

**AGREEMENT FOR GREEN WASTE STORAGE AND RELOAD AT THE
NORTH AREA RECOVERY STATION BETWEEN THE COUNTY OF
SACRAMENTO AND THE CITY OF SACRAMENTO**

THIS AGREEMENT is made and entered into this ____ day of _____, 2007, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and the CITY OF SACRAMENTO, a municipal corporation, hereinafter referred to as "CITY".

RECITALS

WHEREAS, COUNTY'S Department of Waste Management and Recycling has the facilities available at its North Area Recovery Station (hereinafter referred to as "NARS") to serve as an intermediate storage and reload site for green waste collected by CITY;

WHEREAS, CITY has a need for a location to deposit and store its green waste pending final removal by its sub-contractor;

WHEREAS, CITY desires to enter into an agreement with COUNTY for green waste storage and reloading at COUNTY'S NARS;

WHEREAS, COUNTY AND CITY desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CITY agree as follows:

1. **Rights And Responsibilities of County**
COUNTY will provide sufficient area at its NARS facility to allow CITY authorized vehicles to deposit and reload green waste collected by CITY. COUNTY will provide sufficient area to accept not less than two hundred (200) tons per day (day shall mean Sunday through Saturday) and to accommodate the storage of not less than four hundred (400) tons at any one time.
2. **Rights And Responsibilities of City**
 - A. CITY, within its sole judgment and discretion, shall deposit the green waste it collects from its normal residential routes NARS. CITY is expected to deliver up to two hundred (200) tons per day of green waste, and not to exceed a total storage requirement of up to four hundred (400) tons at any given time.
 - B. CITY shall arrange for its subcontractor to reload and remove such green waste on a first in, first out basis, and with no more than two (2) calendar days worth of collected materials (maximum of 400 tons) accumulated on site at any time. If CITY'S subcontractor fails to remove the green waste

as specified herein, COUNTY shall notify CITY in writing and CITY shall arrange for the removal of the green waste not later than forty-eight (48) hours after receiving such notice. If CITY fails to remove the green waste as specified herein, then COUNTY may remove the green waste at CITY'S expense as provided below, and may terminate as provided in Paragraph 5, below.

- C. CITY shall employ reasonable good neighbor and industry practices to minimize the migration of odor and dust off-site as a result of CITY'S green waste operations at NARS. If CITY fails to reasonably control odor, the notice, and termination provisions of Paragraph 5(A) shall apply.
- D. CITY agrees to remove all residuals, litter, and/or contaminated materials on an as-needed basis within the reasonable judgment and discretion of COUNTY, upon two (2) business days advance written notice by COUNTY. Said materials shall be placed in appropriate containers by CITY to prevent windblown materials from littering the Site. If CITY fails to remove the residuals as specified herein, then COUNTY may remove the residuals at CITY'S expense as provided below.
- E. CITY agrees to compensate COUNTY its actual costs of removal, if green waste or residuals are not removed by CITY or its designee under Paragraphs 2(B) and 2(D) of this Agreement. COUNTY shall provide CITY with a written itemization of its costs with ten (10) business days after COUNTY'S removal of CITY'S green waste or residuals.
- F. CITY is authorized to have one wheeled loader stored on site at NARS for use in its green waste reload operation.
- G. CITY green waste collection trucks shall be weighed on NARS scales when coming onto the site. Additionally, COUNTY agrees to provide CITY access to said scales for the purpose of documenting the transport of green waste off-site by CITY'S subcontractor.
- H. CITY shall provide truck identification numbers and tare weights for its green waste vehicles to COUNTY to be utilized in the deposit of green waste at NARS prior to the commencement of operations under this Agreement and every six (6) months thereafter until the termination of this Agreement.

3. Term

This Agreement shall commence on the date first written above and shall end on December 31, 2007. This Agreement may be renewed for up to four additional one (1) year terms upon mutual written consent of the COUNTY'S DIRECTOR and CITY'S Director of Utilities

4. Compensation

- A. CITY shall pay COUNTY three dollars and thirty-one cents (\$3.31) per ton of green waste delivered for the utilization of COUNTY drop off area and scale services. COUNTY shall bill CITY on a monthly basis. The rate per ton shall be adjusted in writing on an annual basis pursuant to Paragraph 4(B), below. The agreement amount shall not exceed \$172,120 per year, or \$860,600 for five years.
- B. CPI Adjustment. When making CPI adjustments, the base year shall be 100% of the "Northern California All Urban Consumers" Consumer Price Index (CPI) value for April 2006. Effective July 1, 2007, the rate per ton of green waste delivered shall be adjusted using 100% of the increase (or decrease if applicable) in said CPI value for the period April 2006 to April 2007. Thereafter, the rate per ton shall be adjusted each year using the April CPI value compared to the base year CPI value to take effect each July 1. Notwithstanding the foregoing, the rate per ton shall not be adjusted to exceed the COUNTY'S current gate tipping fee at any time during the term of this agreement.
- C. COUNTY shall credit CITY \$7.88 per ton of green waste delivered by CITY to NARS during the period of December 11, 2006 through the date first written above. This credit of \$7.88 per ton shall be applied to all green waste delivered by CITY to NARS where COUNTY charged CITY \$44.80 per ton as a tipping fee.

5. Termination

- A. If CITY fails to remove green waste pursuant to Section 2B above, or if COUNTY receives odor complaints at NARS due to CITY'S green waste, COUNTY may terminate this Agreement upon ten (10) calendar days advance written notice to CITY.
- B. Either party may terminate this Agreement, for any reason, upon sixty (60) calendar days advance written notice provided to the other party.
- C. The notice of termination shall be deemed served and effective for all purposes on the date it is deposited in the United States mail, postage prepaid and addressed to the other party at the address indicated in Section 11.

6. Liability and Indemnity

- A. CITY shall indemnify, defend and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against all, demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys fees, to the extent arising out of or resulting from the performance of this Agreement and

caused in whole or in part by the negligent or intentional acts or omissions of CITY, its City Council, its officers, directors, agents, employees, or subcontractors.

- B. COUNTY shall defend, indemnify, and hold harmless CITY, its City Council, officers, directors, agents, employees and subcontractors from and against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys fees, to the extent arising out of or resulting from the performance of this Agreement and caused in whole or part by the negligent or intentional acts or omissions of COUNTY, COUNTY'S Board of Supervisors, its officers, directors, agents, employees, or volunteers.
- C. It is the intention of COUNTY and CITY that the provisions of Section 6 be interpreted to impose on each party responsibility to the other for the acts or omissions of their respective officers, directors, agents, employees, volunteers, COUNTY'S Board of Supervisors, City Council and CITY'S subcontractors. It is also the intention of COUNTY and CITY that, where fault is determined to be contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage, attributable to the fault of that party, its officers, directors, agents, employees, volunteers, COUNTY'S Board of Supervisors, City Council and CITY'S subcontractors.

7. **Insurance**

- A. Each party, at its sole cost and expense, shall carry insurance or self-insure for its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.
- B. CITY shall require that its subcontractors performing work as part of this agreement maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit A. CITY'S Subcontractor shall list COUNTY as an additional insured on their policies of general liability and automobile liability insurance and CITY shall provide COUNTY with proof of such insurance on an annual basis.

8. **Compliance with Laws**

The parties shall observe and comply with all applicable Federal, State and County laws, regulations, and ordinances.

9. **Governing Laws and Jurisdiction**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

10. **Health, Safety and Environmental Regulation Compliance**

A. The parties shall observe and comply with all applicable Federal, State and Local laws, ordinances, rules and regulations pertaining to health and safety protection of their respective employees, including requirements applicable to an Injury and Illness Protection Plan and a program to communicate any significant hazards of work to be performed under this Agreement.

B. The parties agree to comply with all applicable hazardous waste and environmental laws, ordinance, rules and regulations, enacted or promulgated by any public or governmental authority or agency having jurisdiction.

11. **Notices**

Any, notice, demand, request, consent, approval, invoice, or payment concerning this Agreement shall be in writing and shall be either personally delivered or sent by first class mail, postage pre-paid, addressed as follows:

TO COUNTY:	TO CITY:
Waste Management and Recycling	Solid Waste Division
County of Sacramento	City of Sacramento
9850 Goethe Road	2812 Meadowview Rd.
Sacramento, CA 95827-3561	Sacramento, CA 95832
Attn: David Pelsler, Director	Attn: Edison Hicks, Manager

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

12. **Licenses and Permits**

The parties shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento, City of Sacramento and all other appropriate governmental agencies. Failure to maintain the licenses permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by either party.

13. **Performance Standards**

CITY and CITY'S subcontractor shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to the services performed under this Agreement.

14. **Contractor Identification**

CITY shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 1.60: CITY'S subcontractor's name, residence address, telephone number, and social security number, and whether dependent health insurance coverage is available to CITY'S subcontractor.

15. **Status of City and City's Subcontractor**

- A. It is understood and agreed that CITY (including CITY'S subcontractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CITY'S and CITY'S subcontractor's assigned personnel shall not be entitled to any benefits payable to employees of County. County is not required to make any deductions or withholdings from the compensation payable to CITY or CITY'S subcontractor under the provisions of this agreement; and as an independent contractor, CITY and CITY'S subcontractor hereby indemnifies and hold County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that CITY and CITY'S subcontractor in the performance of its obligation hereunder is subject to the control or direction of County as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CITY and CITY'S subcontractor for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by CITY and CITY'S subcontractors, such person shall be entirely and exclusively under the direction, supervision, and control of CITY and CITY'S subcontractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CITY and CITY'S subcontractor, and the County shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of County, neither the CITY'S nor CITY'S subcontractor's assigned personnel shall have any entitlement as a County employee, right to act on behalf of County in any capacity whatsoever as agent, nor

to bind County to any obligation whatsoever. CITY nor CITY'S subcontractor shall not be covered by worker's compensation; nor shall CITY nor CITY'S subcontractor be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.

16. Child, Family and Spousal Support Reporting Obligations

- A. CITY'S failure to comply with state and federal child, family and spousal support reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CITY'S failure to cure such default within ninety (90) days of notice by COUNTY shall be grounds for termination of this Agreement.

17. Audits and Records

Upon either party's request, either party or its authorized designee shall have the right at reasonable times and intervals to audit, at the other party's premises, the other party's non-privileged financial and program records as the auditing party reasonably deems necessary to determine the other party's compliance with this agreement. Each party shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon the other party's request at the other party's expense.

18. Assignment of Agreement

The parties to this Agreement may not assign the privileges or obligations of this Agreement.

19. Amendments

Amendments shall be in writing and executed by both parties.

20. Successors

This Agreement shall bind the successors of COUNTY and CITY in the same manner as if they were expressly named.

21. Waiver

The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

22. Interpretation

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or

interpreted more favorably for one party on the basis that the other party prepared it.

23. Director

As used in this Agreement, "DIRECTOR" shall mean the Director of the Department of Waste Management and Recycling or his/her designee.

24. Governing Laws and Jurisdiction

This Agreement shall be deemed to be executed and deemed to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

25. Severability

The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

26. Time

Time is of the essence of this Agreement.

27. Entire Agreement

This instrument constitutes the entire Agreement between COUNTY and CITY concerning the subject matter hereof. Any prior whether oral or written, between COUNTY and CITY regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

28. Approval of Governing Bodies

This Agreement is expressly conditional upon the approval of each party's governing body. Each of the parties hereto will use its best efforts to obtain such approval.

29. Warranty of Contracting Authority

The signers of this Agreement have the capacity and are authorized to execute this Agreement as the representatives of their respective parties, and to bind said parties to the terms hereof.

30. Duplicate Counterparts

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when both parties have signed it.

(SIGNATURE PAGE FOLLOWS.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

CITY OF SACRAMENTO, a municipal corporation

By: _____
David A. Pelsler, Director
Department of Waste Management
and Recycling
Municipal Services Agency

By: _____
Name: _____
Title: _____

"COUNTY"

"CITY"

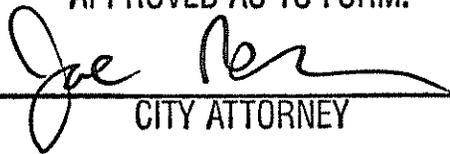
Date: _____

Date: _____

Signed by the Director under the authority delegated by Resolution Number 99-0327.

Agreement approved by Board of Supervisors:

APPROVED AS TO FORM:



CITY ATTORNEY

Agenda Date: _____

Item Number: _____

CONTRACT AND CONTRACTOR TAX STATUS
REVIEWED AND APPROVED BY COUNTY COUNSEL

By: _____
Diane E. McElhern
Deputy County Counsel

Date: _____

Prepared by: _____
Doug Kobold, Program Manager
Business Development & Contract Administration
Department of Waste Management & Recycling
Phone: (916) 875-7087

**EXHIBIT A to Agreement
Between COUNTY OF SACRAMENTO and CITY OF SACRAMENTO**

**COUNTY OF SACRAMENTO
INSURANCE REQUIREMENTS
FOR CITY'S SUBCONTRACTORS**

Without limiting SUBCONTRACTOR'S indemnification, SUBCONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by SUBCONTRACTOR, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of COUNTY Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require SUBCONTRACTOR to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

1. Verification of Coverage

SUBCONTRACTOR shall furnish COUNTY with certificates evidencing coverage required below. **Copies of required endorsements must be attached to the certificates provided.** COUNTY Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by COUNTY before performance commences. COUNTY reserves the right to require that SUBCONTRACTOR provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

2. Minimum Scope of Insurance

Coverage shall be at least as broad as:

GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by COUNTY Risk Manager.

AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 00 01. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply. Personal Lines automobile insurance shall apply if vehicles are individually owned.

WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

3. Minimum Limits of Insurance

SUBCONTRACTOR shall maintain limits no less than:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage:	\$ 100,000

Automobile Liability:

- a. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$2,000,000 Combined Single Limit.
- b. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

Workers' Compensation: Statutory.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

4. Deductibles and Self-Insured Retention

Any deductible or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by COUNTY.

5. Other Insurance Provisions

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

6. All Policies:

- a. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. COUNTY Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the

interests of COUNTY and the general public are adequately protected.

- b. MAINTENANCE OF INSURANCE COVERAGE: SUBCONTRACTOR shall maintain all insurance coverages in place at all times and provide COUNTY with evidence of each policy's renewal ten (10) days in advance of its anniversary date. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' written notice for cancellation or sixty (60) days' written notice for non-renewal has been given to COUNTY. For non-payment of premium 10 days prior written notice of cancellation is required.

7. Commercial General Liability and/or Commercial Automobile Liability:

- a. ADDITIONAL INSURED STATUS: COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of SUBCONTRACTOR; products and completed operations of SUBCONTRACTOR; premises owned, occupied or used by SUBCONTRACTOR; or automobiles owned, leased, hired or borrowed by SUBCONTRACTOR. The coverage shall contain no endorsed limitations on the scope of protection afforded to COUNTY, its officers, directors, officials, employees, or volunteers.
- b. CIVIL CODE PROVISION: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- c. PRIMARY INSURANCE: For any claims related to this agreement, SUBCONTRACTOR'S insurance coverage shall be endorsed to be primary insurance as respects COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of SUBCONTRACTOR'S insurance and shall not contribute with it.
- d. SEVERABILITY OF INTEREST: SUBCONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. SUBCONTRACTORS: SUBCONTRACTOR shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by SUBCONTRACTOR'S subcontractor.

8. Workers' Compensation:

WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against COUNTY, its

officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by SUBCONTRACTOR.

9. Notification of Claim

If any claim for damages is filed with SUBCONTRACTOR or if any lawsuit is instituted against SUBCONTRACTOR, that arise out of or are in any way connected with SUBCONTRACTOR'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, SUBCONTRACTOR shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.