

**Yard Waste Processing  
and Disposal Services  
Agreement**

**Between**

**Indian River County Solid Waste Disposal District  
("SWDD")**

**And**

**Russell Payne, Inc. d/b/a Mr. Mulch, Inc.  
("Contractor")**

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**This Agreement** is by and between the Solid Waste Disposal District (SWDD), a dependent special district of INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called Owner) and Russell Payne, Inc. d/b/a Mr. Mulch, Inc. (hereinafter called Contractor). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

#### **ARTICLE 1 - WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Indian River County Solid Waste Disposal District is contracting for the services to process and remove: Yard waste, landscape debris, and land clearing debris, which means: vegetative matter from commercial and residential landscaping maintenance, which includes branches, shrubs, trimmings, grass clippings, palm fronds, Christmas trees, stumps, trees and wood pallets. The diameter and length of materials, varies greatly. Majority of the incoming material is covered by the SWDD landfill assessment, i.e., no tipping fee. However, anything over 3 inches in diameter is considered chargeable material by SWDD, therefore, the Contractor must inspect each load and if applicable report as chargeable load to the SWDD scalehouse to apply appropriate charges. The Contractor will process (includes vehicle receiving/traffic control services) all incoming material into mulch and load/remove off-site all material designated by SWDD to maximize recycling credits to Indian River County. The Contractor will also load all material designated by SWDD for beneficial use to be removed by others. The SWDD does not guarantee the quality or the quantity of the yard waste, reserves the right to keep 100% processed mulch for cover material or any other beneficial use, reserves the right to accept or not accept any out-of-county yard waste and reserves the right to provide or not provide any storm related debris under the control of the County and or SWDD.

#### **SPECIFIC CONDITIONS**

- A.** Contractor shall process (includes vehicle receiving/traffic control services and creation of mulch) all the specified material at the processing site located at the Indian River County Landfill at 1325 74<sup>th</sup> Ave SW, Vero Beach, Florida, 32968. The Contractor shall limit the processing activity within the designated area (Approximately 5 acres as shown in Exhibit B).
- B.** Contractor must be able to process a minimum of 60,000 tons of material per year. The Contractor must also be able to accommodate any increase in tonnages per year for the duration of the Agreement. Contractor must be aware that tonnage numbers change due to seasonal fluctuations. However, SWDD makes no guarantee as to any quantity or quality of yard waste to be provided. SWDD's failure to provide any quantity of yard waste shall not be a violation of the agreement by SWDD.
- C.** Solid Waste Disposal District requires the site be operated in a clean, secure and efficient manner. The County and SWDD requires the Contractor to comply with all applicable Federal, State and local regulations, including 62-701 F.A.C. SOLID WASTE MANAGEMENT FACILITIES. Any operational activity by the Contractor that violates any regulatory agency codes shall be the responsibility of the Contractor to correct solely at the Contractors expense within the time frame set by the regulatory agency. The Contractor's "Equipment Service Area" shall be kept clean and organized. All equipment maintenance shall be performed in a manner that prevents oils, fuel, lubricants and other waste from contaminating the environment.

- D. Contractor shall provide debris processing (includes vehicle receiving/traffic control services and creation of mulch) and disposal/recycling services for yard waste, landscaping debris, and land clearing delivered to the Solid Waste Disposal District Indian River County Landfill.
- E. Contractor shall process all materials within Federal, State, Local and the Solid Waste Section guidelines. Any proposed regulations that are adopted by the Regulatory agencies that are more restrictive than this document shall be incorporated into this Agreement.
- F. Contractor, at their own expense, shall market and remove the materials generated by the processing operation conducted at the landfill in a manner that Indian River County will receive recycling credits. Remaining post-processing materials on site can never exceed 30 days receipts of yard waste.
- G. The processing specifications for contractor are as follows:
  - 1. Contractor shall receive and handle all materials on site delivered by customers from 7:00 a.m. to 5:00 p.m., seven days per week except for the following holidays: Independence Day, Labor Day, Thanksgiving, Christmas, and New Year's Day.
  - 2. Contractor shall inspect all incoming material for conformity to yard waste specifications (less than 3 inches in diameter). All yard waste not meeting this requirement shall be reported to the SWDD scalehouse so that appropriate charges are applied. Loads containing hazardous or unacceptable materials shall be refused if identified prior to being dumped. If identified after being dumped, then notify scalehouse and provide an opportunity for customer to remove all non-conforming materials. If identified after customer has left, then handle hazardous materials appropriately and place all other non-conforming materials in a roll-off container provided by the landfill contractor. This container will be weighed at the scalehouse prior to disposal by the landfill contractor. The disposal tonnage will be deducted from the incoming yard waste materials; however, the disposal charges will not apply.
  - 3. Contractor shall process all materials on site as needed to allow for a safe working environment.
  - 4. Contractor shall prepare and provide a site operating plan as well as a health and safety plan for approval by SWDD. The plan shall include, at a minimum, site environmental issues such as noise, dust, odor and waste acceptance as well as equipment and personnel safety issues, personnel training, site communication, fire prevention and control, management of contamination and spill response.
  - 5. Processed material not utilized by the SWDD for landfill cover material or other beneficial uses will be Contractor's responsibility to market and/or sell and provide all trucking at their expense. Contractor will provide in writing to the SWDD the final destination(s) of the material upon contract award.
  - 6. Contractor shall remove and consolidate any foreign materials (non-wood wastes/non-process materials) dropped off improperly at the site. The Contractor will haul these foreign materials; garbage, tires, scrap metals, etc., and transport them to their proper disposal locations as directed by the SWDD Scalehouse staff.
  - 7. If the Contractor's equipment fails to operate for seven (7) consecutive days the Contractor will utilize alternate equipment to process the material.

8. Storm Debris. The SWDD shall have the exclusive right to determine how the SWDD will dispose of Yard Waste generated by a hurricane, natural disaster, or other event that produces unusually large quantities of Yard Waste (collectively, "Storm Debris"). The County/SWDD reserves the right to designate Disaster Debris Management Sites that are deemed suitable for the management and disposal of Storm Debris with appropriate notification to the Florida Department of Environmental Protection of this designation. The SWDD shall make a good faith effort to direct as much Storm Debris to the Contractor as possible; however, the SWDD shall not be obligated to provide Storm Debris to the Contractor, and the SWDD shall have no liability to the Contractor if the SWDD in its sole discretion determines that it is not appropriate or otherwise in the SWDD's best interests to provide Storm Debris to the Contractor. If the SWDD does provide Storm Debris to the Contractor then the Contractor shall provide additional resources at no additional cost to SWDD and the processing/disposal cost shall remain as is.

**ARTICLE 2 - THE YARD WASTE PROCESSING SITE**

The Yard Waste Processing Site (Site), shown in Exhibit B, for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Site Name:	Yard Waste Processing Site
Bid Number:	2017028
Site Address:	1325 74 <sup>th</sup> Ave SW, Vero Beach, Florida 32968
Approximate Size:	5 Acres

**ARTICLE 3 - CONTRACT TERM**

- 3.01 The initial term of the Agreement shall be for one (1) year and shall commence on April 1, 2017. This Agreement may be extended for six (6) one (1) year terms at the same prices and conditions at the time of renewal, by mutual agreement. This Agreement may be terminated by either party with at least a ninety (90) calendar day notice of intent to terminate.

**ARTICLE 4 - CONTRACT PRICE, PAYMENT AND ADJUSTMENT**

- 4.01 The County shall pay the Contractor for the performance of this Contract and completion of the project in accordance with the Contract Documents, subject to annual price adjustments (if approved by the County Administrator or designee) or by an approved contract amendment by the SWDD Board, the total amount in current funds being as follows (the "Contract Price"):

\$11.19/TON            PROCESS (RECEIVE, GRIND AND LOAD) YARD WASTE (ON-SITE)

\$9.48/TON            TRANSPORT AND DISPOSE OF YARD WASTE (OFF-SITE)

- 4.02 Once each month payments shall be made during the term of the Contract in the amount due on the Contract. Contractor shall submit an invoice to the SWDD Project Manager no later than the 10<sup>th</sup> day of each month for the previous month's tonnage. Payment to the Contractor shall be made for all undisputed amounts on or before the thirtieth (30th) calendar day or 20 business days of the SWDD's receipt of the invoice, whichever occurs later, upon verification by SWDD of the invoice submitted. The SWDD may reject the application in writing which shall specify the deficiency and the action necessary to correct the deficiency. Payment shall be due 20 business days after the SWDD's receipt of a corrected invoice.

- 4.03 The SWDD shall pay the Contractor through payments issued by the County Finance Department in accordance with the Local Government Prompt Payment Act of the Florida Statutes, upon receipt of the certified invoice from the SWDD Managing Director. The parties agree, however, that any payments withheld as liquidated damages or for any other reason allowed by this Contract, shall not be governed by the Florida Prompt Payment Act.
- 4.04 Rate Adjustment
- A. All unit prices shall remain the same through September 30, 2018.
  - B. Contractor may request an annual rate adjustment. Such request must be submitted in writing to SWDD no later than April 30th of the year in which Contractor would like the rate adjustment to go into effect. Such rate adjustments are subject to approval by the County Administrator or his designee. If approved, the rate adjustment would become effective October 1 of that year.
  - C. If a rate adjustment is requested, the calculation shall be made as specified in Exhibit A and shall not exceed three percent (3%).
- 4.05 Performance Bond: The County requires an annual payment and performance bond in the amount of \$300,000 renewed each year the contract is extended.

#### **ARTICLE 6 - INSURANCE**

##### 6.01 General Liability Insurance

- A. Contractor shall obtain and maintain throughout the Initial Term and any Renewal Terms of this Agreement at its expense the following insurance coverage from insurers who are licensed in the State of Florida and have a current rating of B+ or better in "Best's Key Rating Guide":
  - 1. Workers' Compensation Insurance. Workers' compensation coverage must be maintained in accordance with current statutory requirements;
  - 2. Employer's Liability Insurance. Employer's liability coverage shall have a minimum limit of liability of \$100,000 per occurrence, \$100,000 by disease, and \$500,000 aggregate by disease;
  - 3. Liability Insurance. Commercial general liability insurance and automobile liability shall have a minimum combined single limit of liability of \$1,000,000 for personal bodily injury, including, without limitation, death, and property damage.
  - 4. Excess Coverage. Umbrella or excess liability coverage in the amount of \$5,000,000 shall be maintained.
- B. Notwithstanding the minimum limits of coverage stated in subsection A above, the limits of each underlying insurance coverage must be at least as high as is necessary to support the excess liability insurance coverage.

##### 6.02 Environmental Impairment Insurance

The Contractor shall procure environmental impairment insurance upon Contract award and shall maintain such insurance in full force and effect at all times thereafter during the term of this Agreement. The environmental impairment insurance shall provide coverage with minimum

limits of \$2,000,000 per occurrence, if an occurrence form is available, or with a "claims made" form with "tail coverage" extending three (3) years beyond the termination or expiration of this Agreement. Proof of tail coverage shall be submitted with the Company's invoice for its final payment. In lieu of tail coverage, the Contractor may submit annually to the SWDD a current certificate of insurance proving that claims made insurance remains in force throughout the same three (3) year period. Such insurance shall provide coverage for pollution and environmental remediation. The form and content of the insurance coverage, as well as the financial stability of the company issuing the insurance, shall be subject to the prior review and approval of the SWDD. The SWDD shall be added as a named insured on the insurance policy.

#### 6.03 Proof of Insurance

The Contractor shall furnish the SWDD a certificate of insurance in a form acceptable to the SWDD for the insurance required. Such certificate or an endorsement provided by the Contractor must state that the SWDD will be given thirty (30) calendar days written notice prior to cancellation or material change in coverage. Copies of an endorsement-naming SWDD as Additional Name Insured must accompany the Certificate of Insurance.

### **ARTICLE 7 - INDEMNIFICATION**

7.01 Contractor shall indemnify and hold harmless the Owner, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Work.

### **ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents as specified in Article 8 and the other related data identified in the Invitation to Bid documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground utilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.

- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 9 - CONTRACT DOCUMENTS**

### 9.01 *Contents*

#### A. The Contract Documents consist of the following:

- (1) This Agreement
- (2) Notice of Award
- (3) Payment and Performance Bonds
- (4) Certificate(s) of Insurance
- (5) Invitation to Bid 2017028
- (6) Addenda (numbers 1 to 2, inclusive)
- (7) Contractor's Bid Form
- (8) Bid Bond
- (9) Bidders Questionnaire
- (10) Drug Free Workplace Form
- (11) Affidavit of Compliance
- (12) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships



(13) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

1. Written Amendments;
2. Approved Rate Adjustments

#### **ARTICLE 10 - MISCELLANEOUS**

##### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the Invitation to Bid.

##### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

##### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

##### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

##### 10.05 *Venue*

- A. This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

##### 10.06 *Public Records Compliance*

- A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- (1) Keep and maintain public records required by the County to perform the service.

- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**B. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**(772) 226-1424**

**[publicrecords@ircgov.com](mailto:publicrecords@ircgov.com)**

**Indian River County Office of the County Attorney**

**1801 27<sup>th</sup> Street**

**Vero Beach, FL 32960**

- C. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

**ARTICLE 11 – FEDERAL CLAUSES**

11.01 Owner and Contractor will adhere to the following, as applicable to this work

- A. *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). In compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*

**Compliance with the Contract Work Hours and Safety Standards Act:**

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and any subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. Any Federal agency may provide funding under this agreement shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

- B. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—*Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).*

**Clean Air Act:**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the SWDD and understands and agrees that the SWDD will, in turn, report each violation as required to assure notification to any appropriate recipient, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**Federal Water Pollution Control Act:**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the SWDD and understands and agrees that the SWDD will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

C. Energy Policy and Conservation Act – The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

D. Debarment and Suspension – (Executive Orders 12549 and 12689)

Consistent with 2 CFR 180.220, the Contractor shall not be listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

#### **Debarment and Suspension**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Indian River County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and Indian River County), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

E. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Contractor shall file the required certification per 31 U.S.C. 1352. The Contractor certifies that it shall not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures shall be forwarded from tier to tier up to the non-Federal award.

F. §200.322 Procurement of recovered materials.

To the extent applicable, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

G. **Access to Records:** The following access to records requirements apply to this contract:

(1) The contractor agrees to provide SWDD Indian River County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives' access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

H. **DHS Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

I. **Compliance with Federal Law, Regulations, and Executive Orders:** It is possible that FEMA financial assistance may be used to fund part of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

J. **No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

K. **Program Fraud and False or Fraudulent Statements or Related Acts:** The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) may apply to the contractor's actions pertaining to this contract.

L. **Energy Policy and Conservation Act –** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

M. **AFFIRMATIVE STEPS:** Contractor shall take the following affirmative steps to ensure minority business, women's business enterprises and labor surplus area firms are used when possible:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

(2) Ensuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

## **ARTICLE 12 - TERMINATION OF CONTRACT**

- A. The occurrence of any of the following shall constitute a default by Contractor and shall provide the Owner with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the Owner may have under this Contract or under law:
  - (1) If in the Owner's opinion Contractor is improperly performing work or violating any provision(s) of the Contract Documents;
  - (2) If Contractor neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Engineer pursuant to an inspection;
  - (3) If in the Owner's opinion Contractor's work is being unnecessarily delayed and will not be finished within the prescribed time;
  - (4) If Contractor assigns this Contract or any money accruing thereon or approved thereon;  
or
  - (5) If Contractor abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for Contractor or for any of his property.
- B. Owner shall, before terminating the Contract for any of the foregoing reasons, notify Contractor in writing of the grounds for termination and provide Contractor with ten (10) calendar days to cure the default to the reasonable satisfaction of the Owner.
- C. If the Contractor fails to correct or cure within the time provided in the preceding Sub-Article B, Owner may terminate this Contract by notifying Contractor in writing. Upon receiving such notification, Contractor shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that the Owner may authorize Contractor to restore any work sites.
- D. The Contractor shall be liable for:
  - (1) Any new cost incurred by the Owner in soliciting bids or proposals for and letting a new contract; and
  - (2) The difference between the cost of completing the new contract and the cost of completing this Contract;
  - (3) Any court costs and attorney's fees associated with any lawsuit undertaken by Owner to enforce its rights herein.
- E. **TERMINATION FOR CONVENIENCE:** Owner may at any time and for any reason terminate Contractor's services and work for Owner's convenience. Upon receipt of notice of such termination Contractor shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies

in connection with the performance of this Contract. Upon such termination Contractor shall be entitled to payment only as follows:

- (1) The actual cost of the work completed in conformity with this Contract and the specifications; plus,
- (2) Such other costs actually incurred by Contractor as are permitted by the prime contract and approved by the Owner.

Contractor shall not be entitled to any other claim for compensation or damages against the County in the event of such termination.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_ (the date the Agreement is approved by the Indian River County Solid Waste Disposal District, which is the Effective Date of the Agreement).

**Owner:**

INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT

By: \_\_\_\_\_  
Joseph E. Flescher, Chairman

Date: \_\_\_\_\_

**Contractor:**

Russell Payne, Inc. d/b/a Mr. Mulch, Inc.

By: \_\_\_\_\_  
Name: Russell Payne  
Title: President

(CORPORATE SEAL)

**APPROVED:**

By: \_\_\_\_\_  
Jason E. Brown, County Administrator

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Dylan Reingold, County Attorney

**ATTEST:**

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: \_\_\_\_\_  
Deputy Clerk

Address for giving notices:  
1765 Commerce Avenue  
Vero Beach, FL 32960

Designated Representative:  
Name: Russell Payne  
Title: President  
Address: 1765 Commerce Avenue  
Vero Beach, FL 32960  
Phone: 772-778-2652  
Email: Russell@Russellpayne.com

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)





EXHIBIT B – YARD WASTE PROCESSING SITE

