not be liable at any time for any loss, damage, injury to the property or person or any person whomsoever, claims, lawsuits, costs, expenses, attorney's fees, court costs or any other cost at any time occasioned by or arising out of any act or omission of the Operator, or any employee or agent of Operator, or of anyone holding under Operator or from the occupancy or use of the Premises or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the Premises or any part thereof during the term of this Agreement.

b) Indemnification of District. Notwithstanding anything to the contrary in this Agreement, to the full extent permitted by law, Operator shall defend, protect, indemnify, and hold the District, its Board of Directors, officers, employees and agents, and the Premises, free and harmless from any and all damages, liabilities, claims, suits, actions, proceedings, costs and expenses of whatsoever nature, without limitation or restriction, arising under the terms of this Agreement or arising out of or in connection with the operation carried on by Operator on, or the use or occupancy of, the Premises.

5.02 Insurance Requirements. Without limiting the Operator's duty to indemnify, the Operator shall maintain in effect throughout the initial and any extended term of the Agreement the insurance coverage set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Operator will have the District, its board, officers, employees and agents named as additional insureds or covered parties with respect to claims arising out of the performance of Operator's operations under this Agreement, including ongoing and completed operations, and shall further provide that its coverage is primary to any insurance or self-insurance maintained by the District, and that the insurance of an additional insured or covered party shall not be called upon to contribute to a loss covered by the Operator's primary coverage.

5.03 Certificate of Coverage. A certificate of coverage, certifying the Operator's coverage which shall meet all requirements of this Agreement, shall be provided to the District prior to the execution of this Agreement. Acceptance of the certificate of coverage shall in no way modify or change the indemnification provisions of this Agreement, which shall remain in full force and effect. District shall be provided with thirty (30) days' prior written notice of any reduction in coverage or limit, cancellation or intended cancellations.

5.04 Compliance with Insurance Policies. Operator shall comply with all of the terms and conditions of each insurance policy maintained pursuant to the terms of this Agreement to the extent necessary to avoid invalidating such insurance policy or impairing the coverage available thereunder.

5.05 Limits. The limits of insurance maintained by the Operator shall not be construed as limits on its indemnification obligations set forth in the Agreement.

ARTICLE 6. DEFAULT AND REMEDIES

6.01 Default. District may, at its option and without limiting District in the exercise of any other right or remedy it may have on account of a default or breach by Operator, exercise the rights and remedies specified in paragraph 6.02 if:

a) Rent Default. Operator defaults in the payment of any money agreed to be paid by Operator to District for rent or to be paid for utilities or for any other purpose under this Agreement, and if such default continues for ten days after written notice to Operator by Owner.

b) Other Default: Operator defaults in the performance of any other of its agreements, permits, conditions, or covenants under this Agreement and such default continues for ten days, plus such period of delay as Operator may encounter in the performance of its agreements by reason of matters beyond the control of Operator.

6.02 Remedies. On any breach or default district may exercise any of the following rights after the periods of time stated in paragraph 6.01:

a) Re-entry and Removal and Storage of Property and Repairs. Immediately re-enter

and remove all persons and property from the Premises, storing the personal property in a public warehouse or elsewhere at the cost of, for the account of, and at the risk of Operator.

b) Collection of Rent Installments. To collect by suit or otherwise each installment of rent or other sum as it becomes due hereunder, or to enforce, by suit or otherwise, any other term or provision hereof on the part of Operator required to be kept or performed, it being specifically agreed that all unpaid installments of rent or other sums shall bear interest at the rate specified in paragraph 2.03 hereinabove.

c) Termination of Agreement and Damages. Either party may terminate this agreement without cause by providing a minimum three (3) year advance notice of termination in writing to the other party. Either party may terminate this agreement for cause by providing a minimum three (3) year advance notice of termination in writing to the other party that describes the cause for termination, identifies what the claiming party would anticipate necessary to resolve the claim, and provides a 12-month notice to cure to the other party. Should the other party redress the claim to terminate for cause before expiration of the 'cure' period, as mutually agreed by the two parties, the notice for termination shall end or expire at that point in time. At termination of this Agreement, Operator agrees to immediately surrender possession of the Premises and District owned equipment or materials, and to pay to District, in addition to any other remedy District may have, all damages District may incur by reason of Operator's defaults, including the cost of recovering the Premises and District's assets.

6.03 No Waiver of Default. District's failure to take advantage of any default or breach of covenant on the part of Operator shall not be, or be construed as, a waiver hereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Agreement be construed to waive or to lessen the right of District to insist upon the performance by Operator of any term, covenant, or condition hereof, or to exercise any rights given it on account of any such default. A waiver of a particular breach, or default, shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, or be construed to be a waiver of any term, covenant, or condition of this Agreement.

6.04 Remedies Cumulative. The rights, powers, elections, and remedies of the District contained in this Agreement shall be construed as cumulative and no one of them is or shall be considered exclusive of the other or exclusive of any rights or remedies allowed by law, and the exercise of one or more rights, powers, elections, or remedies shall not impair District's right to exercise any other.

ARTICLE 7. GENERAL PROVISIONS

7.01 Dispute Resolution.

a) Duty to Meet and Confer. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good

faith attempt to resolve the matter between themselves. Representatives of each party will personally meet and attempt in good faith to resolve the dispute.

b) Mediation. If their representatives are unable to resolve the dispute within 15 days thereafter, the parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of the Judicial Arbitration and Mediation Service ("JAMS"). The expenses of witnesses for either side shall be paid for the party producing such witnesses. All other expenses of the mediation shall be borne equally by the parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 through 1128), unless otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. Mediation shall be completed within 30 days after request for the mediation by either party or such additional time as may be mutually agreed upon in writing by both parties.

c) Arbitration. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted under the rules of JAMS. The decision of the arbitrator shall be binding, unless within 30 days after issuance of the arbitrator's written decision a party files an action in a court of law. Venue and jurisdiction for any legal proceeding between the parties shall lie in the Superior Court for the County of Monterey.

7.02 Conditions and Covenants. All of the provisions of this Agreement shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

7.03 No Waiver of Breach. No failure by either District or Operator to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement, and term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

7.04 Time of Essence. Time is of the essence of this Agreement, and of each provision hereof.

7.05 Subleasing and Assigning. Operator shall not encumber, assign or otherwise transfer this Agreement or any right or interest in this Agreement, or any right or interest in the Premises, without the express written consent of the District. Neither shall Operator sublet the Premises or any part thereof or allow any other persons, other than Operator's agents, employees and customers to occupy or use the premises or any part thereof without the prior written consent

of District. A consent by District to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any encumbrance, assignment, transfer or subletting without the prior written consent of the District, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of District, terminate this Agreement.

7.06 Insolvency of Operator. The insolvency of Operator as evidenced by a receiver being appointed to take possession of all or substantially all of the property of Operator, the making of a general assignment for the benefit of creditors by Operator, or the adjudication of Operator as a bankrupt under the Federal Bankruptcy Act, shall terminate this Agreement and entitle District to re-enter and regain possession of the Premises.

7.07 Binding on Heirs and Successors. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this paragraph contained shall be construed as a consent by District to any assignment of this Agreement or any interest therein by Operator except as provided in paragraph 7.05 of this Agreement.

7.08 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered by this Agreement, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

7.09 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

7.10 Attorney's Fees. Should either party commence any legal action or proceeding against the other based on this Agreement, the prevailing party shall be entitled to an award of attorney's fees.

7.11 Modification. This Agreement is not subject to modification except in writing and as approved by both parties.

7.12 a) Delivery of Notices-Method and Time. All notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the end of the second full day following the date of mailing.

b) Notices to District. All notices, demands, or requests from Operator to District shall be given to District by delivery at the District's offices at 14201 Del Monte Boulevard, Monterey County (Salinas), California, 93908, or at Post Office Box 1670, Marina, California, 93933-1670.

c) Notices to Operator. All notices, demands, or requests from District to

Operator shall be given to Operator at Keith Day Company, Inc. at 1091 Madison Lane, Salinas, California 93907.

d) Change of Address. Each party shall have the right, from time-to-time, to designate a different address by notice given in conformity with this section.

7.13 Counterparts. This Agreement, consisting of thirteen (13) pages, plus Exhibits A, B, C and D, has been executed by the parties hereto in two counterparts, each of which shall be deemed to be an original copy.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement in duplicate on the date first hereinabove stated at Monterey County, California.

OWNER:

MONTEREY REGIONAL WASTE
MANAGEMENT DISTRICT

By _____
Board Chairperson

And by _____
Felipe Melchor, General Manager

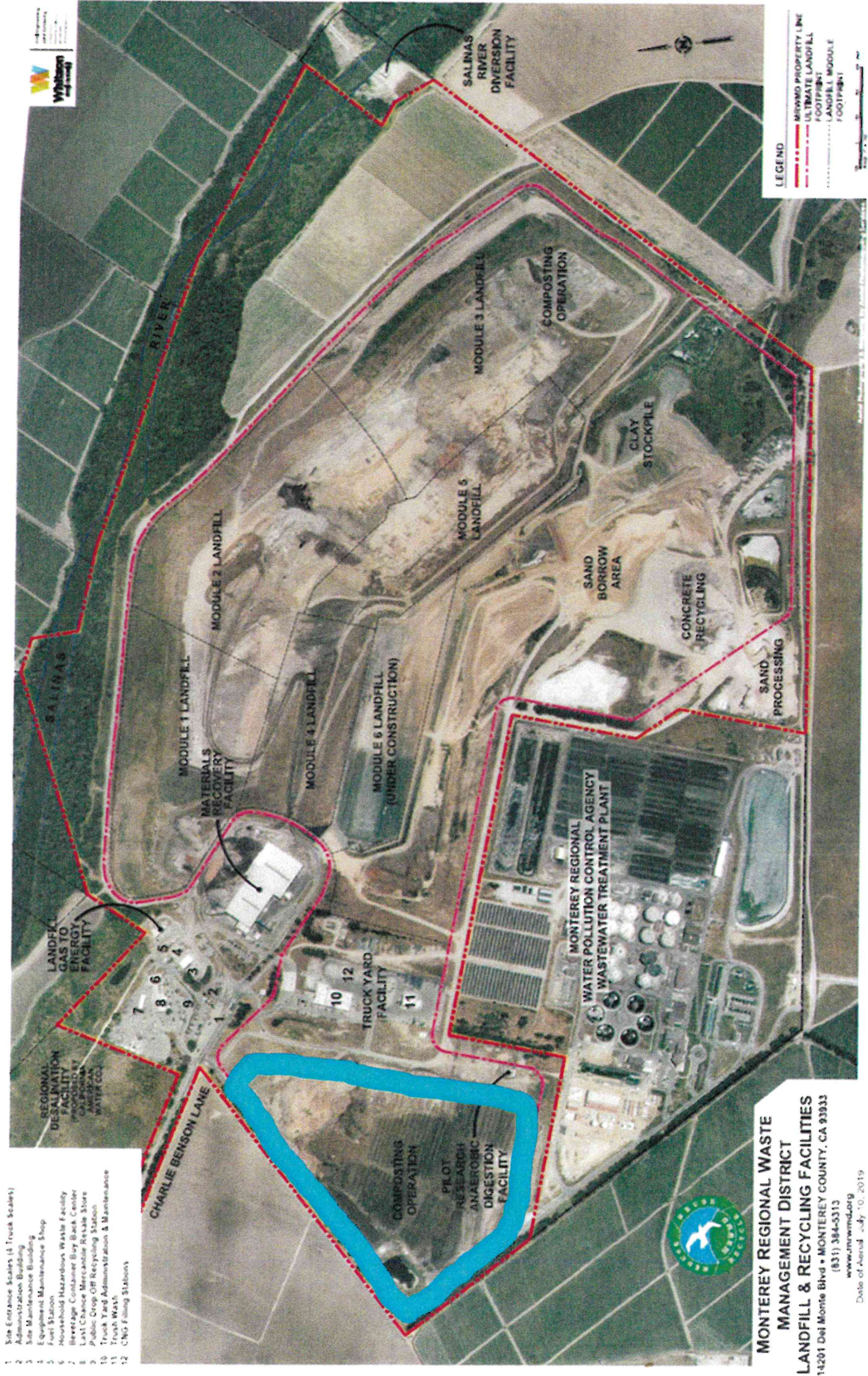
OPERATOR:

KEITH DAY COMPANY, INC.

By _____
Keith Day, President

- EXHIBIT A - Map showing location of premises [to be initialed by the parties and attached.]
- EXHIBIT B - Insurance Requirements
- EXHIBIT C – Processing Services Agreement
- EXHIBIT D - Odor Management and Mitigation Strategy Options

EXHIBIT A - COMPOST FACILITY AREA MAP



Compost Facility Area – Approximate Limits

EXHIBIT B
INSURANCE REQUIREMENTS

Without limiting Tenant's indemnification obligations to District under this Lease, Tenant shall provide and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the leased premises. The cost of such insurance shall be borne by the Tenant.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.

B. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office Form CA0001.

C. Workers Compensation, as required by State of California and Employer's Liability Insurance.

D. Property Insurance against all risk or special form perils, including Replacement Cost and debris removal coverage for any Improvements, without deduction for depreciation, constructed or erected by Tenant, and the personal property of Lessee, its agents and employees.

E. Pollution Legal Liability and Remediation and/or Errors & Omissions applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year. This policy shall be endorsed to cover materials to be transported by the Tenant.

2. Minimum Limits of Insurance

Tenant shall maintain limits no less than:

A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.

B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.

C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of the District.

D. Property: Full replacement cost with no coinsurance penalty provision.

3. Deductibles and Self-Insured Retentions

Any liability deductible or self-insured retention must be declared to and approved by the

District's General Manager or his or her designee. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by the Tenant.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement: Any general liability policy provided by Tenant shall contain an additional insured endorsement applying coverage to the District, the members of the District Board of Directors and the officers, agents and employees of the District, individually and collectively.

B. Primary Insurance Endorsement: For any claims related to this Lease, the Tenant's insurance coverage shall be primary insurance as respects the District, the members of the Board of Directors of the District and the officers, agents and employees of the District, individually and collectively. Any insurance or self-insurance maintained by the District, the members of the Board of Directors, the District's officers, officials or employees shall be excess of the Tenant's insurance and shall not contribute with it.

C. Notice of Cancellation: Each required insurance policy shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District at the address shown in section of the Lease entitled "Notices".

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by District's Risk Manager.

6. Evidence of Insurance

Prior to commencement of this Lease Tenant shall furnish the District with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Tenant shall furnish certified copies of the actual insurance policies specified herein, within thirty days after commencement of Lease. Thereafter, copies of renewal certificates and amendatory endorsements shall be furnished to District within thirty days of the expiration of the term of any required policy. Tenant shall permit District at all reasonable times to inspect any policies of insurance of Tenant which Tenant has not delivered to the District. Policies, renewal certificates and amendatory endorsements shall be delivered to the District at the address shown in the section of the Lease entitled "Notices."

7. Failure to Obtain or Maintain Insurance;

District's Remedies. Tenant's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to

make premium payments required by such insurance, shall constitute a material breach of the Lease, and District may, at its option, terminate the Lease for any such default by Tenant.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Tenant, and any approval of said insurance by the District are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Tenant pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

District retains the right at any time to review the coverage, form and amount of insurance required herein and may require Tenant to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Sub-tenants' Insurance

Tenant shall require any District-approved sub-tenant, of all or any portion of the Premises, to provide the insurance coverage described herein prior to its occupancy of the Premises.

EXHIBIT C PROCESSING SERVICES AGREEMENT

Without limiting Operator's obligations to District under this Lease, Operator shall provide processing services to the District in accordance with this Lease, permit conditions, and applicable statutes and laws. The Operator, since 2009 under a year-to-year rental agreement, has designed and operated the composting facility on District property to process organic materials, including yard waste, clean wood waste and, most recently, food waste upon the request of and for the benefit of the District and its member communities. It is mutually agreed by the parties hereto that the processing services are subject to the following terms, covenants, conditions and provisions, and the Operator covenants, as a material part of the consideration of the processing services, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and entered into upon the condition of such performance and compliance.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and Operator agree to the following terms and conditions for processing services of green wastes, yard wastes, wood wastes, and food wastes:

Terms and Conditions

ARTICLE I. PROCESSING SERVICES

1.01 Location. Operator shall receive and process materials on the District property that is defined in this Lease except where otherwise agreed to in writing by the District.

1.02 Term. The term of processing services shall be the term of the Agreement.

1.03 Operator Receipt of Materials. The commercial route trucks that deliver green waste, yard waste, and/or food waste materials to the District will be directed to the Lease facility and received by the Operator, at which point all such material shall be owned by and the responsibility of the Operator. At no cost to the Operator, the District shall supply to the Operator an empty roll-off or similar container for the Operator's use to deposit trash and non-organic debris removed from the green/yard/food waste materials delivered to the Operator. The District shall periodically remove and dispose of the trash and return empty containers to the Operator at no cost to the Operator. The Operator shall immediately notify the District, upon receipt of the load, of any loads that contain excessive amounts of trash. The parties acknowledge that both the Operator and the District may have additional costs to which additional fees are charged to the customer involved. The District will accept the "overs" remaining after processing all material at no charge to the Operator. All such "overs" shall be hauled by the District from the Lease Facility to a location at the landfill at no cost to the Operator. The District will also provide a trommel screen to be used, operated and maintained by the Operator. The District shall assist the Operator, if necessary, to receive electrical power utility service. The Operator shall perform normal routine maintenance on the District's trommel

equipment, such as cleaning and lubricating to ensure proper operation. The District shall be responsible for repair and replacement of major components of the trommel equipment except that caused by the Operator's improper or negligent use of the equipment. Should the District request that the Operator perform any such major repairs on the District's trommel equipment, a quote will be provided to the District by the Operator before any work is undertaken. The District and the Operator acknowledge that the quantity of food waste material is likely to increase in the future and that the Operator's operations of the Lease Facility may need to be modified with both new personnel and equipment. The District and the Operator agree that should the annual food waste volume exceed 10,000 tons per year, the processing rate paid to the Operator by the District may need to be renegotiated to accommodate the additional labor and equipment costs needed to process the food waste material.

The delivery of green/yard/wood waste materials that are received by the District at its Material Recovery Facility (MRF) will be sorted and cleaned by the District. Once the material from the public has been processed by the District, the clean green/yard waste will be segregated from the clean wood waste and piled neatly for routine pick up by the Operator at no cost to the District. Upon pick up by the Operator, the materials shall be owned by and the responsibility of the Operator. The District will reduce the size of the wood waste so as not to damage the Operator's trailers when loading and unloading the trailers, which will be performed by the Operator at no cost to District on the northeast side of the District's MRF or at a mutually agreed to alternative location. Alternatively, the Operator may choose to use Operator's grinding equipment to grind the wood waste in-place on the northeast side of the District's MRF, or at a mutually agreed to alternative location, and transfer the wood grindings to the Lease facility at no cost to the District.

The Operator shall assure the District that all organic waste received and processed by the Operator from the District for processing on the Lease Facility shall be diverted from landfill disposal to the greatest extent possible so that such materials shall receive Diversion Credit in accordance with any and all waste diversion requirements under Applicable Law, except regarding non-organic material that is removed during the processing of waste at the Lease Facility.

ARTICLE 2. PROCESSING SERVICES PAYMENTS

2.01 Payments. Effective upon signing this Lease, District agrees to and shall pay to Operator, a processing service payment at a processing rate of \$____ per ton until June 30, 2025. The parties acknowledge that the processing rate is inclusive of minimal to zero amounts of oversized logs and tree trunks. In the event that significant quantities of oversized logs and tree trunks are present, separate compensation to reimburse the Operator for additional services that are necessary to reduce the size of the materials to permit the processing services to be employed shall be mutually agreed to by the parties and recorded in the form of an addendum to this Exhibit.

Operator shall invoice the District on a bi-weekly basis and District shall pay the Operator with a payment term of "Net 15 calendar days" from date of receipt of the invoice. The District

shall electronically submit scale tickets to the Operator within seven (7) business days of the scale ticket transaction date. After June 30, 2025, the processing rate shall be as defined in the following table *{table not presented – to be defined}*. District and Operator acknowledge that annual inflation rates are included in the processing rates presented in the table below.

2.02 Interest on Late Payments. If District is late in the payment of any invoices for processing services by the Operator, such payments shall bear interest at the rate of ten per cent (10%) per annum from the day it is due until actually paid.

2.03 Adjustment of Processing Rate for Changes in Scope of Services. Any changes to the scope of services, either increases or decreases in the processing services performed by the Operator, represent a basis for the District and/or the Operator to request a change in the processing rate. The parties agree to provide a basis for the magnitude of the rate change and to negotiate the rate change in good faith. Mutually agreed changes in the processing rate shall be recorded in an addendum to this Exhibit, In the event that the parties cannot reach an agreement of the rate change, the dispute resolution terms of this Lease shall be used to achieve an agreement.

2.04 Diesel Fuel Surcharge. A surcharge will be applied for any increase above \$3.00 per gallon based on the average California diesel fuel price per gallon as published each Monday by the Energy Information Administration of the US Department of Energy. The base fuel rate of \$3.00 per gallon is included in the above processing rate. Should the cost of diesel fuel exceed this base fuel rate, or fall below the base fuel rate, the calculated fuel surcharge shall be used to determine the extra costs to the Operator for an increase above the base rate or a credit to the District for a cost below the base rate. Operator shall report to the District on a weekly basis the amount of fuel used in the prior week and the Operator's cost of fuel purchase for every purchase of fuel by the Operator. The fuel surcharge will be calculated by the Operator every week and the credits to the Operator and District determined accordingly and presented in the Operator's invoice to the District.

EXHIBIT D

ODOR MANAGEMENT AND MITIGATION STRATEGY OPTIONS

The Tenant shall provide processing services to the District in accordance with this Lease, permit conditions, and applicable statutes and laws that result in products of market value quality and operations that do not cause a nuisance to the District or neighboring properties. The Tenant, since 2009 under a year-to-year rental agreement, has designed and operated the composting facility on District property to process organic materials, including yard waste, clean wood waste and, most recently, food waste upon the request of and for the benefit of the District and its member communities. It is mutually agreed by the parties hereto that the services include processing of materials with various odor characteristics and that the Tenant shall use Best Management Practices (NMPs) for their composting operations to manage odors on site in accordance with this Lease, permit conditions, and applicable statutes and laws to avoid causing a nuisance to the District and neighboring properties. The parties mutually agree that they individually and collectively shall review odor complaints made to the composting operations; and address those that are determined to be from the composting operations. The Tenant's Odor Impact Minimization Plan (OIMP), as required by permit, shall be reviewed and modified from time-to-time to maintain the use of BMPs in the composting operations at the site. The OIMP shall guide the Tenant's activities at the compost site and the Tenant's management of odor in the composting operations. In addition to the OIMP, the Tenant shall consider using one or more of the following strategy options, where appropriate, to address a foul odor condition that is determined to be from the compost operations.

Odors During Receiving:

- Mix or aerate materials (increase material porosity).
- Consider covering odiferous materials with a 6" – 12" layer of bulking agent, high carbon amendments, or finished compost. Moisture condition to reduce odor releases.
- Reject odorous loads if possible (or add odor absorbing material at the originating location, such as sawdust to a load of manure).
- Incorporate wet or odorous loads directly into actively composting windrows; or manage those loads separately and blend with other materials to lessen their concentration.
- Expedite material processing following receipt of material.
- Consider blanketing odiferous materials with a 6" – 12" layer of bulking agent, high carbon amendments, finished compost (water lightly to reduce odor releases), or similar.

Odors During Grinding: (when the odor is a terpene):

- Add light misting of water and/or odor neutralizer to grinder at discharge points
- Consider grinding green materials with woodier materials.

Odors During Mixing:

- Uniformly blend materials in windrows/piles.
- Combine materials to achieve a high C:N ratio (typically > 30 to 1).
- Mist water and/or odor neutralizer at dust generation points.
- Create piles and windrows with good porosity characteristics.

Odors During Composting:

- Modify the “Turn” frequency to re-invigorate the composting process.
- Maintain sufficient windrow moisture content. Avoid over-watering windrows.
- Manage the size of windrows to increase passive aeration.
- Consider blanketing odiferous materials with a 6” – 12” layer of bulking agent, high carbon amendments, finished compost. (water lightly to reduce odor releases), or similar.
- For mercaptans and sulfur, adopt forced aeration.

Odors During Curing:

- Decrease curing pile size (height).
- Increase processing time prior to moving to curing.
- Review moisture content of in-process compost.
- Screen after curing to maintain porosity.
- Alter frequency of aerating curing piles.

Odors at the Site:

- Clean aisles of spilled material prior to the end of day.
- Keep paved areas clean by mechanically sweeping or suitable means.
- Apply water and/or neutralizer to reduce dust during dry conditions.

Odors in Runoff Water:

- Minimize storm water contact with organic materials.
- Remove particles from runoff water prior to the retention basin.
- Filter runoff water through a filter, filter berm, rock sock, or similar.