



Lee County
Solid
Waste

YARD WASTE (HORTICULTURE) GRINDING AND
PROCESSING SERVICE AGREEMENT

BETWEEN

LEE COUNTY
("COUNTY")

AND

[TBD]

("CONTRACTOR")

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ARTICLE 1. DEFINITIONS

To the extent the definitions contained herein conflict with similar definitions contained in any federal, state or local law, the definition herein shall prevail. However, nothing contained herein shall be interpreted to require Contractor to undertake any action that is contrary to federal, state or local law. Terms that are not defined herein shall be given their plain meaning unless the context in which the term is used denotes a different meaning.

Agreement or Service Agreement shall mean this contractual Agreement between County and the awarded Contractor for horticulture grinding, processing, loading, transportation, marketing, and storm water management of the County's Yard Waste and Mulch Facility.

Applicable Law shall mean all applicable federal and state of Florida laws, local (municipal and county) ordinances, and the rules and regulations of all authorities having jurisdiction over any part of the services provided under this Agreement.

Commencement Date shall mean October 1, 2022, the date services pursuant to this Agreement shall commence.

Compost Feedstock shall mean Yard Waste that is ground to a reduction size of 2 inch minus Mulch and utilized for County composting operations.

Contamination shall mean a load or other quantity of other waste materials where the proportion of Contamination as compared to Yard Waste exceeds 25% by Volume. Plastic bags containing Yard Waste will not be considered Contamination.

Contract Administrator shall mean the individual, designated by the Director to act as County's representative in matters relating to the interpretation, implementation, and enforcement of this Agreement.

Contractor Mulch shall mean Yard Waste that is ground to a reduction size of 2 inch minus or 5 inch minus Mulch and is disposed of by the Contractor.

Contract Year shall mean October 1 of a given year through September 30 of the following year.

Contractor shall mean the individual, firm or entity offering services which, by execution of this Agreement, shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or the work of subcontractors, required under the covenants, terms and provisions contained in this Agreement.

County shall mean the Board of County Commissioners of Lee County, a political subdivision and charter County of the State of Florida, and all officials and employees.

Day shall mean one calendar day.

Distribution Mulch shall mean Yard Waste that is ground to a reduction size of 2 inch minus Mulch for distribution to public drop - off areas, and County Mulch sales.

Facility shall mean the County's six (6) acre Yard Waste processing site at the Lee County Resource Recovery Facility located at 10500 Buckingham Road, Fort Myers Florida. And any future Lee County Yard Waste process facilities.

Facility Manager shall mean the individual designated by Contractor to represent it in all matters related to this Agreement.

Mulch shall mean Yard Waste that is ground to a reduction size of 2 inch or 5 inch minus mulch as directed by the County Administrator. This means at least 97% of the material shall pass a two-inch or five-inch screen mesh respectively, and not contain excessive non-horticultural debris, such as plastic, string or rocks.

Putrescible Waste shall mean solid waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.

Rolling Stock shall mean all mobile pieces of heavy equipment and grinders provided by Contractor in order to meet its contract obligations to operate and maintain the Facility.

Ton refers to a unit of weight equal to 2,000 pounds.

Yard Waste shall mean vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps.

ARTICLE 2. TERM

2.1. Commencement Date

The Commencement Date shall be October 1, 2022; no work under this Agreement may begin at the Facility until the COUNTY issues a Notice to Proceed.

2.2. Initial Term

The term of this Agreement shall be for a period of five (5) years beginning on the Commencement Date and terminating midnight on September 30, 2027.

2.3. Renewal Option

Under a mutual agreement by both parties, this Agreement may be renewed for three (3) additional terms of One (1) year each under the same terms and conditions as the initial term, including amendments. CONTRACTOR shall be notified no later than one hundred eighty (180) Days prior to the end of the initial term of the COUNTY'S intent to renew this Agreement.

ARTICLE 3. TERMINATION

This Agreement may be terminated by the COUNTY at its convenience, or due to the fault of the CONTRACTOR, by giving ninety (90) calendar days written notice to the CONTRACTOR. In the event of such termination, the COUNTY shall be responsible to the CONTRACTOR only for fees and compensation earned by the CONTRACTOR, in accordance with Article 9 and Exhibit 1 of this Agreement, prior to the effective date of said termination. In no event shall the COUNTY be responsible for lost profits of the CONTRACTOR or any other elements of breach of contract.

If the CONTRACTOR is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the CONTRACTOR or for any of its property; or if it disregards the authority of the COUNTY'S designed representatives; or if it otherwise violates any provisions of this Agreement; or for any other just cause, the COUNTY may, without prejudice to any other right or remedy, and after giving the CONTRACTOR written notice, terminate this Agreement.

This Agreement may be terminated by the COUNTY for habitual violations of performance. Should the CONTRACTOR'S record of performance demonstrate a frequent, regular, or repetitive failure in performance of terms or conditions required herein, regardless of whether the CONTRACTOR has corrected each individual condition of failure or paid the assessments for those violations, the CONTRACTOR may be found in default, or breach of contract and may be subject to terminating this Agreement.

ARTICLE 4. GENERAL PROVISIONS

The CONTRACTOR shall comply strictly with all the terms and conditions of the Request for Proposals No. [INSERT] (The Solicitation), a copy of which is on file with the COUNTY'S Department of Procurement Management and is deemed incorporated into this Agreement. In the event of a conflict between the Agreement and the Solicitation, the Agreement shall take precedence. The CONTRACTOR shall be responsible for all aspects of managing, staffing, and operating the Facility, including the removal, disposal or recycling of Contractor Mulch in conformance with the terms of this Agreement and Applicable Law. The CONTRACTOR shall provide all necessary equipment, tools, personnel, and supplies to accept, process, and grind Yard Waste; as well as, load Mulch and transport Contractor Mulch or Compost Feedstock. The CONTRACTOR shall be responsible to transport Contractor Mulch and, upon request by the COUNTY, transport Compost Feedstock Mulch to the COUNTY'S Compost Facility located at the Lee/Hendry County Landfill 5500 Church Rd Felda, Florida.

4.1. Hours of Operation

The Facility shall be open and available to receive Yard Waste during all operating hours at the COUNTY'S Resource Recovering Facility. Hours of operation are from 6:00 am to 6:00 pm Monday through Friday, and 6:00 am to 12:00 pm on Saturday, excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Should an observed holiday fall during a normal workweek Day and the Resource Recovery Facility is closed, the Facility shall be open and available to receive Yard Waste the following Saturday from 6:00 am to 6:00 pm.

All work under this Agreement shall be performed during regular operating hours unless otherwise approved by the COUNTY. The CONTRACTOR shall be required to operate additional hours or Days as needed to receive collection vehicles, upon the COUNTY'S request, at no additional charge to the COUNTY. The CONTRACTOR consent may not be unreasonably withheld.

Lee/Hendry Landfill hours of operation are 7:00 am to 4 pm Monday through Friday, and 7:00 am to 12:00 pm on Saturday for Compost Feedstock deliveries, upon the COUNTY'S request.

The COUNTY reserves the right to amend its hours of operations at any time throughout this Agreement.

4.2. Compliance with Laws and Regulations

CONTRACTOR shall comply with all Applicable Laws, regulations, and permits including Chapter 62-709 of the Florida Administrative Code (F.A.C.), Florida Statute 403, the Conditions of Certification, and similar requirements, including all requirements concerning health and safety, noise, odors, effluent, and emissions.

4.2.1. Fire Protection and Control Provisions:

CONTRACTOR shall maintain fire protection and control provisions to prevent and contain accidental burning of Yard Waste or Mulch, which shall include:

- An all-weather access road, at least 20 feet wide, all around the perimeter of the Facility.
- Maintain 15 feet wide lanes between windrows.
- Processed or unprocessed materials shall not be mechanically compacted.
- Processed or unprocessed Yard Waste or Mulch shall be no more than 50 feet from access by motorized firefighting equipment.

4.2.2. Signage:

CONTRACTOR shall provide signage for the Facility as required by Chapter 62-709, F.A.C. At a minimum, this includes the name of the operating authority, hours of operations, emergency contact, and 24-hour telephone number in case of emergency.

4.2.3. Traffic Control:

CONTRACTOR shall ensure and provide adequate traffic control to and from the site to prevent interference with other operations on adjacent COUNTY property. Traffic control shall include any measures necessary to protect the public using the COUNTY'S facilities from any safety hazards arising from the Yard Waste processing and grinding operation. The CONTRACTOR shall provide traffic control signs, cones, or other traffic management measures, including ground traffic flag personnel to direct customers. The CONTRACTOR shall maintain spacing requirements for all vehicles unloading Yard Waste at the Facility. At a minimum, all hand unload, or inject vehicles shall be spaced ten (10) feet apart and all dump vehicles shall be spaced twenty (20) feet apart during the unloading process. The CONTRACTOR is required to report all accidents to the COUNTY immediately and send an accident report to the COUNTY within 24hours.

4.2.4. Litter, Dust, Odor, Storm Water, and Vector Control:

The CONTRACTOR shall employ methods for litter, dust, odor, storm water, and vector control as required by Chapter 62-709 F.A.C., and Applicable Law. CONTRACTOR shall collect litter at least once per day, or more often as necessary to maintain orderly and neat site operations. The CONTRACTOR shall employ means to control dust. The Contractor shall control and manage storm waste run-off and prevent ponding of storm water in accordance with Applicable Law. The Contractor and shall employ means to control objectionable odors in accordance with Chapter 62-296.320 (2), F.A.C., including, but not limited to, immediately containerizing Putrescible Waste within 24 hours of receipt of such material. The COUNTY shall provide the CONTRACTOR roll-

off containers to place Putrescible Waste in. The County shall be responsible for transporting and disposal cost(s) of Putrescible Waste.

4.2.5. Emergency Response & Preparedness:

The CONTRACTOR shall be on-call 24 hours a day, 7 days a week to respond to site emergencies. The CONTRACTOR shall have a competent person available to operate the site including, but not limited to, moving or processing materials as required by emergency responders. The CONTRACTOR shall provide the COUNTY a list of emergency contact names, including telephone numbers that allow for contact 24 hours a day, 7 days per week.

4.2.6. Spill Response and Prevention:

The CONTRACTOR shall clean up all spills immediately upon discovery and shall report spills of toxic or hazardous material immediately to the COUNTY, regardless of the size.

The CONTRACTOR shall maintain sufficient spill cleanup supplies on-site and shall immediately clean oil or other fluid leaks using adsorbent materials maintained on site. Used adsorbents shall be properly bagged and placed with other municipal solid waste and plastic debris in a roll-off container.

The CONTRACTOR shall install secondary containment on all fuel tanks brought onto the work area. The COUNTY shall inspect the containment provided to determine its effectiveness and Contractor shall modify as needed until the tank has adequate containment per COUNTY'S instructions.

The CONTRACTOR'S personnel shall be trained in spill prevention and response procedures including how to properly handle fuel/oils and promptly clean spills using adsorbent materials. Training shall cover:

- Best management practices and controls
- Proper handling and storage procedures for significant materials
- Good housekeeping and material management practices

4.2.7. Title V Air Operating Permit Requirement:

The CONTRACTOR shall ensure that grinding equipment is relocated around the Facility, in accordance with Applicable Law, to grind materials. Each time grinding equipment is moved off-site, around the Facility or stored for any length of time at the Facility inoperable, the CONTRACTOR shall record the date and description of the move to maintain documentation of its non-road, non-stationary source status as to not affect the Facility's Title V Air Operation Permit. The CONTRACTOR shall include these records with their monthly reports submitted to the COUNTY as described in Article _ of this Agreement. Should grinding equipment operate at a

single physical location for more than 12 months, the CONTRACTOR shall request written approval from the Contract Administrator.

4.3. Operations and Maintenance Plan:

The CONTRACTOR shall develop an operations, health, and safety plan. This plan shall be submitted to County no later than thirty (30) days after the Effective Date of this Service Agreement. The operations plan shall provide written instructions for the daily operation and maintenance of the Facility and Rolling Stock. Any revision to the operations plan shall be accepted by the COUNTY before the CONTRACTOR implements any proposed changes. The operations plan shall include at a minimum:

- **Facility Contacts:** Name and designation of persons responsible for the operation and maintenance of the Facility, including 24 hours a day 7 days a week emergency contact information.
- **Rolling Stock:** Identify all Rolling Stock and backup spare Rolling Stock or sources to obtain or lease Rolling Stock.
- **Traffic Management Plan:** Identify measures and procedures for managing Facility traffic. Sequence and procedures for unloading including spotting and spacing requirements for customers.
- **Material Management Plan:** Identify the orientation and placement of unprocessed and processed materials. Method and sequence of processing and grinding materials. Waste screening procedures and procedures for managing prohibited wastes.
- **Communications Plan:** Identify methods for communication and communication devices. The COUNTY shall provide one (1) two-way radio for communication with the COUNTY's scale house.
- **Health and Safety Plan:** Provide organizations safety procedures, training including fire prevention and response, spill prevention and response, dust and odor control procedures.
- **Emergency Response and Preparedness Plan:** Procedures and resources to respond to natural disasters; such as hurricanes, tropical storms, fire, spills, and receipt of hazardous waste.

ARTICLE 5. PERSONNEL

The CONTRACTOR shall employ qualified supervision, equipment operators, laborers, mechanics, and drivers, or subcontract trucking with written approval from the COUNTY for the work under this Agreement. The CONTRACTOR shall staff the Facility with a sufficient number of employees to ensure the Facility is operated with good management and industry standards and practices and in sufficient numbers to enable the CONTRACTOR to perform its obligations and duties under this Agreement in a timely and efficient manner. Personnel shall be knowledgeable of the standard Facility operation, maintenance, and coordination of a Yard Waste processing facility.

The CONTRACTOR shall appoint a Facility Manager with written approval from the COUNTY and shall be the primary point of contact on behalf of the CONTRACTOR for all matters pertaining to this

Agreement. The COUNTY'S approval of the Facility Manager shall not be unreasonably withheld. The Facility Manager shall be responsible for overseeing and implementing the CONTRACTOR'S performance under this Agreement. Should there be reasonable cause, the COUNTY reserves the right to request the removal of the Facility Manager. In addition to the Facility Manager, the CONTRACTOR shall employ key personnel that has full authority to make operating decisions and shall be available at all times during Facility operation.

The CONTRACTOR personnel shall be appropriately trained in accordance with all Applicable Laws and the CONTRACTOR shall provide operating and safety training before beginning operation and formal on-the-job and safety training of its personnel during the term of this Agreement. The CONTRACTOR shall keep records of all training and provide the COUNTY a copy of said records upon request from the COUNTY.

The CONTRACTOR shall provide its personnel with Personal Protective Equipment (PPE) which is appropriate for the work under this Agreement.

The CONTRACTOR agrees that all of its officers, personnel, and representatives shall conduct themselves in a professional manner and shall communicate with COUNTY representatives and members of the public in a civil manner while on COUNTY property or conducting business related to this Agreement.

ARTICLE 6. EQUIPMENT

The CONTRACTOR shall purchase or lease, maintain, and repair all Rolling Stock, including back-up spare Rolling Stock, necessary to perform its obligations and duties under this Agreement. The CONTRACTOR is required to have the following minimum Rolling Stock onsite and operating, as needed, throughout the term of this Agreement:

- One (1) vertical grinder or equivalent with a minimum processing rate of 250 cubic yards per hour.
- Two (2) front-end wheeled loaders for material handling and loading. One or more front-end loaders shall have a high tip bucket for loading equipment.
- One (1) excavator for loading grinding equipment and stockpiling of materials.
- One (1) water truck for Facility dust control with a minimum of 2500 gallons.
- Tractor-trailers with 100 cubic yard walking floor trailers or equivalent to transport Contractor Materials in a timely manner from the Facility. CONTRACTOR may sub-contractor transportation of Mulch only with written approval from the COUNTY.

The CONTRACTOR'S Rolling Stock will be equipped with fire extinguishers. All fire extinguishers shall be rated for the appropriate use and size of the Rolling Stock and shall be maintained and inspected annually.

The CONTRACTOR shall be responsible for the security of its Rolling Stock during and after operating hours. The COUNTY shall not be responsible for vandalism or theft of the CONTRACTOR'S Rolling Stock, including backup rentals.

In addition to minimum Rolling Stock, the CONTRACTOR shall have access to equivalent backup Rolling Stock necessary to continue with its operations in the event of mechanical failures. The CONTRACTOR shall be responsible for all costs associated with backup Rolling Stock, including rentals. Minimum required backup Rolling Stock and timeline:

- One (1) front-end wheeled loader with high tip bucket or the ability to obtain one within 24 hours of breakdown.
- One (1) vertical grinder or equivalent or the ability to obtain one within 72 hours of breakdown
- One (1) excavator or the ability to obtain one within 24 hours of breakdown
- One (1) water truck or the ability to obtain one within 24 hours of breakdown.

COUNTY may assess administrative charges per day for failure to provide back-up equipment in a timely manner.

ARTICLE 7. MAINTENANCE & REPAIR

The CONTRACTOR is responsible for all preventative maintenance, scheduled, and unscheduled repairs to its Rolling Stock. The CONTRACTOR shall inspect, maintain, and repair its Rolling Stock in accordance with the original equipment manufacturers (OEM) recommendation and Applicable Law. Oil and hydraulic systems shall be kept in good condition at all times to prevent spills and leaks. The CONTRACTOR shall immediately notify the Contract Administrator of any spills or leaks of oil, hydraulic fluid, or fuel from its Rolling Stock. The CONTRACTOR shall not perform major maintenance activities which could result in spills at the Facility. All maintenance including Rolling Stock washing shall only be incidental at the Facility.

The CONTRACTOR is responsible for performing grounds maintenance to the Facility. CONTRACTOR shall maintain the Facility in a neat and orderly condition to prevent unsanitary conditions from developing, and minimize unsightly conditions in all areas of the Facility. CONTRACTOR shall keep the Facility free from litter resulting from its activities and responsibilities under this Agreement. At least once daily and more often as necessary, CONTRACTOR shall collect and contain litter around the perimeter of the Facility, including fence line. The COUNTY shall provide the CONTRACTOR roll-off containers to place litter or other non-Yard Waste debris. The COUNTY shall be responsible for transporting and the disposal costs associated with litter collection. The CONTRACTOR shall take proper measures to ensure no water ponding or material run-off (litter, Mulch, soil etc.) enters the storm water management system at the Facility.

The CONTRACTOR shall maintain entrance and exit roads to assure orderly traffic flow and to preclude accidents and shall maintain the perimeter and internal roads to conform to site plan contours. The CONTRACTOR is responsible for repairing any damages to the asphalt pad, roadways, and perimeter fence caused by the fault or wrongful actions of the CONTRACTOR or its agents. The COUNTY shall be responsible for maintaining the asphalt pad due, roadways, and perimeter fence do to normal wear and tear. The CONTRACTOR agrees to work with County to schedule and perform repairs in a timely manner to minimize interruptions to services.

ARTICLE 8. YARD WASTE PROCESSING & SERVICES

The CONTRACTOR shall assure that all Yard Waste received at the Facility are managed in such a manner to maintain a neat, orderly operation, adhering to the minimum requirements for Yard Waste processing facilities prescribed in, but not limited to, Chapter 62.709, F.A.C., and Applicable Law. Yard Waste shall be managed on a first in – first out basis. The CONTRACTOR shall, at all times, maintain sufficient space available at the Facility to receive and unload Yard Waste. The CONTRACTOR shall manage traffic in accordance with Article 4.1.3 of this Agreement.

8.1. Load Rejection:

Subject to approval by the COUNTY, the CONTRACTOR shall have the right to reject loads of inbound Yard Waste if the CONTRACTOR reasonably suspects a load to be Contaminated Yard Waste, as defined in this Agreement, the Contractor shall comply with the following procedure:

1. The Facility Manager shall immediately isolate the load and notify the Contract Administrator, document the occurrence of such event by digital photograph or videotape, record the time, truck number, identify the hauler, and allow the Contractor Administrator to inspect the load.
2. The Facility Manager and the Contract Administrator must mutually agree that the load meets the criteria of being Contaminated Yard Waste.
3. If the Facility Manager and the Contract Administrator choose to reject the load, the COUNTY shall notify the COUNTY'S scale house to change the material and billing information of the material and shall transport the load for disposal at no expense to the CONTRACTOR.

8.2. Yard Waste Processing:

Inbound Yard Waste may contain non-Yard Waste materials; such as municipal solid waste, which could include Putrescible Waste, rock, metal, or other items which may cause damage to grinding and processing equipment. Non-Yard Waste materials might also include hazardous waste. If any Hazardous/Biohazardous Waste is detected delivered to the Yard Waste Processing Facility, the CONTRACTOR will properly isolate the waste and notify the COUNTY. The COUNTY shall be responsible for removing, packing, and

disposing of the waste and the cost thereof. The CONTRACTOR shall properly manage and dispose of its own, and any other, hazardous/biohazardous waste or potential hazardous/biohazardous waste for which it is responsible according to Applicable Law.

The CONTRACTOR is responsible for detecting and segregation, in accordance with Applicable Law, all Non-Yard Waste materials. The COUNTY shall not be responsible for damage caused to the CONTRACTOR'S equipment due to Non-Yard Waste materials entering the CONTRACTOR'S grinding and processing equipment (Rolling Stock).

The CONTRACTOR shall be required to separate plastic bagged Yard Waste. The CONTRACTOR may opt to recover Yard Waste inside plastic bags and dispose of the plastic debris; however, the CONTRACTOR shall be responsible for the labor and other associated costs required to do so. The COUNTY shall provide the CONTRACTOR roll-off containers to place plastic bagged Yard Waste in. The COUNTY shall be responsible for transportation and disposal costs of bagged Yard Waste.

8.3. Windrow Construction:

The CONTRACTOR shall construct windrows of clean processed Yard Waste to be ground in accordance with the specifications of this Agreement, and in accordance with Article 4.1.1. Windrows shall be approximately 15' high x 100' wide x 260' long. Windrows cannot exceed 100 feet in width, not compacted, and shall have a minimum of 15 feet lanes between windrows. The COUNTY may assess administrative charges, per Day, to the CONTRACTOR for constructed windrows outside of the parameters of this Agreement.

8.4. Large Diameter Material:

The CONTRACTOR shall be required to handle, process, and grind large diameter material; such as large trunks, root-balls, etc. received at the Facility. Large diameter material shall be ground to, at least, a 5" minus specification, and shall be stocked piled separately from the rest of the material processed at the Facility. COUNTY reserves the right to require further processing of this material to fulfill the quantity requirements of 2" minus specification material.

8.5. Specifications of Mulch:

The CONTRACTOR shall produce a ground 2-inch minus Mulch, or 5-inch minus Mulch from clean processed Yard Waste materials, as directed by the COUNTY. The annual estimated quantities of Mulch are provided in Exhibit 2 of this Agreement. 2-inch minus Mulch and 5-inch minus Mulch shall be kept in separate piles at the Facility and shall be in accordance with Article 4.1.1 of this Agreement.

The COUNTY shall periodically inspect Mulch to verify an acceptable finished product. The COUNTY reserves the right to require additional grinding or screening to obtain a product that meets the COUNTY'S specifications without incurring additional costs to the COUNTY. The COUNTY reserves the right to halt

production or refuse to accept materials that do not meet specifications herein. Rejected Mulch materials shall be transported by COUNTY for disposal and any associated costs shall be charged to the CONTRACTOR. This charge will be deducted from the monthly invoice on the month that fees are generated.

8.6. Specification Changes:

The COUNTY reserves the right to renegotiate Agreement terms and conditions with the CONTRACTOR should technical specification requirements are changed due to a change in Applicable Law, or the best interest of the COUNTY, as long as such changes do not constitute a cardinal change to this Agreement.

ARTICLE 9. COMPENSATION AND METHOD OF PAYMENT

The COUNTY shall pay the CONTRACTOR for all authorized services rendered hereunder by the CONTRACTOR and completed in accordance with the requirements, provisions, and/or terms of this Agreement as set forth in Exhibit 1, which is attached hereto and made part of this Agreement. Compensation shall be based on a per ton rate for all outbound Mulch leaving the Facility (Grind Rate per Ton), outbound Compost Feedstock (Grind Rate per Ton + Trucking Fee), and outbound Contractor Mulch (Grind Rate + Trucking Fee). The COUNTY shall provide the CONTRACTOR all scale transactions for outbound Mulch.

9.1. Monthly Statements

The CONTRACTOR shall be entitled to submit no more than one invoice statement to the COUNTY each calendar month covering services rendered and completed during the preceding calendar month, no later than fifteen (15) Days following the end of the month. The CONTRACTOR'S invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in this Agreement. The CONTRACTOR'S invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement.

9.2. Payment Schedule

The COUNTY shall issue payment to the CONTRACTOR within thirty (30) calendar days after receipt of an invoice statement from the CONTRACTOR in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the COUNTY object or take exception to the amount of any CONTRACTOR'S invoice statement, the COUNTY shall notify the CONTRACTOR of such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the COUNTY shall withhold the disputed amount and make payment to the CONTRACTOR

of the amount not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

9.3. Payment When Services Are Terminated

In the event of termination of this Agreement at the convenience of the COUNTY, the County shall compensate the Contractor for all services performed prior to the effective date of termination.

9.4. CPI Adjustment

Beginning on the 1st anniversary of the Commencement Date and on each subsequent anniversary thereafter during the term of this Agreement, the Grind Fee, Compost Feedstock Fee, and Contractor Mulch Fee shall be automatically adjusted by the rate adjustment.

The rate adjustment shall be based on the change in the average monthly Consumer Price Index (CPI) from July through June in the prior year (CPI Old) and the average monthly CPI from July through June in the current year (CPI New). The rate adjustment shall be rounded to the nearest hundredth of a percent and in any given year shall not exceed three and a half percent (3.50%) of the previous rate.

The index used shall be the CPI for All Urban Consumers (CPI-U), South Urban Region; All Items, not seasonally adjusted, 1982-1984=100 reference base published by the United States Department of Labor, Bureau of Labor Statistics (Series ID – CUUR0300SA0).

The CPI adjustment shall be calculated as follows:

$$\text{Rate Adjustment (\%)} = \frac{\text{CPI New} - \text{CPI Old}}{\text{CPI Old}}$$

ARTICLE 10. PERFORMANCE

Should the CONTRACTOR fail to commence, provide, perform, and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the COUNTY may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the COUNTY at its sole option, upon written notice to the CONTRACTOR, withhold any or all payments due and owing to the CONTRACTOR, not to exceed the amount of compensation for the work dispute, or levy an administrative penalty as set forth in this Agreement, until such time as the CONTRACTOR resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements as set forth in this Agreement.

10.1. Notice of Non-Compliance

If any performance standard set forth in this Agreement is violated, the COUNTY will issue the CONTRACTOR a written Notice of Non-Compliance identifying the violation(s), and a specified period for reaching compliance if the violation cannot be corrected immediately. If no other period is specified by

the COUNTY in the Notice of Non-Compliance or authorized in a plan of action for correction previously approved by the COUNTY, the CONTRACTOR shall have a maximum of five (5) Days to correct the violation. If the violation is not corrected within the time provided (if any) or the specified time period previously approved by the COUNTY, administrative charges will be assessed retroactively to the date of the Notice of Non-Compliance and continue until such time that the violation is corrected.

10.2. Administrative Charges

The COUNTY may levy administrative charges for improper and insufficient actions related to any service required by this Agreement including, but not limited to:

Performance Standard Violation	Administrative Charges
Failure to have personnel with full authority to make operating decisions and key personnel available during operation. (Article 5)	\$500 per Day
Failure to maintain sufficient space to receive Yard Waste. (Article 8)	\$1,000 per Day
Failure to process Yard Waste on a first in and first out basis. (Article 8)	\$100 per Day
Failure to properly maintain the Facility and collect litter. (Article 7)	\$100 per Day
Failure to notify Contract Administrator of accidents within twenty-four (24) hours of occurrence.	\$500 per Day per occurrence
Failure to provide any required report within the required timeframe. (Article 11.2)	\$100 per Day
Failure to maintain fire protection and control provisions. (Article 4.2.1)	\$500 per Day

The COUNTY may assess administrative charges pursuant to this Article on a monthly basis, at a minimum, in connection with this Agreement and shall, at the end of each month during the term of this Agreement, notify the CONTRACTOR in writing of the charges assessed and the basis for each assessment.

10.3. Dispute Resolution Process

If CONTRACTOR desires to challenge the administrative charges, it must do so in writing within five (5) days after receiving a monthly notice of assessment requesting an opportunity to be heard by COUNTY. The request shall specify the reasons upon which the CONTRACTOR objects to the assessment of administrative charges. The decision of the COUNTY shall be final.

10.4. Offset

Assessments for violations identified above will be offset from any amounts owed to the CONTRACTOR under this Agreement. The COUNTY will notify the CONTRACTOR of the amounts assessed and offset against the CONTRACTOR at the time of payment to the CONTRACTOR.

ARTICLE 11. RECORD KEEPING

11.1. Record-Keeping and Scale Operation

All Yard Waste entering or leaving the Facility shall be weighed using the COUNTY'S Resource Recovery Facility truck scales. All Compost Feedstock entering the Lee/Hendry Landfill shall be weighed using the landfill's truck scales. The COUNTY shall maintain truck scale records that show the amount of a Yard Waste delivered to and the amount of Mulch from the Facility. Such records shall include the hauler's identification, truck number, weight and the franchise area, as applicable. The CONTRACTOR shall keep monthly operating records of incoming and outgoing Yard Waste and Mulch on-site according to Chapter 62-709 and make these records available for inspection by County, State, or other local agencies. The COUNTY shall provide the CONTRACTOR with daily, monthly, and yearly scale reports of incoming Yard Waste, and outgoing Mulch, Compost Feedstock and Contractor Mulch. The CONTRACTOR shall compile a monthly and annual report to be submitted to the COUNTY based on the COUNTY'S scale house records. Operating records shall include, at a minimum:

- Quantities of incoming/outgoing material (in tons) Identifying receivers/end-users of the processed material and quantities received for each disposal location.

The CONTRACTOR shall forward all monthly operating records to the COUNTY along with the CONTRACTOR(S) monthly invoice in a format approved by the COUNTY.

11.2. Reporting

The CONTRACTOR shall submit to the COUNTY monthly and annual reports that summarize records maintained pursuant to this Agreement in a format approved by the COUNTY. Monthly reports shall be submitted no later than fifteen (15) days following the end of each calendar month. Annual reports shall be submitted no later than thirty (30) days following the end of the Contract Year. The COUNTY may provide a format and assign a due date for any additional reports required under this Agreement. The CONTRACTOR agrees to provide the COUNTY said reports.

11.3. Review of Records

The COUNTY or any of its duly authorized representatives shall have access, within seven (7) days of notification, to all of the CONTRACTOR'S books, records, data, and documents relating to the CONTRACTOR'S efforts pursuant to this Agreement for inspection and audit.

The CONTRACTOR shall create, maintain, and provide to the COUNTY upon request records of all activities related to the CONTRACTOR'S obligations as defined herein. Records shall be kept in a format conforming to generally accepted standards in the industry and as required by this Agreement. The COUNTY shall have access during operating hours to the records maintained by the CONTRACTOR as defined in this Article. Records shall include the following, at a minimum:

- Title V Equipment relocation or movement status
- All inbound Yard Waste Received at the Facility
- All Outbound Mulch, Compost Feedstock, and Contractor Mulch
- Monthly Estimated Inventory of Yard Waste or Mulch at the Facility
- Maintenance records of Rolling Stock
- Health & Safety Training Records

ARTICLE 12. OTHER TERMS AND CONDITIONS

12.1. Sanitary Facilities

The CONTRACTOR shall be responsible for providing and the associated cost with renting and servicing portable sanitary facilities for its personnel. The CONTRACTOR shall ensure portable sanitary facilities are serviced weekly or more often as necessary to maintain sanitary conditions.

12.2. Indemnification

The CONTRACTOR will indemnify, save harmless, and exempt the COUNTY, its officers, agents, servants, and employees from and against all suits, actions, legal proceedings, claims, demands, damage costs, expenses, and reasonable attorney's fees (including fees and costs for appeals) arising from or out of the CONTRACTOR'S actions or work done in the performance of this Agreement.

12.3. Assignment, Transfer, and Subcontracts

The CONTRACTOR shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of CONTRACTOR with a third party; or (2) the disestablishment of the CONTRACTOR'S professional practice and the establishment of the successor CONTRACTOR. Nor shall the CONTRACTOR subcontract any of its service obligations hereunder to third parties without prior written approval of the COUNTY. The CONTRACTOR shall have the right, subject to the COUNTY'S prior written approval, to employ other persons and/or firms to serve as

subcontractors to Contractor in connection with the Contractor performing services and work pursuant to the requirements of this Agreement.

12.4. Severability

If any Article, sub-article, sentence, clause, or provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected.

12.5. Sovereign Immunity

COUNTY reserves and does not waive any and all defenses provided to it by the laws of the State of Florida or other Applicable Law, and specifically reserves and does not waive the defense of sovereign immunity.

12.6. Right to Require Performance

The failure of COUNTY at any time to require performance by the CONTRACTOR of any provisions hereof, shall in no way affect the right of the COUNTY thereafter to enforce same. Nor shall waiver by the COUNTY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

12.7. Modification

This Agreement constitutes the entire agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless by a fully executed amendment hereto.

12.8. Reservation of Rights

The COUNTY hereby expressly reserves the right to amend this Agreement, which may be necessary or proper to secure and protect the health, safety, moral, general welfare and accommodation of the public including, but not limited to, amendments related to rates, and to protect the public from danger and inconvenience in the management and operations of solid waste services business, and to provide such service as is contemplated by this Agreement.

12.9. Governing Law, Venue

The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in Lee County, Florida.

12.10. Waiver

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

12.11. Survival of Obligation

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations shall survive final payment, completion, and acceptance of the work, and termination or completion of this Agreement.

12.12. Entire Agreement

This Agreement and any exhibits attached hereto contain the entire agreement between the parties as to matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

12.13. Attorney's Fees

In the event of any litigation which arises out of, pertains to, or relates to this Agreement, or the breach of it, including, but not limited to, the standard of performance required in it, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party, at both trial and appellate levels.

12.14. Headings

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

12.15. Notice

Unless otherwise specified by the Contract Administrator, all notices required or contemplated by this Agreement shall be personally served or mailed, postage prepaid, and return receipt requested, addressed to County and Contractor as follows:

To County: Lee County
Solid Waste Director
10500 Buckingham Road
Fort Myers, FL 33905
with a copy to:
Procurement Management Director
P.O. Box 398
Fort Myers, FL 33902

To Contractor: [TO BE DETERMINED]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

CONTRACTOR NAME

Signed By: _____

Signed By:

Print Name: _____

Print Name: _____

Title: _____

Date: _____

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS OF
LEE COUNTY, FLORIDA

BY: _____

CHAIR

DATE: _____

ATTEST: CLERK OF THE CIRCUIT COURT
, Clerk

BY: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: _____

OFFICE OF COUNTY ATTORNEY

EXHIBIT 1: COMPENSATION

Compensation Rates	
Grind Fee Per Ton 2" & 5" minus	[TBD]
Compost Feedstock Delivery Fee (Mulch Delivered by Contractor to Compost Facility)	[TBD]
Contractor Mulch Delivery Fee (Mulch transported by Contractor for disposal or recycling)	[TBD]

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EXHIBIT 2: ESTIMATED ANNUAL QUANTITIES OF MULCH FOR COUNTY OPERATIONS

Estimated Annual Quantities of Mulch Needed for County Operations	
Compost Facility (2" Minus)	50,000 tons
Mulch Sales	450 tons
Distribution Mulch for Franchise Haulers	5,500 tons
Estimated Total Tons	55,950 tons

*Note: Estimated Annual Mulch produced at Facility: 120,000 tons

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EXHIBIT 3: YARD WASTE (HORTICULTURE) FACILITY PHOTO



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