
Yard Waste Processing and Recycling Services Agreement

THIS AGREEMENT (“Agreement”) is by and between INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT, a dependent Special District of Indian River County, Florida, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called “Owner”) and ATLAS ORGANICS INDIAN RIVER, LLC, a Delaware limited liability company (hereinafter called “Contractor”). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - THE PROJECT

The “Project” for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name:	Yard Waste Processing and Recycling Services
RFP Number:	2019045
Project Address:	1325 74 th Ave. SW, Vero Beach, FL 32968

1.1 DEFINITIONS

To the extent that any definition contained herein conflicts with any similar definition contained in any federal, state, or local law, the definition herein shall prevail for the purposes of this Agreement. However, nothing contained herein shall be interpreted to require Contractor to undertake any conduct that is prohibited by Applicable Law. Whenever the context may require, any pronoun which is used in this Agreement shall include the corresponding masculine, feminine and neuter forms and the singular shall include the plural and vice versa.

Business Day: means any day other than a Saturday, a Sunday, or any other day on which banks in Indian River County are authorized or required by law or other governmental action to be closed.

Inter-County: with respect to waste, means that such waste originates from somewhere outside of Indian River County, Florida.

Intra-County: with respect to waste, means that such waste originates from within Indian River County, Florida.

Prudent Industry Practices: means those practices, methods, standards and acts engaged in or approved by a significant portion of the industry for compost facilities of the type, size and location similar to the project, that, at a particular time, in the exercise of reasonable care and judgment in light of the facts known at the time that the decision was made, could have been reasonably expected to accomplish the desired result in a manner consistent with applicable law and the Contract Documents. “Prudent Industry Practices” are not intended to be limited to a single practice or method to the exclusion of others, but may encompass a range of practices or methods generally accepted or approved by a significant portion of the industry for compost facilities as reasonably applied to the project during the relevant time period.

Unacceptable Material: means materials that are not Yard Waste as defined herein.

Yard Waste: means yard waste, landscape debris and land clearing debris, vegetative matter from commercial and residential landscaping maintenance and includes branches, shrubs, trimmings, grass clippings, palm fronds, Christmas trees, stumps, and trees.

1.2 SPECIFIC CONDITIONS

- A.** Owner is contracting for the processing and recycling of Yard Waste at the Yard Waste facility located at 1325 74th Ave SW, Vero Beach, FL 32968 (“Yard Waste Facility”). The Contractor shall limit the processing activity within the designated area (as shown in Exhibit B), which is not an engineered drawing and is subject to change upon PE and state regulator evaluation.
- B.** Contractor must be able to process a minimum of 75,000 tons of Yard Waste 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, Owner makes no guarantee as to any quantity or quality of Yard Waste to be provided. Owner’s failure to provide any quantity of Yard Waste shall not be a violation of the Agreement by Owner. In consideration of the time, effort and expense to be undertaken by Contractor in its performance of this Agreement, Owner agrees that, except as otherwise expressly provided in Sub-Article 1(L), during the Term of this Agreement: (i) Contractor shall be Owner’s exclusive provider for Yard Waste processing and recycling services; and (ii) Owner shall not, directly or indirectly solicit, negotiate, or enter into any agreement with any person other than Contractor for such services or for any other services to be provided by Contractor to Owner hereunder.
- C.** The Contractor shall ensure that all Yard Waste is free of plastic bags, metal, garbage, etc. before it is turned into mulch. The diameter and length of materials varies greatly. The majority of the incoming material is covered by the Owner landfill assessment, i.e., no tipping fee. However, anything over 3 inches in diameter is considered chargeable material by Owner, therefore, the Contractor must inspect each load and, if applicable, report as chargeable load to the Owner’s Scalehouse to apply appropriate charges. The Contractor must have dedicated spotter(s) while the Yard Waste Facility is in operations to ensure that inspections are being performed. Contractor reserves the right to reject any incoming loads if the volume of such load is comprised of 3% or more of any material other than Yard Waste (“Unacceptable Material”) as determined in Contractor’s sole discretion. The Contractor shall follow Yard Waste Facility Operations requirements in Sub-Article 1.3, B.
- D.** The Contractor will process (includes vehicle receiving/traffic control services, load inspections, grinding, screening and loading) all incoming Yard Waste into mulch and recycle all material designated by Owner to maximize recycling credits to Indian River County. Specifically, the Contractor must be able to process a minimum of 40,000 tons of mulch per year into compost using the Extended Aerated Static Pile System. The Contractor is responsible for the transportation of the mulch from the Owner Yard Waste Facility to the Compost Facility that is to be located on the Indian River Eco-District site at 925 74th Avenue SW, Vero Beach, FL 32968 (“Compost Facility”).

- E. The Contractor will also load all overs designated by Owner for beneficial use such as cover material, application at County Parks/Golf Course, etc. to be removed by others. Owner reserves the right to keep up to 35,000 tons per year of overs for cover material or any other beneficial use, reserves the right to accept or not accept any Inter-County Yard Waste and reserves the right to provide or not provide any storm related debris. The Contractor shall work with Owner's Landfill Operator to stage cover material such that there is always cover material available on-site. At a minimum, the Contractor shall provide at least thirty (30) days of cover material staged within thirty (30) days from the Commencement Date at a location to be agreed by Owner and Contractor.
- F. Owner requires the Yard Waste Facility be operated in a clean, secure and efficient manner. Indian River County and Owner require the Contractor to comply with all applicable Federal, State and local regulations, including Chapter 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 Contractor's expense and within the time frame set by the regulatory agency. The Contractor's designated "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.
- G. Contractor shall process all materials within Federal, State, and Local guidelines. Any proposed regulations that are adopted by the Regulatory agencies that are more restrictive than what is required under this Agreement shall be incorporated into this Agreement.
- H. Contractor, at its own expense, shall market and remove the materials generated by the processing operation conducted at the Yard Waste Facility or the Compost Facility in a manner that Indian River County will receive recycling credits. Remaining post-processing materials on the Yard Waste Facility can never exceed 30 Calendar Days receipts of yard waste, unless it has completed the composting and screening process at the Compost Facility and is temporarily being stored on the Yard Waste Facility.

1.3 SITE OPERATION

- A. 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.
- B. The Contractor shall provide a dedicated radio or a cell phone along with the contact information to the Scalehouse to communicate with the Yard Waste Facility. Loads containing unacceptable materials shall be refused if identified prior to being dumped. If identified after being dumped, Contractor shall notify Scalehouse and provide an opportunity for customer to remove all unacceptable materials. If identified after customer has left, Contractor will place all unacceptable materials in a roll-off container provided by Owner. This container will be weighed at the Scalehouse prior to disposal by the Owner's Landfill Operator. The disposal tonnage will be deducted from the incoming yard waste materials and disposal charges will not apply. Notwithstanding anything else contained herein, Contractor shall not be responsible for the handling, disposal or clean up of any hazardous materials that are dumped or released at the Yard Waste Facility by any person other than Contractor.

- C. Contractor shall remove and consolidate any Unacceptable Material dropped off improperly at these material sites. Except as otherwise provided in Section 1.3(B), Contractor will haul these Unacceptable Material and transport them to their proper disposal locations as directed by Owner.
- D. Contractor shall process all materials on site as needed to allow for a safe working environment. Contractor is not allowed to remove unprocessed materials off-site without prior Owner approval, i.e. hardwood logs removed off-site for processing. Contractor's submitted site operating plan and health and safety plan are subject to approval by Owner. These plans need to be submitted 30 Calendar Days before January 2, 2019 (the "Commencement Date").
- E. Processed material not utilized by Owner for landfill cover material or other beneficial uses will be Contractor's responsibility to market and/or sell and provide all trucking at Contractor's expense. The County will provide trucks to haul any mulch for beneficial use.
- F. If the Contractor's equipment fails to operate for seven (7) Business Days, the Contractor will utilize alternate equipment to process the material.
- G. The incoming tonnage numbers to be used in billing will be generated by Owner's calibrated scale operations, and any discrepancies shall be immediately brought to the attention of the Owner Managing Director. The Contractor will be paid to handle and process all incoming materials and paid to transport and recycle of all outgoing materials. The tonnage for the outgoing materials and the materials utilized by Owner for landfill cover material or other beneficial uses will be measured by Contractor using Loadrite on board loader scales. The other beneficial use could include the use at the County golf course, County parks or for composting purposes.
- H. The Contractor will provide weights in tons all materials leaving the Yard Waste Facility or Compost Facility for recycling credits, and billing purposes.
- I. Acceptance of Intra-County Yard Waste. Contractor will not accept any Intra-County Yard Waste at the Compost Facility.
- J. Inter-County Yard Waste, Intra-County and Inter-County Food Waste and Intra-County and Inter-County Biosolids. Owner and Contractor shall in good faith continue to develop and discuss these opportunities and formalize a separate agreement for these items as an amendment to this Agreement to be approved by Owner and Contractor.
- K. Storm Debris. The exclusivity obligations of Owner contained in Section 1.2(B) shall not apply to temporary services required for the processing and recycling of unusually large quantities of Yard Waste (collectively, "Storm Debris") caused by a hurricane, natural disaster or other event that results in an emergency response from the Federal Emergency Management Agency (FEMA).
- L. The Yard Waste Facility is provided as is; however, Owner is in the process of making some site improvements to the Yard Waste Facility to provide better access for customers and to provide a more stable/elevated base area for the Contractor's operations (the "Owner Improvements"). However, the Contractor is responsible for any required repairs to the Yard Waste Facility as a result of Contractor's use after completion of the Owner Improvements, reasonable wear and tear excepted. In addition, the Contractor is committed to making improvements at the Yard Waste Facility at an approximate value of \$250,000, which shall be made within the first 12

months from the Commencement Date (the “Contractor Improvements”). Both Owner and Contractor shall coordinate the Owner Improvements and Contractor Improvements and all Contractor Improvements by the Contractor shall be with prior approval from Owner, which shall not be unreasonably withheld or delayed. The Contractor Improvements shall be intended to improve the safe working conditions at the Yard Waste Facility and shall include without limitation applying crushed concrete to low areas that can create wet/muddy conditions for the public, stabilizing roads and ensuring that there is proper drainage to the existing swale ditches/canals located on the property. Any Contractor Improvements that entail impervious improvements such as a concrete slab or asphalt paving shall require proper approval and permits prior to installation. The Contractor Improvements made in accordance with this provision shall become the property of Owner. Notwithstanding the foregoing, movable equipment, trade fixtures, personal property, furniture, or any other items that can be removed without material harm to the Yard Waste Facility will remain Contractor’s property and shall not be considered Contractor Improvements nor shall they become the property of Owner but shall be removed by Contractor, at its sole cost and expense, promptly upon expiration or termination of the Term.

1.4 Owner Responsibilities

- A.** Owner will make every effort to direct all customers with wood wastes/yard waste to the proper sites for processing and will instruct the customer where non-processed materials are to be deposited. For example, wooden pallets are no longer accepted in the Yard Waste Facility. Owner and Contractor shall jointly agree on the addition of new materials accepted in the Yard Waste Facility prior to final approval by the Owner.
- B.** The Owner’s Scalehouse shall be used to weigh all in-coming wood wastes/yard waste materials. Each vehicle shall be weighed going in and out at the Scalehouse, and the driver will be provided a weigh ticket. Owner shall staff and maintain the Scalehouse and associated equipment at its expense in accordance with generally accepted industry standards and as required under applicable law. The Scalehouse shall be calibrated in accordance with the requirements of the Florida Bureau of Weights and Measures.
- C.** Owner shall provide scale records monthly to the Contractor for all materials by category sent to the processing site in tons (2,000 pounds per ton). Owner will pay the Contractor for processing these materials. Contractor’s processing cost per ton must include all costs (a total cost) for equipment, labor, loading, transport, insurance, etc.
- D.** Owner shall provide the use of the Site on the landfill property for consolidating, processing and loading the wood waste/yard waste materials.

1.5 Contractor Responsibilities

- A.** The Contractor shall use the Loadrite on board loader scales for measuring processed Yard Waste that is transported to and recycled at the Compost Facility and for measuring the Overs that are provided to Owner for landfill cover or other beneficial use.
- B.** The Contractor shall provide a weekly weight report to Owner.

- C. The Contractor and Owner shall follow an agreed calibration method and frequency to verify the accuracy of the Loadrite on board scales. In general, this will consist of utilizing the Owner's Scalehouse to periodically confirm the accuracy of the Loadrite on board scales.
- D. The Contractor is responsible for the purchase, installation, operation, maintenance, and calibration of the Loadrite system.

ARTICLE 2 - CONTRACT TERM

The initial term of this Agreement commences on the Effective Date and continues thereafter for a period of ten years, unless and until sooner terminated as provided in Sub-Article 11(E) (the "Term").

ARTICLE 3 - CONTRACT PRICE

3.01 Owner shall pay the Contractor for the performance of this Agreement in accordance with the Contract Documents, subject to annual price adjustments set forth in Section 4.03 (if approved by the County Administrator or designee) or by an approved contract amendment by the Owner Board, the total amount in current funds being as follows (the "Contract Price"):

<u>\$11.49/TON</u>	\$11.49 shall be paid by Owner to Contractor for Contractor's Processing of each ton of Yard Waste that is dumped at the Yard Waste Facility. "Processing" means receiving, grinding, screening, and loading Yard Waste dumped at Yard Waste Facility.
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<u>\$12.45/TON</u>	\$12.45 shall be paid by Owner to Contractor for Contractor's Transportation and Recycling of each ton of Yard Waste that is dumped at the Yard Waste Facility. "Transportation and Recycling" means transporting processed Yard Waste from Yard Waste Facility to Compost Facility for composting/recycling. During Transportation and Recycling processed Yard Waste will be measured by Contractor using Loadrite on board loader scales and a weekly weight report will be provided to Owner.
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\$12.45/TON	\$12.45 shall be rebated to Owner by Contractor for Owner's Collection of each ton of Overs from the Compost Facility. "Collection" means receiving and transporting of Overs from designated storage area located at the Compost Facility to be used as alternative daily cover or other landscaping applications as Owner sees fit. "Overs" means byproduct that is collected through Contractor's initial screening of Yard Waste compost. During Collection, Overs will be measured by Contractor using Loadrite on board loader scales and a weekly weight report will be provided to Owner.
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3.02 The prices above are applicable through the Term, subject to adjustment pursuant to Sections 4.03.

3.03 Owner acknowledges and agrees that any and all Yard Waste that goes through Processing at the Yard Waste Facility must also go through Transportation and Recycling, provided that if Contractor does not

desire to put certain processed Yard Waste through Transportation and Recycling then Contractor may, in its sole discretion, make such material available to Owner to be used as landfill cover or other beneficial use.

ARTICLE 4 - PAYMENT PROCEDURES AND ADJUSTMENT

4.01 Once each month, payments shall be made during the term of the Agreement in the amount due on the Agreement. Contractor shall submit an invoice to the Owner's Managing Director no later than the 10th 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 Owner's receipt of the invoice, whichever occurs later, upon verification by Owner of the invoice submitted. The Owner may reject the invoice in writing which shall specify the disputed amounts and reason for such dispute, and the action necessary to correct the deficiency. Payment for the previously disputed amounts shall be due 20 Business Days after the Owner's receipt of a revised invoice.

4.02 Owner shall make monthly payments as invoiced. Upon a determination of satisfactory completion, the Owner Managing Director will authorize payment to be made. All payments for services shall be made to the Contractor by Owner in accordance with the Local Government Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

4.03 Rate Adjustment

A. Contractor may request an annual rate adjustment and such requests shall not be refused if within the funding authority of the Owner. Such request must be submitted in writing to Owner no later than June 1 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.

B. If a rate adjustment is requested, the Contract Price shall be adjusted as specified in Exhibit A and shall not exceed three percent (3%) for any single adjustment. Contractor shall provide notice to Owner of such adjustment, provided that failure to provide such notice shall not void this Section or be deemed to be a breach of this Agreement.

4.04 Performance Bond: Owner requires an annual payment and performance bond in the amount of \$300,000 renewed annually with annual verification of insurance. The proof of bond and insurance will be subject to any consideration for a rate adjustment.

ARTICLE 5 – INSURANCE:

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

Notwithstanding the minimum limits of coverage set forth below, the limits of each underlying insurance coverage must be at least as high as is necessary to support the excess liability insurance coverage.

The Selected Firm shall not commence work until they have obtained all the insurance required under this section, and until such insurance has been approved by Owner. Firm's insurance shall be primary. Owner shall be named as an additional insured for both General Liability and Automobile Liability. The awarded firm shall maintain the following limits of insurance during the term of this agreement.

General Liability

- Each Occurrence \$500,000
- Fire Damage-any one fire \$50,000
- Medical Expenses-any one person \$5,000
- Personal and Advertising Injury \$500,000
- General Aggregate \$500,000
- Combined Single Limit \$500,000

Automobile Liability

- Combined Single Limit \$500,000

Worker's Compensation as required by the State of Florida

- Each accident \$100,000
 - Each Disease – Each employee \$100,000
 - Each disease – policy limit \$500,000
- The policy shall cover the firm, all employees, and/or volunteers, and all independent contractors, subcontractors and professional contractual persons hired or retained by contractor.

Excess Coverage

- Umbrella or excess liability coverage in the amount of \$5,000,000 shall be maintained.

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 Owner 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 Owner. Owner shall be added as a named insured on the insurance policy.

All above insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be licensed to do business in Florida. The insurance policies procured shall be "Claims Made" policies or as generally available on the open insurance market.

ARTICLE 6 - INDEMNIFICATION

Contractor shall indemnify and hold harmless the Owner, and its Commissioners, officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the

extent caused by the gross negligence, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Work.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.01 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 and the other related data identified in the Invitation to Bid documents.
- B. Contractor has visited the Yard Waste Facility and become familiar with and is satisfied as to the general, local, and Yard Waste Facility 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. [RESERVED]
- 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 Yard Waste Facility 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 Yard Waste Facility, 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.
- J. Prior to the Commencement Date, Contractor shall provide proof of lease or copy of lease (which may be redacted in Contractor's sole discretion), with the Indian River Eco-District for the use of the Compost Facility to match the term of this Agreement.

ARTICLE 7A – OWNER COVENANTS

(a) Compliance with Applicable Laws. Owner shall at all times comply with all applicable laws in connection with the Project, the relevant areas of the Yard Waste Facility, and their respective

maintenance and operation, including, without limitation, such laws pertaining to the health and safety of persons and property.

(b) Security. Owner provides the Yard Waste Facility “As is” which includes a perimeter fence and gates for security of the Project and to protect the Project against loss, theft, damage and vandalism. If, at the request of Contractor, Owner is required to incur any out-of-pocket costs in connection with the installation of fencing or other security equipment requested by Contractor, Contractor shall pay any such costs agreed between the Parties.

(c) Non-Interference with Project. Owner, at the Yard Waste Facility, shall not touch, disturb, move or otherwise physically interfere with, and shall ensure that no person, including, without limitation, its employees and other agents, contractors and guests, touches, disturbs, moves or otherwise physically interferes with, the Project in any way without the prior written consent of Contractor unless, in the event of an emergency, the Owner does so for the health and safety of persons and property.

(d) Notice of Damage. Owner shall promptly notify Contractor of any matters it is aware of pertaining to any damage to or loss of the use of the Project or that could reasonably be expected to adversely affect the Project.

(e) Liens. Owner shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the Project or any interest therein. If Owner breaches its obligations under this Article, it shall immediately notify Contractor in writing, shall promptly cause such lien to be discharged and released of record without cost to Contractor, and shall indemnify Contractor against all costs and expenses (including reasonable attorneys’ fees and court costs at trial and on appeal) incurred in discharging and releasing such lien.

(f) Consents and Approvals. Owner shall secure and maintain, and shall deliver to Contractor copies of, all consents, approvals, permits, licenses, and authorizations relating to the performance of Owner’s obligations and the rights granted by Owner hereunder, and which are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Owner is a party or by which Owner is bound. Owner shall also provide reasonable assistance to Contractor in completing applications for approvals and consents with respect to which Contractor has primary responsibility.

ARTICLE 7B - LICENSE AND ACCESS TO SITE

(a) Owner hereby grants unto Contractor a license for use of the Yard Waste Facility, as is more fully described in Exhibit A, attached hereto and by reference incorporated herein, together with the right of ingress and egress over existing roadways on said Yard Waste Facility or on any adjoining property owned by Owner.

(b) Owner hereby grants to Contractor, its agents, employees and contractors, a non-exclusive temporary easement over and across any of the Owner’s property adjoining the Yard Waste Facility during the Term hereof, as a means of ingress and egress from and to the Yard Waste Facility, and to perform all reasonable operations of, or other services at the Yard Waste Facility. The easement shall not run with the land and shall cease to be an encumbrance upon such real property upon the termination of this Agreement.

(c) Owner covenants and agrees as follows: (i) Owner has full right, power and authority to enter into this Agreement for the terms herein granted, and that the Yard Waste Facility may be used by Contractor during the entire Term for the purposes set forth in this Agreement; and (ii) upon Contractor's performance of all the terms of this Agreement, Contractor shall at all times during the Term, peaceably and quietly enjoy the Yard Waste Facility without any disturbance from Owner or from any other person claiming through Owner.

(d) Any alteration, addition, and improvement placed upon the Yard Waste Facility by Contractor shall remain the property of Contractor and shall be removed from the Yard Waste Facility within ninety days of the termination or expiration of this Agreement. Any such property not removed by Contractor within such ninety day period, shall become the property of Owner and surrendered to Owner.

(e) All costs, expenses, and obligations relating to property taxes for the Yard Waste Facility (if any) shall be paid by Owner and Owner shall hold Contractor harmless from any damage, loss, fine, penalty or personal injury arising on or before the Effective Date or resulting from Owner's acts or omissions occurring during the Term.

8.01 *Contents*

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

- (1) This Agreement (pages 1 to 19, inclusive);
- (2) Certificate(s) of Liability Insurance
- (3) Request for Proposals 2019045
- (4) Addenda (numbers 1 to 3, inclusive);
- (5) Contractor's Submitted Proposal & Interview Presentation
- (6) Drug Free Workplace Form
- (7) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships
- (8) Certification Regarding Prohibition Against Contracting with Scrutinized Companies
- (9) Certification Regarding Lobbying
- (10) Payment and Performance Bonds
- (11) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a) Written Amendments;
 - b) Work Change Directives;

- c) Change Order(s).

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the Request for Proposals.

9.02 *Assignment of Agreement*

- 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.

9.03 *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.

9.04 *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.

9.05 *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.

9.06 *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

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

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

ARTICLE 10 – FEDERAL CLAUSES

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

A. **Equal Employment Opportunity.** During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. 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, such contractor and 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. The Owner 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.

C. 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 Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the State, 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 Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the State, 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.

D. 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.

E. Suspension and Debarment

(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 any 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 or proposer 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.

F. **Byrd Anti-Lobbying Amendment** (31 U.S.C. § 1352 (as amended)—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

G. **Procurement of Recycled/Recovered Materials:**

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

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

(1) The contractor agrees to provide Owner, 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.

I. **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.

- J. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that any FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- K. **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.
- L. **Program Fraud and False or Fraudulent Statements or Related Acts:** *Contractor* acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.
- 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 11: TERMINATION OF AGREEMENT

- 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 Contractor fails to perform the Work in accordance with Prudent Industry Practices (as defined in Sub-Article 11.F);
 - (2) if Contractor materially breaches any provision of this Agreement; or
 - (2) if Contractor abandons the Work, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for a substantial part of its property.
- B. With the exception of Article 1.3 (F), 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 thirty (30) calendar days to cure the default to the reasonable satisfaction of the Owner. With respect to Article 1.3 (F), Owner shall provide Contractor with seven (7) 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 subject to the terms and conditions contained in Article 7B.

- D. Owner's right to terminate this Agreement under Sub-Article 11(A) is cumulative with any other rights or remedies that may now or subsequently be available to Owner at law, in equity, by statute, in any other agreement between the parties, or otherwise.
- E. TERMINATION FOR CONVENIENCE: Owner may at any time and for any reason terminate this Agreement and Contractor's services and work for Owner's convenience by providing prior written notice to Contractor, which shall specify that Owner is terminating the Agreement for convenience and the effective date of the termination, which shall be thirty days from the date of the notice of termination (the "Termination Date"). Upon the Termination Date: (a) Contractor shall immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract; and (b) Owner shall pay Contractor (i) all amounts due, but not yet paid, to Contractor under this Agreement for Work completed prior to the Termination Date; and (ii) if the Termination Date is a date that occurs on or before January 2, 2021, reimbursement of all costs and expenses incurred on or before the Termination Date by Contractor for the Contractor's Improvements, provided that such reimbursement shall not exceed \$250,000.
- F. TERMINATION IN REGARDS TO F.S. 287.135: Contractor certifies that it and those related entities of respondent as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, Contractor certifies that it and those related entities of respondent as defined above by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

Owner may terminate this Agreement if Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

Owner may terminate this Agreement if Contractor, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

Article 12: LENDER ACCOMMODATIONS

- A. Contractor shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to any property owned by Owner. If Contractor breaches its obligations under this Article, it shall immediately notify Owner in writing, shall promptly cause such lien to be discharged and released of record without cost to Owner, and shall indemnify Owner against all

costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such lien.

- B. Owner acknowledges that one or more persons may be lending money or extending credit to Contractor for financing or refinancing of personal property to be obtained and owned by Contractor to perform the Project. Owner shall, within fifteen (15) business days of the request of the Contractor or any lender or prospective lender, provide an estoppel certificate as to any matters reasonably requested by the Contractor or Contractor's lender.

[remainder of page intentionally left blank]

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 _____, 2019 (the date the Agreement is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

Owner:

INDIAN RIVER COUNTY _____

By: _____
TBD, Chairman

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk

(SEAL)

Designated Representative:

Name:
Title:
Address:
Phone
Email

Contractor:

Atlas Organics Indian River, LLC _____

By: _____
(Contractor)

(CORPORATE SEAL)

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

Designated Representative:

Name: _____
Title: _____
Address: _____

Phone: _____
Email: _____

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

EXHIBIT A – CALCULATION OF RATE ADJUSTMENT

One Hundred Percent (100%) of the rate adjustment shall be based on seventy-five percent (75%) of the change in the Consumer Price Index (CPI) between the month of June in the prior year (CPI1) and the month of June in the current year (CPI2). The CPI shall be the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, published by the United States Department of Labor, Department of Labor Statistics (Series ID = CWUR0300SA0)

If the designated index is discounted or substantially altered, Owner may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices. The total rate adjustment is rounded to the nearest hundredth of a percent and in any given year shall not exceed three percent (3.0%) of the previous rate.

FORMULA FOR CALCULATING ANNUAL RATE ADJUSTMENT

$$\text{Annual Adjustment (as a Percentage) AA} = (((\text{CPI2} - \text{CPI1}) / \text{CPI1}) * 0.75));$$
$$\text{New Rate} = \text{Round} ((\text{Current Rate} + \text{AA} * \text{Current Rate}), 2)$$

Where:

“CPI1” = published CPI average for the month of June of the prior year

“CPI2” = published CPI average for the month of June of the current year

SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENT INCREASE

Assumptions: Current Rate = \$10.00 CPI1 = 226.618
CPI2 = 227.955

Annual Rate Adjustment = $((227.955 - 226.618) / 226.618) * 0.75 = 0.44\%$

Annual Rate Adjustment of 0.44% is less than 3.0%, the maximum allowed.

New Rate = $\text{ROUND} (\$10.00 * (1 + 0.0044), 2) = \10.04

SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENT DECREASE

Assumptions: Current Rate = \$10.00 CPI1 = 226.618
CPI2 = 225.618

Annual Rate Adjustment = $((225.618 - 226.618) / 226.618) * 0.75 = -0.33\%$

New Rate = $\text{ROUND} (\$10.00 * (1 + (-0.0033)), 2) = \9.97

Annual Rate Adjustment is subject to the approval of the County Administrator or his designee.

EXHIBIT B – YARD WASTE and COMPOST FACILITIES

