

COMPOST REBATE PROCUREMENT AGREEMENT

This Compost Rebate Procurement Agreement (“Agreement”) is made and entered into this _____ day of _____, in the year _____ (“Effective Date”) by and between County of Fresno (“County”) and _____ Direct Service Provider (“DSP”).

County and DSP may be collectively referred to as the “Parties” and individually as a “Party.”

1. Purpose of Agreement. This Agreement sets forth the terms and conditions pursuant to which the DSP shall acquire recovered organic waste product in the form of finished compost (“Compost”) on behalf of the County’s AB 939 MOU Committee to assist the County and 15 incorporated cities in complying with the requirements of the California Code of Regulations (CCR), title 14, sections 18993.1 through 18993.4 (“SB 1383 Regulations”). SB 1383 seeks to significantly reduce the statewide disposal of organic waste, and as part of that process, certain public agencies are required to procure organic waste products for use or to give away to third party users. DSP has agreed to acquire and use organic waste products on behalf of the County to assist the County in complying with the obligations of the SB 1383 Regulations.

2. Term. The term of this Agreement shall commence on the above Effective Date and remain in effect until December 31, _____.

3. Direct Service Provider Obligations. DSP shall provide County copies of the invoices evidencing procurement of and payment for the Compost, as well as their most recent W-9 and 590 Forms to receive the rebate. These tax forms will only need to be submitted one time unless the information submitted changes. When the Provider claims the rebate from the County, the associated Compost shall be credited towards the County’s member agencies’ SB 1383 procurement targets. Invoices must include date of purchase, the name of each entity, operation, or facility from whom the Compost was procured, and the amount in cubic yards of Compost purchased. DSP shall use and apply the Compost within Fresno County.

4. Additional Requirements. In addition to the requirements above, DSP must ensure that the Compost shall also meet the following requirements:

- a. The Compost must be produced and sold by a compostable material handling operation or facility in accordance with SB 1383 Regulations (14 CCR § 18993.1) in order to qualify for rebate. Nearby local facilities include:
 - i. Kochergen Farms Compost
33915 Avenal Cutoff Rd
Avenal, CA 93239
 - ii. Mid Valley Disposal
15300 W. Jensen Ave

Kerman, CA 93630

- iii. South Valley Compost Facility
24487 Rd 140
Tulare, CA 93274

Farther facilities are also acceptable and may be identified using the state's Solid Waste Information System (SWIS) database using the following link. Under "Activities", the facility should list compostable material handling operation" or green material handling operation".

<https://www2.calrecycle.ca.gov/SolidWaste/Site/Search>

- b. Compost derivative products such as compost tea, potting mixes, or compost blends are not eligible for rebate.
- c. Any costs other than cost of the Compost purchase, including transportation costs, are not eligible for rebate.
- d. DSP can only receive rebate from the County for Compost purchased on or after the Effective Date of this Agreement.
- e. If DSP submits a reimbursement request to or receives reimbursement from another entity, person, or program for the purchase of Compost, that Compost is ineligible for a rebate from the County.

5. Rebate Terms. At such time that the DSP has purchased the Compost, provided the County with the information required pursuant to Section 3, and provided evidence satisfactory to the County that the Compost complies with the requirements of Section 4, County will provide a rebate to DSP equal to 15% of the purchase amount for procurement of the Compost. Rebate shall only be provided for Compost purchases totaling over 100 tons within the County's calendar year. (For example, if you purchase 50 tons of compost twice, the two receipts can be submitted together because they total 100 tons.) The cumulative amount of rebates shall be capped at \$4,000 within the County's calendar year, which runs from January 1 to December 31 annually. The County shall provide the rebate to the DSP within forty-five (45) days of the date that all information required pursuant to this section is received by the County for qualifying purchases.

6. Warranties. DSP warrants and covenants that all Compost at the time of delivery conforms with the specifications in this Agreement, SB 1383 Regulations, particularly 14 CCR §§ 18993.1-18993.4, and complies with all federal, state, and local laws, regulations, and ordinances applicable to the manufacture, production and sale of Compost.

7. Third Parties Beneficiaries. Each Party acknowledges and agrees that the

County's member agencies are expressed and intended third-party beneficiaries of this Agreement including all representations, warranties and covenants contained herein, and that the County's member agencies are entitled to enforce the terms of this Agreement as if they were original parties hereto.

8. Indemnity. DSP agrees to accept responsibility for loss or damage to any person or entity, including but not limited to County and its members agencies, and to defend, indemnify, hold harmless, reimburse and release County, its member agencies, and their officers, agents and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by County or its member agencies to enforce the indemnity provisions herein, whether arising from personal injury, or property damage, that may be asserted by any person or entity, including DSP, to the extent arising out of the negligent acts or omissions or willful misconduct in the performance by DSP hereunder, whether or not there is concurrent negligence on the part of the County or its member agencies, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of the County or its member agencies.

If there is a possible obligation to indemnify, DSP's duty to defend exists regardless of whether it is ultimately determined that there is a duty to indemnify. County or its member agencies shall have the right to select its own legal counsel at the expense of DSP, subject to DSP's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for DSP or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

9. Governing Law Venue. This Agreement shall be deemed to have been made in the County of Fresno, California. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in Fresno County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

10. Independent Direct Service Provider. DSP shall act as an independent DSP in performance of this Agreement and in no respect shall DSP be considered an agent or employee of the County. No provisions of this Agreement shall be intended to create a partnership or joint venture between DSP and County and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement.

11. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and any agreement or representation with respect to the same obligations of either Party with respect to the same which is not expressly provided in this Agreement or in a written document which is signed by the Party to be charged, shall be null and void.

The parties are signing this Agreement on the date stated in the introductory clause.

12. Electronic Signatures. The Parties agree that this Agreement may be executed by electronic signature as provided in this section.

- a. An “electronic signature” means any symbol or process intended by an individual signing this First Amendment to represent their signature, including but not limited to (a) a digital signature; (b) a faxed version of an original handwritten signature; or (c) an electronically scanned and transmitted (for example by PDF document) version of an original handwritten signature.
- b. Each electronic signature affixed or attached to this First Amendment (a) is deemed equivalent to a valid original handwritten signature of the person signing this First Amendment for all purposes, including but not limited to evidentiary proof in any administrative or judicial proceeding, and (b) has the same force and effect as the valid original handwritten signature of that person.
- c. The provisions of this section satisfy the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1).
- d. Each Party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other Party may rely upon that representation.
- e. This First Amendment is not conditioned upon the Parties conducting the transactions under it by electronic means and either Party may sign this First Amendment with an original handwritten signature.

Direct Service Provider

COUNTY OF FRESNO

 Signature
 Name: _____
 Street Address: _____
 City, State, ZIP: _____

 Steven E. White, Director
 Department of Public Works and Planning

For accounting use only:

Org No.: 9015
 Account No.: 7260
 Fund No.: 0701
 Subclass No.: 15001