

**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT  
AGREEMENT**

This Agreement is made and entered into this 11th day of May, 2012, by and between the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT (District), a unified air pollution control district formed pursuant to California Health and Safety Code section 40150 et seq., and Association of Compost Providers (Contractor).

**WITNESSETH:**

**WHEREAS**, despite major reductions in emissions and corresponding improvements in air quality, San Joaquin Valley continues to face difficult challenges in meeting the federal ambient air quality standards; and

**WHEREAS**, on March 18, 2010 the District's Governing Board adopted the Technology Advancement Program; and

**WHEREAS**, on July 5, 2011 the District issued Request for Proposal TAP11-01 seeking proposals for projects demonstrating new and innovative emission reduction technologies that have the potential for broad applicability in the San Joaquin Valley and will assist the District in meeting its air quality goals; and

**WHEREAS**, on October 16, 2008 the District's Governing Board adopted Rule 4320 (Advanced Emission Reduction Options For Boilers, Steam Generators, And Process Heaters Greater Than 5.0 MMBtu/hr); and

**WHEREAS**, Rule 4320 provides an option allowing payment of an emissions fee rather than installation of additional NO<sub>x</sub> controls; and

**WHEREAS**, Fees collected under Rule 4320 are to be used by the District to fund projects which could achieve cost effective emission reductions; and

**WHEREAS**, Contractor has proposed a project that meets the eligibility criteria of District that has been approved by District for funding; and

**WHEREAS**, Contractor represents that it is willing and able to perform

1 the activities set forth herein.

2 **NOW, THEREFORE**, based on their mutual promises, covenants, and  
3 conditions, the parties hereby agree as follows:

4 **1. PROJECT**

5 Through this cooperative agreement the San Joaquin Valley Unified Air  
6 Pollution Control District will fund the demonstration of the Aerated Static Pile method  
7 of composting and verify emissions benefits at a large-scale composting facility. This  
8 work is to be implemented at Tulare County Compost & Biomass Inc.. This project  
9 hopes to demonstrate that use of this technology is feasible and cost-effective in the  
10 San Joaquin Valley.

11 Contractor shall design, develop, and integrate the described composting  
12 system as set forth in the Statement of Work attached hereto and incorporated herein  
13 as Exhibit A, the project proposal submitted as a response to the Technology  
14 Advancement Program request for proposals number TAP11-01 attached hereto and  
15 incorporated herein as Exhibit B, and the request for proposal attached hereto as  
16 Exhibit C. Contractor agrees to furnish all labor, materials, equipment, licenses,  
17 permits, fees, and other incidentals necessary to perform and complete per schedule,  
18 in a professional manner, the services described herein. Contractor represents that  
19 Contractor has the expertise necessary to adequately perform the project specified in  
20 Exhibit A, Exhibit B, and Exhibit C.

21 In the event of any conflict between or among the terms and conditions of  
22 this Agreement, the exhibits incorporated herein, and the documents referred to and  
23 incorporated herein, such conflict shall be resolved by giving precedence in the  
24 following order of priority:

- 25 1. The text of this Agreement  
26 2. Exhibit A to this Agreement  
27 3. Exhibit B to this Agreement  
28 4. Exhibit C to this Agreement

1 **2. PERIOD OF PERFORMANCE/TIMETABLE**

2 Contractor shall commence performance of work and produce all work  
3 products in accordance with the work schedule and deadlines for performance  
4 identified in Exhibit A to this Agreement, unless this Agreement is terminated sooner as  
5 provided for elsewhere in this Agreement.

6 If requested by District, Contractor shall submit regular progress reports  
7 at intervals determined by District detailing the work performed during the current  
8 reporting period; work planned for the next reporting period; problems identified,  
9 solved, and/or unresolved; and the percentage of each task completed.

10 **3. COMPENSATION**

11 The total obligation of District under this Agreement shall not exceed one  
12 hundred thirty eight thousand dollars (\$138,000).

13 Contractor shall obtain, through other sources, sufficient additional  
14 monies to fund the total cost of the project as outlined in Exhibit B. Satisfactory written  
15 evidence of such funding commitments shall be provided to District prior to the release  
16 by District of any funds under this Agreement. In the event funding from other sources  
17 for the total cost of the project as outlined in Exhibit B is not received by Contractor,  
18 District reserves the right to terminate or re-negotiate this Agreement. In the event of  
19 termination or re-negotiation, if requested by District, Contractor shall return any  
20 District funds disbursed, but only to the extent that funds have not been earned by  
21 services rendered.

22 **A. Payments**

23 Advance payments shall not be permitted. Payments shall be permitted  
24 only at such time that equivalent services have been satisfactorily rendered. District  
25 shall reimburse Contractor after receipt and verification of a properly supported District  
26 Claim for Payment Form and, if necessary, inspection by District staff. Claims and all  
27 supporting documentation shall be submitted to San Joaquin Valley Unified Air  
28 Pollution Control District, Strategies and Incentives Program.

1 Payment shall be made to Contractor by District upon submission and  
2 evaluation of District Claim for Payment Form, Contractor's invoice(s), and other  
3 supporting documentation that shall set forth the work completed pursuant to this  
4 Agreement, and as set forth in the section of Exhibit A entitled "Payment Schedule".

5 District will issue payment to Contractor within sixty (60) calendar days of  
6 receipt of proper documentation and verification that Contractor has satisfactorily  
7 completed the work for which compensation is sought.

8 The amount to be paid to Contractor under this Agreement includes sales  
9 and use taxes, if any, incurred pursuant to this Agreement, including any such taxes  
10 due on equipment purchased by Contractor. Contractor shall not receive additional  
11 compensation for reimbursement of such taxes and shall not decrease work to  
12 compensate therefore.

13 Concurrently with the submission of any claim for payment, Contractor  
14 shall certify (through copies of invoices issued, checks, receipts, and the like) that  
15 complete payment has been made or invoiced. In the event Contractor completes work  
16 internally, for which invoices, checks, receipts, and the like are not available,  
17 completion of the self-certification section of the District's Claim for Payment Form is  
18 required.

19 **B. Surplus Funds**

20 Any compensation not expended by Contractor pursuant to the terms and  
21 conditions of this Agreement by the project completion date shall automatically revert  
22 to District. Only expenditures incurred by Contractor in the direct performance of this  
23 Agreement will be reimbursed by District. Allowable expenditures under this Agreement  
24 are specifically established and included in Exhibit A attached hereto and incorporated  
25 herein.

26 **C. Closeout Period**

27 Contractor shall submit all final claims within sixty (60) days following the  
28 final month of activities for which payment is claimed or no later than October 31, 2013.

1 No action will be taken by District on claims submitted beyond the 60-day closeout  
2 period.

3 **4. NON-ALLOCATION OF FUNDS**

4 The terms of this Agreement and the services to be provided thereunder  
5 are contingent on the approval and receipt of funds by the appropriating government  
6 agency. Should sufficient funds not be allocated, the services provided may be  
7 modified or this Agreement terminated at any time by giving Contractor written notice  
8 thirty (30) days prior to such modification or termination.

9 **5. INDEPENDENT CONTRACTOR**

10 In performance of the work, duties, and obligations assumed by  
11 Contractor under this Agreement, it is mutually understood and agreed that Contractor,  
12 including any and all of Contractor's officers, agents, and employees, will at all times  
13 be acting and performing as an independent contractor and shall act in an independent  
14 capacity and not as an officer, agent, servant, employee, joint venture, partner, or  
15 associate of District. Furthermore, District shall have no right to control or supervise or  
16 direct the manner or method by which Contractor shall perform its work and function.  
17 However, District shall retain the right to administer this Agreement so as to verify that  
18 Contractor is performing its obligations in accordance with the terms and conditions  
19 thereof. Contractor and District shall comply with all applicable provisions of law and  
20 the rules and regulations, if any, of governmental authorities having jurisdiction over  
21 matters the subject thereof.

22 Because of its status as an independent contractor, Contractor shall have  
23 absolutely no right to employment rights and benefits available to District employees.  
24 Contractor shall be solely liable and responsible for providing to, or on behalf of, itself  
25 all legally required employee benefits. In addition, Contractor shall be solely  
26 responsible and save District harmless from all matters relating to payment of  
27 Contractor's employees, including compliance with social security, withholding, and all  
28 other regulations governing such matters. It is acknowledged that during the term of

1 this Agreement, Contractor may be providing services to others unrelated to District or  
2 to this Agreement.

3 **6. TERMINATION**

4 **A. Breach of Agreement**

5 District may immediately suspend or terminate this Agreement in whole or  
6 in part where, in the determination of District, there is

- 7 1. An illegal or improper use of funds;
- 8 2. A failure to comply with any term of this Agreement by  
9 Contractor;
- 10 3. A substantially incorrect or incomplete report submitted to  
11 District by Contractor; or
- 12 4. An improperly performed service.

13 In no event shall any payment by District constitute a waiver by District of  
14 any breach of this Agreement or any default that may then exist on the part of  
15 Contractor. Neither shall such payment impair or prejudice any remedy available to  
16 District with respect to the breach or default. District shall have the right to demand of  
17 Contractor the repayment to District of any funds disbursed to Contractor under this  
18 Agreement that, in the reasonable judgment of District, were not expended in  
19 accordance with the terms of this Agreement. Contractor shall promptly refund any  
20 such funds upon demand.

21 In addition to immediate suspension or termination, District may impose  
22 any other remedies available by law, in equity, or otherwise specified in this  
23 Agreement.

24 **B. Without Cause**

25 Either party may terminate this Agreement at any time by giving the other  
26 party written notice at least thirty (30) days prior to termination. In such case,  
27 Contractor shall, subject to paragraph 4, be paid the reasonable value of all services  
28 satisfactorily rendered and actual, reasonable costs incurred up to the time of the

1 termination. Upon such termination, all work produced by Contractor shall be promptly  
2 delivered to District.

3 **7. USE OF FUNDS RESTRICTION**

4 Contractor agrees that funds under this award cannot be used for  
5 emissions reductions that are mandated under federal, state, or local law. This refers to  
6 specific compliance dates within the mandate, not when the mandate is passed.  
7 Voluntary or elective emissions reductions measures shall not be considered to be  
8 "mandated," regardless of whether the reductions are included in the state  
9 implementation plan of a state.

10 **8. AUDITS AND INSPECTIONS**

11 Contractor shall at any time during regular business hours, and as often  
12 as District may deem necessary, make available to District for examination all of its  
13 records and data with respect to the matters covered in this Agreement. Contractor  
14 shall, upon request by District, permit District to audit and inspect all such records and  
15 data necessary to ensure Contractor's compliance with the terms of this Agreement.

16 Contractor shall be subject to an audit by District or its authorized  
17 representative to determine if the revenues received by Contractor were spent for the  
18 reduction of pollution and to determine whether said funds were utilized as provided by  
19 law and this Agreement. If, after audit, District makes a determination that funds  
20 provided Contractor pursuant to this Agreement were not spent in conformance with  
21 this Agreement or any other applicable provisions of law, Contractor agrees to  
22 immediately reimburse District all funds determined to have been expended not in  
23 conformance with said provisions.

24 Contractor shall retain all records and data for activities performed under  
25 this Agreement for at least two (2) years from the date of final payment under this  
26 Agreement or until all state and federal audits are completed for that fiscal year,  
27 whichever is later.

28 Contractor shall be subject to the examination and audit of the auditor

1 general for a period of two (2) years after final payment under contract (Government  
2 Code § 8546.7).

3 **9. CONFLICT OF INTEREST**

4 No officer, employee, or agent of District who exercises any function or  
5 responsibility for planning and carrying out the services provided under this Agreement  
6 shall have any direct or indirect personal financial interest in this Agreement.  
7 Contractor shall comply with all federal and state conflict-of-interest laws, statutes, and  
8 regulations, which shall be applicable to all parties and beneficiaries under this  
9 Agreement and any officer, agent, or employee of District.

10 **10. GOVERNING LAW**

11 This Agreement shall be governed in all respects by the laws of the State  
12 of California. Venue for any action arising out of this Agreement shall only be in Tulare  
13 County, California.

14 **11. COMPLIANCE WITH LAWS**

15 Contractor shall comply with all federal and state laws, statutes,  
16 regulations, rules, and guidelines that apply to its performance under this Agreement,  
17 including California driving eligibility and financial liability laws.

18 **12. MODIFICATION**

19 Any matters of this Agreement may be modified from time to time by the  
20 written consent of all the parties without affecting the remainder.

21 **13. NON-ASSIGNMENT**

22 Neither party shall assign, transfer, or subcontract this Agreement, nor  
23 their rights or duties under this Agreement, without the prior express, written consent of  
24 the other party, which shall not be unreasonably withheld or delayed.

25 **14. INDEMNIFICATION**

26 Contractor agrees to indemnify, save, hold harmless, and at District's  
27 request, defend District, its boards, committees, representatives, officers, agents, and  
28 employees from and against any and all costs and expenses (including reasonable

1 attorneys' fees and litigation costs), damages, liabilities, claims, and losses (whether in  
2 contract, tort, or strict liability, including, but not limited to, personal injury, death, and  
3 property damage) occurring or resulting to District that arises from any negligent or  
4 wrongful acts or omissions of Contractor, its officers, agents, subcontractors, or  
5 employees in their performance of this Agreement.

6 **15. INSURANCE**

7 **A.** Without limiting District's right to obtain indemnification from  
8 Contractor or any third parties, Contractor, at its sole expense, shall maintain, in full  
9 force and effect, the following insurance policies throughout the term of this  
10 Agreement:

11 1. Commercial general liability insurance with minimum  
12 limits of coverage in the amount of One Million Dollars (\$1,000,000) per occurrence;

13 2. Commercial automobile liability insurance which  
14 covers bodily injury and property damage with a combined single limit with minimum  
15 limits of coverage in the amount of One Million Dollars (\$1,000,000) per occurrence;

16 3. Workers' compensation insurance in accordance with  
17 California law.

18 **B.** This insurance shall not be canceled or changed without providing  
19 the District written notice at least thirty (30) days prior to such cancelation or change  
20 taking effect.

21 **C.** Prior to the commencement of performing its obligations under this  
22 Agreement, Contractor shall provide certifications of insurance on the foregoing policy,  
23 as required herein, to District, stating that such insurance coverages have been  
24 obtained and are in full force, that the District, its officers, agents, and employees will  
25 not be responsible for any premiums on the policy. This insurance shall not be  
26 canceled or changed without written notice given to the District at least thirty (30) days  
27 prior to such cancelation or change taking effect.

28 **D.** In the event Contractor fails to keep in effect at all times insurance

1 coverage as herein provided, District may, in addition to other remedies it may have,  
2 suspend or terminate this Agreement upon the occurrence of such event.

3 **E.** If Contractor is a government entity, then it may self-insure those  
4 risks identified in paragraph 15.A.1 of this Agreement, provided, however, that:

5 1. Such self-insurance plans shall be reasonably  
6 satisfactory to District; and

7 2. All those provisions identified in paragraph 15.C of  
8 this Agreement concerning the relationship of Contractor's primary and District's  
9 excess insurance to each other, the requirement of Contractor delivering a certificate of  
10 insurance or other suitable evidence to District, and the cancellation/change of  
11 insurance requirements shall apply to such self-insurance plans.

## 12 **16. NOTICES**

13 The persons and their addresses having authority to give and receive  
14 notices under this Agreement are as follows:

### 15 **CONTRACTOR**

16 **Dan Noble**  
17 **Executive Director**  
18 **Association of Compost Producers**  
19 **P.O. Box 1538**  
20 **Julian, CA 92036-1538**

### **DISTRICT**

**Seyed Sadredin**  
**Executive Director/APCO**  
**San Joaquin Valley Unified APCD**  
**1990 East Gettysburg Avenue**  
**Fresno, CA 93726**

21 Any and all notices between District and Contractor provided for or  
22 permitted under this Agreement or by law shall be in writing and shall be deemed duly  
23 served when personally delivered to one of the parties, or in lieu of such personal  
24 service, when deposited in the United States mail, postage prepared, addressed to  
25 such party.

## 26 **17. BINDING ON SUCCESSORS**

27 This Agreement, including all covenants and conditions contained herein,  
28 shall be binding upon and inure to the benefit of the parties, including their respective  
successors-in-interest, assigns, and legal representatives.

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1 **18. TIME IS OF THE ESSENCE**

2 It is understood that for Contractor's performance under this Agreement,  
3 time is of the essence. The parties reasonably anticipate that Contractor will, to the  
4 reasonable satisfaction of District, complete all activities provided herein within the time  
5 schedule outlined in Exhibit A to this Agreement, provided that Contractor is not  
6 caused unreasonable delay in such performance.

7 **19. NO THIRD-PARTY BENEFICIARIES**

8 Notwithstanding anything else stated to the contrary herein, it is  
9 understood that Contractor's services and activities under this Agreement are being  
10 rendered only for the benefit of District, and no other person, firm, corporation, or entity  
11 shall be deemed an intended third-party beneficiary of this Agreement.

12 **20. SEVERABILITY**

13 In the event that one or more of the provisions contained in this  
14 Agreement shall for any reason be held to be unenforceable in any respect by a court  
15 of competent jurisdiction, such holding shall not affect any other provisions of this  
16 Agreement, and the Agreement shall then be construed as if such unenforceable  
17 provisions are not a part hereof.

18 **21. ENTIRE AGREEMENT**

19 This Agreement constitutes the entire agreement between Contractor and  
20 District with respect to the subject matter hereof and supersedes all previous  
21 negotiations, proposals, commitments, writings, advertisements, publications, and  
22 understandings of any nature whatsoever unless expressly included in this Agreement.

23 ///

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26 ///

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28 ///

1 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be  
2 executed as of the day and year first hereinabove written.

3 **Contractor**  
4 **Association of Compost Producers**

**DISTRICT**  
**San Joaquin Valley Unified Air**  
**Pollution Control District**

5 

6 \_\_\_\_\_  
7 Dan Noble  
8 Executive Director

\_\_\_\_\_

William O'Brien  
Governing Board Chair

9 ***Recommended for approval:***  
10 San Joaquin Valley Unified Air Pollution  
11 Control District

\_\_\_\_\_

Seyed Sadredin  
Executive Director/APCO

12 ***Approved as to legal form:***  
13 San Joaquin Valley Unified Air Pollution  
14 Control District

\_\_\_\_\_

Catherine Redmond  
District Counsel

15 ***Approved as to accounting form:***  
16 San Joaquin Valley Unified Air Pollution  
17 Control District

\_\_\_\_\_

Cindi Hamm, C.P.A.  
Director of Administrative Services

18 ***For accounting use only:***  
19 Program: \_\_\_\_\_  
20 Accounting No.: \_\_\_\_\_