

## RESOLUTION NO. 2021 - 40

### **A RESOLUTION OF THE SALINAS VALLEY SOLID WASTE AUTHORITY APPROVING A LEASE AGREEMENT WITH REPUBLIC SERVICES OF SALINAS TO PROVIDE SPACE FOR RELOCATION OF THE SUN STREET TRANSFER STATION AB 939, RECYCLING AND HOUSEHOLD HAZARDOUS WASTE OPERATIONS**

**WHEREAS**, Republic Services of Salinas (Republic) purchased the Madison Lane Transfer Station located at 1120 Madison Lane in Salinas, California ("MLTS"), in November 2018. MLTS is a privately owned and operated solid waste transfer station and materials recovery facility. MLTS also has a solid waste collection vehicle yard, used for the parking and maintenance of waste collection vehicles.

**WHEREAS**, the Authority operates a solid waste facility located at 139 Sun Street in Salinas, California (the "Sun Street Transfer Station and Recycling Center or SSTSRC") that has been used for the receipt and transfer of municipal solid waste from members of the public and franchised collection vehicles. The facility also has a household hazardous waste collection facility and receives source separated recyclable materials from the public for processing and recycling.

**WHEREAS**, Republic and the Authority have been in discussions for the purpose of entering into agreements for cooperative activities involving both the Authority and Republic. The purpose of this Lease Agreement (Lease) is to provide for continuation and expansion of existing Authority run AB 939, Recycling and Household Hazardous Waste programs.

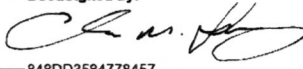
**WHEREAS**, relocation of the above services addresses the City of Salinas needs to begin development of its future Alisal Market Place and meets the condition for rescinding its Notice of Intent to Withdraw from the Authority as memorialized under the August 19, 2021, Memorandum of Understanding.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SALINAS VALLEY SOLID WASTE AUTHORITY** that the Chief Administration Officer is hereby authorized and directed for, and on behalf of the Salinas Valley Solid Waste Authority to execute a Lease with Republic Services of Salinas use of space to at MLTS to facilitate relocation of its Sun Street Transfer Station Operations.

**PASSED AND ADOPTED** by the Board of Directors of the Salinas Valley Solid Waste Authority at a regular meeting duly held on the 16<sup>th</sup> day of September 2021 by the following vote:

AYES:	BOARD MEMBERS:	CRAIG, CROMEENES, CULLEN, JIMENEZ, LOPEZ, PHILLIPS, ROCHA, SILVA, TIPTON
NOES:	BOARD MEMBERS:	None
ABSENT:	BOARD MEMBERS:	None
ABSTAIN:	BOARD MEMBERS:	None

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Christopher M. Lopez, President

ATTEST:

DocuSigned by:

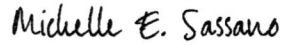


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Erika J. Trujillo, Clerk of the Board

APPROVED AS TO FORM:

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Michelle E. Sassano, Assistant Authority  
General Counsel

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT ("Lease")** is dated as of the 6th day of October, 2021 ("**Effective Date**") by and between **N LEASING COMPANY, LLC**, a Delaware limited liability company ("**Landlord**"), and **SALINAS VALLEY SOLID WASTE AUTHORITY**, a California joint powers authority ("**Tenant**").

### **RECITALS:**

**A.** Landlord is the owner of certain real property located at 1120-1128 Madison Lane, Salinas, California 93907, consisting of approximately 12.46 acres (APNs 261-041-019, 261-051-005 and 261-051-070) which is described on Exhibit A attached hereto ("**Property**").

**B.** Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord that portion of the Property which is a part of APN 261-041-019 commonly known as 1120 Madison Lane consisting of approximately 49,319 square feet of land which contains certain improvements including a building (approximately 3,029 square feet) and depicted on Exhibit A attached hereto and made a part hereof (collectively, the "**Premises**"), on the terms and conditions provided herein.

**NOW, THEREFORE**, in consideration of the premises and mutual agreements herein contained, the parties hereto hereby act and agree as follows:

## **ARTICLE I LEASE OF PREMISES; RENT AND TERM**

### **1.1 Lease of Premises; Franchise Agreement; Existing Tenant; Landlord's Work.**

(a) **Lease of Premises.** Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term (defined below), subject to the terms and conditions set forth in this Lease. Tenant acknowledges that the Premises are part of real property that is used by Landlord in connection with its Adjacent Operations (defined below), and Tenant shall have the non-exclusive right to access the Premises over and across existing curb cuts, driveways and roads currently serving the Premises. In the event Tenant requires access to the Premises over and across the Property at times other than the normal business hours of Landlord at the Property, Tenant shall coordinate such access with Landlord in advance. Landlord may provide vehicle access to Tenant over portions of Landlord's property adjacent to the Premises for the performance by Tenant of other agreements to be executed in the future with Tenant (e.g., a potential agreement whereby Tenant may perform certain transportation services for materials loaded into Tenant's transfer trailers at Landlord's transfer station).

(b) **Franchise Agreement.** Landlord and Tenant agree that a condition precedent to the effectiveness of this Lease shall be the full execution of an Amended and Restated Collection Services Agreement with the City of Salinas, California ("**City**") and Allied Waste Services of North America, LLC ("**Allied**") (an affiliate of Landlord), on terms mutually acceptable to Allied and City in their sole discretion ("**Franchise Agreement**"). If the Franchise Agreement is not fully executed within 45 days after the Effective Date of this Lease, Landlord and Tenant shall each have the right to terminate this Lease in writing within 10 days thereafter. In addition, if at any time during the Term, the Franchise Agreement expires or is terminated in accordance with its terms, this Lease shall

automatically terminate as of the date of termination of the Franchise Agreement, and be of no further force or effect; provided, however, that Tenant shall have a period not to exceed 60 days from the date of such termination to surrender the Premises to Landlord as required by this Lease. Landlord agrees to provide Tenant with written notice within a reasonable period following receipt by Landlord or its affiliate of written notice from the City of its intention to bid the services provided by Allied under the Franchise Agreement; provided, however, that failure to give such notice shall not affect the enforceability of this termination provision.

Landlord and Tenant further agree that a condition precedent to the effectiveness of this Lease shall be the full execution of a Memorandum of Understanding between the City and Tenant, and the City fully rescinding its Notice of Intent to Withdraw from Tenant. Landlord and Tenant shall each have the right to terminate this Lease in writing if the Memorandum of Understanding and Notice of Intent to Withdraw from the Tenant is not executed by the City within 45 days of the Effective Date of this Lease. Upon execution of the Memorandum of Understanding and Notice of Intent to Withdraw from the Tenant, this condition shall automatically be deemed satisfied; provided, however, Tenant agrees to notify Landlord in writing promptly following the execution of such documents. In the event this condition is satisfied within such 45-day period, but the City issues another Notice of Intent to Withdraw from the Authority during the Term of this Lease, this Lease shall automatically terminate on the date the City withdraws from the Authority unless the parties in their sole discretion agree in writing in an amendment to this Lease to waive such termination right.

(c) **Existing Lease Termination.** The Premises are currently leased to Bindel Bros. Grading & Backhoe Service, Inc. ("**Existing Tenant**"), pursuant to a month-to-month lease ("**Existing Lease**"), which Existing Lease requires Landlord to provide prior written notice of its election to terminate the Existing Lease. Promptly following the Effective Date of this Lease, Landlord shall provide written notice to the Existing Tenant of Landlord's election to terminate this Lease, and shall keep Tenant reasonably apprised of the status of termination of the Existing Lease and the vacation of the Premises by the Existing Tenant.

(d) **Landlord's Work.** Prior to the Delivery Date (defined below), Landlord shall complete certain repairs and improvements to the Premises which are necessary for Tenant's use of the Premises and are set forth on Exhibit B attached hereto ("**Landlord's Work**") at Landlord's sole cost and expense. Notwithstanding anything to the contrary set forth in this Lease, in no event shall the cost of Landlord's Work exceed the total sum of One Hundred Fifty Thousand Dollars (\$150,000) ("**Maximum Cost**"); provided, however, the Maximum Cost does not include the cost of Landlord's repaving the pave portion of the Premises which Landlord shall perform as part of the Landlord's Work at no cost to Tenant ("**Paving**"). Upon completion of Landlord's Work, Landlord shall provide written notice to Tenant. Landlord shall deliver the Premises to Tenant on the Delivery Date, in broom clean condition, with all mechanical systems in working order, and with Landlord's Work completed.

(e) **Delivery Date.** Landlord shall use commercially reasonable efforts to deliver the Premises in the condition specified in subsection (d) above on or before March 1, 2022 ("**Expected Delivery Date**"). The parties understand that the actual delivery date may be later due to unforeseen circumstances and Permitted Delays (defined below). Landlord shall provide Tenant written notice at least 10 days prior to the delivery of the Premises to Tenant ("**Delivery Date**"). If Landlord fails to tender delivery of the Premises in accordance with this Lease by September 1, 2022, Tenant shall



have the right to terminate this Lease by delivery of written notice to Landlord at any time prior to delivery of the Premises by Landlord to Tenant.

**(f) Statutory Disclosure Notice.** Pursuant to California Civil Code Section 1938, Landlord provides the following statutory notice to Tenant:

*“A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or Landlord may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”*

Landlord advises Tenant that the Premises have not gone through CASp Inspection. Any CASp Inspection shall be at the sole cost and expense of Tenant, and any cost for repairs identified in any such inspection shall be at the sole cost and expense of Tenant, it being acknowledged and agreed to by the parties that the Premises are being delivered by Landlord and accepted by Tenant in their “as is, where is” condition except for the performance by Landlord of Landlord’s Work up to the Maximum Cost.

**(g) Termination of Green Waste Delivery Agreement.** Tenant and Landlord’s affiliate, Allied Waste Services of North America, LLC, a Delaware limited liability company (“BFI”), as successor to BFI Waste Systems of North America, Inc., are parties to that certain Green Waste Delivery Agreement dated November 18, 2004 (the “Green Waste Delivery Agreement”). Tenant agrees to cause BFI to enter into a written termination of the Green Waste Delivery Agreement with Tenant effective July 1, 2022 (the “Green Waste Delivery Agreement Termination Date”), provided that this Lease is in full force and effect as of the Green Waste Delivery Agreement Termination Date.

## **1.2 Rent.**

**(a) Rent.** Commencing on the Delivery Date, Tenant shall pay to Landlord the sum of \$194,810.04 per year, payable in equal monthly installments of \$16,234.17 (“Rent”). The Rent shall increase annually by 100% of the percentage change in the Water Sewer Trash Index (WST) as published by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index series CUUR0000SEHG CPI-U Water and sewer and trash collection services, US City Average, seasonally adjusted, for the 12 months immediately preceding the applicable anniversary of the Commencement Date. Notwithstanding anything to the contrary set forth in these terms, such adjustment shall never exceed 4%, and Rent shall in no event be less than the Rent in effect for the year prior to the date of such adjustment.

**(b) Payment.** Rent shall be paid to Landlord via ACH payment pursuant to written ACH/wire instructions provided by Landlord to Tenant prior to the Effective Date of this Lease. The

first installment of Rent is due on the Effective Date. Thereafter, Rent is payable on or before the 1st day of each calendar month, without demand, offset or deduction of any nature.

(c) **Late Charge.** If any Rent is not received with 5 days after its due date for any reason whatsoever, or if any Rent payment is by check that is returned for insufficient funds, then in addition to the past due amount Tenant shall pay to Landlord a late charge in an amount equal to 5% of the amount due ("**Late Charge**").

(d) **Interest.** Any amount payable to Landlord pursuant to this Lease, other than Late Charges, that is not received by Landlord within 10 days following the date on which it was due will bear interest starting on the 11th day after it was due. The interest rate shall be the prime rate reported in the Wall Street Journal as published on the start date plus 2% ("**Interest**") but will not exceed the maximum rate allowed by law. Interest is payable in addition to the Late Charge but shall not accrue on the late charge.

(e) **Security Deposit.** Tenant shall deliver the sum of \$100,000 ("**Security Deposit**") to Landlord on or before the Effective Date as security for Tenant's faithful performance of its obligations under this Lease. If Tenant fails to pay Rent, or otherwise defaults under this Lease, Landlord may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Landlord, for Rent which will be due in the future, and/ or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord uses or applies all or any portion of the Security Deposit, Tenant shall within ten (10) days after written request therefor deposit monies with Landlord sufficient to restore said Security Deposit to the full amount required by this Lease. Landlord shall not be required to keep the Security Deposit separate from its general accounts.

### **1.3 Term.**

(a) The Primary Term (herein so called) of this Lease shall begin on the Delivery Date and shall end at 11:59 p.m. on September 30, 2036, unless sooner terminated in accordance with this Lease. Within 10 business days following the Delivery Date, Tenant shall execute and deliver to Landlord a letter substantially in the form of Exhibit "C" hereto confirming the Delivery Date; however, the failure of the parties to execute such letter shall not defer the Delivery Date or otherwise invalidate this Lease.

#### **(b) Extensions.**

(1) **Extension Option.** Tenant shall have the option ("**Extension Option**") of extending this Lease for one additional period of 5 years ("**Extension Term**"), on the same terms and conditions, provided that the term of the Franchise Agreement is extended for the same period. Written notice of the Tenant's exercise of the Extension Option shall be delivered by Tenant to Landlord not later than 180 days prior to expiration of the Primary Term.

(2) **Additional Extension Term.** Tenant shall have the right to further extend the Term of this Lease for one additional period of 5 years ("**Additional Extension Term**"), upon written notice delivered to Landlord not later than 180 days prior to the expiration of the Extension Term, and subject to Landlord's approval in its sole discretion. In the event Landlord approves the Additional Extension Term, then during the Additional Extension Term Landlord and Tenant shall

each have the right to terminate this Lease in their sole discretion upon 12 months prior written notice to the other party.

The Primary Term and the Extension Term and Additional Extension Term, if applicable, shall be collectively referred to herein as the "**Term.**"

## **ARTICLE 2**

### **TAXES, UTILITIES, INSURANCE AND MAINTENANCE**

**2.1 Taxes and Assessments.** Landlord shall be responsible for payment of all real estate taxes and assessments; provided, however, that Tenant shall be responsible for the payment of all personal property taxes, and any assessments or increase in real estate taxes attributable to Tenant's use of the Premises or any improvements constructed thereon or business conducted by Tenant.

**2.2 Utilities.** Tenant shall obtain all water, electricity, sewerage, gas, telephone and other utilities directly from the public utility company furnishing same. Any meters required in connection therewith shall be installed at Tenant's sole cost. Tenant shall pay all utility deposits and fees, and all monthly service charges for water, electricity, sewage, gas, telephone and any other utility services furnished to the Premises during the Term. Landlord shall not be liable for any interruption in utility services unless caused solely by the gross negligence or willful misconduct of Landlord nor shall Tenant be entitled to an abatement or reduction of Rent on account of any interruptions.

#### **2.3 Insurance.**

(a) **General Insurance.** Tenant shall procure and maintain throughout the Term of this Lease the following insurance:

(1) Worker's Compensation in accordance with the benefits afforded by the statutory Worker's Compensation Acts applicable to the state, territory or district of hire, supervision or place of accident. Policy limits for worker's compensation shall not be less than statutory limits and for employer's liability not less than \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

(2) Commercial General Liability Insurance including bodily injury, death, property damage, independent contractors, products/completed operations, contractual, and personal injury liability, with a limit of \$2,000,000 per occurrence and in the annual aggregate.

(3) Commercial Automobile Insurance covering owned hired, rented, and non-owned automotive equipment with a limit of \$1,000,000 per accident.

(4) Excess Umbrella Liability Insurance coverage in excess of the terms and limits of insurance specified in paragraphs (1), (2) and (3) above with a combined limit of \$5,000,000 per occurrence.

(5) Pollution Liability Insurance to cover Grantee's legal liability arising from claims or damages related to pollution events caused by Grantee's performance under this Agreement in the per claim limit of \$5,000,000.

(b) **Fire.** Tenant shall also procure and maintain throughout the term of this Lease, at its sole cost and expense, the following insurance Fire and "all risks" extended coverage insurance covering Tenant's personal Premises, fixtures, improvements and equipment against loss or damage containing the waiver of subrogation required in this Lease and in an amount equal to the full replacement value.

(c) **Miscellaneous.** It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Tenant for its acts or omissions as provided in this Lease. All of the foregoing insurance policies (with the exception of Workers Compensation Insurance to the extent not available under statutory law) shall name Landlord and such other parties as Landlord shall from time to time designate as an additional insured as their respective interests may appear, and shall provide that any loss shall be payable to Tenant, Landlord and any other additional insured parties as their respective interests may appear. Tenant shall deliver to Landlord certificates of coverages in form and content reasonably satisfactory to Landlord as to all such policies, prior to the Delivery Date, or, in the case of renewals thereto, 15 days prior to the expiration of the prior insurance policy, together with evidence that such policies are fully paid for, and that no cancellation, material change or non-renewal thereof shall be effective except upon 30 days' prior written notice from the insurer to Landlord.

(d) **Limitation of Liability.** Except as expressly set forth in this Lease, Landlord and Landlord's agents and employees shall not be liable to Tenant, nor to Tenant's employees, agents or visitors, nor to any other person whomever, for any injury to or death of any person, or damage to Premises caused by the Premises becoming out of repair or by defect or failure of any structural element of the Premises or of any equipment pipes or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity, or oil leaking, escaping or flowing into the Premises, nor shall Landlord be liable to Tenant, nor to Tenant's employees, agents or visitors, nor to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of any persons whomsoever. Except as expressly set forth in this Lease, Landlord shall not be liable to Tenant or to Tenant's employees, agents, contractors, invitees or to any other person whomsoever, for any injury to any person or damage to Premises in or about the Premises caused by any reason. However, nothing in this section shall exempt Landlord for liability for damage or injury caused by the gross negligence or willful misconduct of Landlord or its agents, contractors or employees.

(e) **Waiver of Subrogation.** Landlord and Tenant each hereby release the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to Premises caused by a casualty which is insurable under the standard fire and extended coverage insurance. Landlord and Tenant agree that all policies of insurance obtained by them pursuant to the terms of this Lease shall contain provisions or endorsements thereto waiving the insurer's rights of subrogation with respect to claims against the other, and, unless the policies permit waiver of subrogation without notice to the insurer, each shall notify its insurance companies of the existence of the waiver and indemnity provisions set forth in this Lease.

(f) **Increases in Coverages.** Landlord shall have the right to reasonably increase the amount of the coverages provided the increase is commercially reasonable and available at commercially reasonable rates, and the types of coverage, during the Term of this Lease upon prior written notice to Tenant.

## **2.4 Maintenance.**

(a) **Landlord Maintenance Obligations.** Landlord shall be responsible for the maintenance, repair and replacement of any and all structural components of the building located on the Premises including, without limitation, the roof, roof membrane, load bearing walls and floor slabs and masonry walls and foundations. Landlord shall also be responsible for the maintenance, repair and replacement of the portions of the plumbing system, electrical system and utility lines and connections to the Premises which are located beneath the floor slabs, or inside of the walls or ceiling, except to the extent the need for any such maintenance, repair or replacement shall result from the acts or omissions of Tenant. Landlord shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature or description to, the Premises or any part thereof, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to maintain the Premises or any part thereof in any way, except as set forth in this Section 2.4(a) above, and Tenant hereby expressly waives any right to make repairs at the expense of Landlord which may be provided for in any statute or law in effect at the time of the execution of this Lease or any statute of law which may thereafter be enacted.

(b) **Tenant Maintenance Obligations.** Except for Landlord's obligations set forth in Section 2.4(a) above, Tenant agrees that, at its sole cost and expense, it will keep and maintain the Premises and all buildings and improvements located thereon, in good condition, repair and appearance including without limitation : (1) the plumbing system, (2) the electrical system, (3) the utility lines and connections to the Premises, (4) the parking lot, entrances, exterior lighting, and landscaping, (5) the heating, ventilation and air conditioning system, and (6) the fire sprinkler mains, if any, except for ordinary wear and tear.

## **ARTICLE 3 USE AND ASSIGNMENT**

**3.1 Use.** Tenant shall use the Premises solely as a Household Hazardous Waste Drop-Off Facility and public drop off for source separated recyclable and other recoverable materials (limited to the following items: cardboard, mixed paper, carpet and carpet padding, clothing and shoes, electronics (computers, TV's, monitors, etc.), mattresses and box springs, ridged plastics, glass, metal and appliances (with and without freon)) and for no other use without the prior written consent of Landlord which may be withheld in Landlord's sole discretion. Tenant shall not do or permit anything to be done on the Premises that may result in the creation, commission or maintenance of a nuisance.

**3.2 Compliance with Law.** Tenant agrees, at its own expense, to comply with all laws, orders and regulations of federal, state and municipal authorities and with any lawful direction of any public officer which shall impose any duty upon Tenant with respect to any work to be performed by Tenant on the Premises or the use of the Premises. Tenant shall, at its own expense, procure, maintain and strictly comply with all required licenses, permits or approvals necessary for Tenant's use and occupancy of the Premises and for any activities or work to be performed by Tenant on the Premises, or the use of the Premises. Upon Landlord's written request, Tenant shall promptly provide Landlord with copies of all such permits and approvals obtained by Tenant.

Tenant shall not be responsible to obtain any required license, permits or approvals related to any work to be performed by Landlord on the Adjacent Operations or outside the scope of Tenant's



work to be performed by it on the Premises; provided, however that this Lease is conditioned on Landlord's ability to continue to perform its Adjacent Operations concurrent with Tenant's occupancy and use of the Premises. Should any judicial or governmental action limit Landlord's Adjacent Operations due to Tenant's use and occupancy of the Premises, then Landlord may terminate this Lease with written notice to Tenant. Should any judicial or governmental action limit Landlord's Adjacent Operations due to Tenant's use and occupancy of the Premises in such a way as to prevent Tenant's use and occupancy of the Premises, and such judicial or governmental action was not directly or indirectly caused by Tenant, then Tenant may terminate this Lease with written notice to Landlord. Notwithstanding the foregoing, if a judicial or governmental action is brought under the California Environmental Quality Act by a third party without the support of the Tenant, and an injunction, order or ruling limits Tenant's use and occupancy of the Premises for more than six months from issuance of the order, then Tenant may terminate this Lease with written notice to Landlord.

~~Tenant shall approve and duly file a Notice of Determination pursuant to Public Resources Code § 21152 concurrent with Tenant's Board's approval of this Lease and the companion Master Transportation Services Agreement, reflecting Tenant's Board's approval of both agreements. Should any action be filed under the California Environmental Quality Act (CEQA) or other applicable law challenging any portion of either agreement, this Lease shall not commence until such action is finally resolved in favor of the full validity of both agreements.~~

DS  
PMDS  
MC

**3.3 Quiet Enjoyment.** Except as otherwise expressly set forth in this Lease, Landlord covenants and represents to Tenant that Tenant shall, at all times during this Lease, peaceably and quietly enjoy the Premises without any disturbance from Landlord or from any other person claiming through Landlord, provided Tenant complies with its obligations hereunder.

**3.4 Adjacent Operations.** Tenant acknowledges that the remainder of the Property is being used by Landlord for operations associated with its waste disposal business ("**Adjacent Operations**"). Tenant agrees that: (a) neither it nor its successors or assigns shall object to the presence of the Adjacent Operations; (b) Tenant and its successors and assigns shall not object to any expansion of the Adjacent Operations; (c) upon request of Landlord (or its successor or assigns); Tenant shall state in writing that it has no objection to the expansion of the Adjacent Operations; and (d) no demands, suits or other claims whatsoever of any type shall be made by Tenant and its successors and assigns against Landlord or any of its predecessors in interest with respect to or arising from the Adjacent Operations.

**3.5 Transfer of Landlord's Interest.** Landlord shall have the right to sell the Property and assign its interest in this Lease to any third party in Landlord's sole discretion. If Landlord sells or transfers its interest in the Premises (other than a transfer for security purposes) Landlord shall be released from all obligations and liabilities accruing thereafter under this Lease, if Landlord's successor has assumed in writing Landlord's obligations under this Lease.

**3.6 Assignment and Subletting.** Tenant shall not transfer this Lease or any interest therein (any sale, assignment, mortgage, pledge, hypothecation or encumbrance of this Lease shall be deemed a "**transfer**"), and shall not sublet the Premises or any part thereof, without the prior written consent of Landlord (such consent to be in the sole discretion of Landlord) in each instance, and any attempt to do so without such consent shall be voidable by Landlord and, at Landlord's election, shall constitute a material default under this Lease.

## ARTICLE 4



## CONDITION OF PREMISES

**4.1 Condition of Premises.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, AS A MATERIAL PART OF THE CONSIDERATION FOR THIS LEASE, LANDLORD AND TENANT AGREE THAT, TENANT IS LEASING THE PREMISES "AS IS" WITH ALL FAULTS AND DEFECTS, LATENT AND PATENT, AND TENANT ACKNOWLEDGES AND AGREES THAT LANDLORD HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE PREMISES, (B) THE INCOME TO BE DERIVED FROM THE PREMISES, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH TENANT MAY INTEND TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION INCLUDING WITHOUT LIMITATION, ALL APPLICABLE ZONING LAWS, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (F) ANY OTHER MATTER RELATED TO OR CONCERNING THE PREMISES. TENANT SHALL NOT SEEK RECOURSE AGAINST LANDLORD ON ACCOUNT OF ANY LOSS, COST OR EXPENSE SUFFERED OR INCURRED BY TENANT WITH REGARD TO ANY OF THE MATTER DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE AND HEREBY ASSUMES THE RISK OF ANY ADVERSE MATTERS RELATED TO THE MATTERS DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE FROM AND AFTER THE EFFECTIVE DATE OF THIS LEASE. TENANT ACKNOWLEDGES THAT TENANT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF LANDLORD OR ANY STATEMENT, REPRESENTATION OR OTHER ASSERTION MADE BY LANDLORD WITH RESPECT TO THE PREMISES. TENANT FURTHER ACKNOWLEDGES THAT NO INDEPENDENT INVESTIGATION OR VERIFICATION HAS BEEN OR WILL BE MADE BY LANDLORD WITH RESPECT TO ANY INFORMATION SUPPLIED BY OR ON BEHALF OF LANDLORD CONCERNING THE PREMISES, AND LANDLORD MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, IT BEING INTENDED BY THE PARTIES THAT TENANT SHALL VERIFY THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION ITSELF.

**4.2 Alterations.** Tenant shall not make any alterations, additions or improvements to the Premises without Landlord's prior written consent which shall not be unreasonably withheld, conditioned or delayed provided that such alterations, additions or improvements are made to the interior portions of the building, and do not affect the structural or mechanical systems thereof. Tenant shall not have the authority to, and shall not, permit any lien, charge or encumbrance of any kind whatsoever to be placed upon the Premises, and Tenant shall bond or discharge any such lien, charge or encumbrance within 15 days' written notice from Landlord. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall be solely responsible for making any alterations or

improvements which are required by laws, rules, regulations, ordinances, permits, approvals, licenses or authorizations in connection with the Premises or Tenant's use thereof.

**4.3 Condemnation.** In the event of condemnation or other similar taking or transfer due to governmental order, of all or any portion of the Premises which renders the Premises reasonably and economically unsuitable for Tenant's use, this Lease, at Landlord's sole discretion, shall (a) terminate, in which case the Rent shall be apportioned as of such date, any prepaid Rents or deposits shall be returned, and Tenant shall be released of all further duties and obligations hereunder; (b) continue in full force and effect except that the Rent shall be reduced by a percentage which is equivalent to the percentage of the Premises so taken, as determined by Tenant. Landlord shall be entitled to the entire proceeds of any condemnation award; provided, however, that Tenant shall have the right to make a separate claim against the condemning authority provided that such claim does not reduce the award which would be otherwise payable to Landlord.

**4.4 Damage and Destruction.**

(a) **Casualty.** If, during the Term, a fire or other casualty shall render the whole or any portion of the Premises untenantable, in Tenant's commercially reasonable judgment, and if, in Landlord's commercially reasonable judgment, the Premises can reasonably be expected to be restored to substantially the same condition existing immediately prior to such casualty as soon as reasonably practicable and in all events within 180 days from the date of such casualty, and Landlord elects in writing to Tenant in its sole discretion to restore the Premises to such condition, Landlord shall use commercially reasonable efforts to repair and restore the Premises to substantially the same condition existing immediately prior to such casualty (with the exception of any Tenant improvements or the property of Tenant) within such 180-day period. In the event that Landlord timely completes such repair and/or restoration, this Lease shall remain in full force and effect. In the event that Landlord does not complete such repair and restoration within such 180-day period for any reason or elects in writing to Tenant not to repair or restore the Premises, Tenant may, upon 15 days prior written notice to Landlord, terminate this Lease.

(b) **Rent Proration.** After the date of any casualty subject to this Section 4.4, and for the period during which any repair and/or restoration is being performed, all Rent and additional rent shall continue to be due and payable hereunder, but shall be reduced in the same proportion that the Premises rendered untenantable bears to the total gross leasable area of the Premises until the Premises is completely restored, repaired, or replaced to the condition set forth herein.

**ARTICLE 5  
DEFAULT AND REMEDIES**

**5.1 Default.** The following events shall be deemed to be events of default by Tenant under this Lease:

(a) Tenant shall fail to pay any other obligation under this Lease involving the payment of money and such failure shall continue for a period of 10 days after such payment shall become due and payable.

(b) Tenant shall fail to comply with any provision of this Lease (other than those described in subsection (a) above) and shall not cure such failure within 30 days after written notice thereof to

Tenant, provided, however, if the cure shall take longer than 30 days, and such default shall not adversely affect Landlord's Adjacent Operations or subject Landlord to any penalties, violations, fines or expenses, Tenant shall have such additional time not to exceed 60 days if Tenant commences such cure within the initial 30-day period and diligently prosecutes such cure to completion.

(c) Tenant shall desert or vacate the Premises or any substantial portion of the Premises or at any time prior to the last month of the Lease Term shall remove or attempt to remove, without the prior written consent of Landlord, all or a substantial amount of Tenant's personal property, equipment or fixtures.

**5.2 Remedies.** Upon the occurrence of any such event of default, Landlord shall have the option to pursue any one or more of the following remedies to the extent permitted by law:

(a) Without any further notice or demand whatsoever, Tenant shall be obligated to reimburse Landlord for the damages suffered by Landlord as a result of the event of default, plus interest on such amount at the Default Rate and Landlord may pursue a monetary recovery from Tenant.

(b) Without any further notice or demand whatsoever, Landlord may take any one or more of the actions permissible at law to ensure performance by Tenant of Tenant's covenants and obligations under this Lease. In this regard, and without limiting the generality of the immediately preceding sentence, it is agreed that if Tenant deserts or vacates the Premises, Landlord may enter upon and take possession of such premises in order to protect them from deterioration. It is further agreed in this regard that in the event of any default described in Section 5.1(b) above, Landlord shall have the right to enter upon the Premises without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action.

(c) Landlord may re-enter the Premises with or without terminating this Lease in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. In addition, Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of any re-entry effected pursuant to this subsection (c), said loss and damage to be determined by either of the following alternative measures of damages.

If Landlord elects to exercise the remedy prescribed in Subsection (b) above, this election shall in no way prejudice Landlord's right at any time thereafter to cancel said election in favor of the remedy prescribed in Subsection (c) above, provided that at the time of such cancellation Tenant is still in default. Pursuit of any of the above remedies shall not preclude pursuit of any other remedies prescribed in other sections of this Lease and any other remedies provided by law. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

(d) It is agreed that, in addition to payments required pursuant to Subsections (b) and (c) above. Tenant shall compensate Landlord for all expenses incurred by Landlord in repossession (including, among other expenses, any increase in insurance premiums caused by the vacancy of the Premises), all losses incurred by Landlord as a direct result of Tenant's default and a reasonable allowance for Landlord's other direct costs attributable directly or indirectly to Tenant's default and Landlord's pursuing the rights and remedies provided herein and under applicable law.

(e) Landlord may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Tenant herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Landlord hereunder shall be deemed cumulative and not exclusive of each other.

(f) Tenant hereby waives any and all rights to receive a notice to quit and rights of redemption or restoration of the operation of this Lease conferred by any present or future law, statute or otherwise upon the expiration or sooner termination of the term of this Lease, the entry of final unappealable judgment for recovery of possession through any action or proceeding, or Landlord's obtaining possession of the Premises under the terms of this Lease. In an event of default occurs, Tenant hereby waives its rights to receive any notice of default, as well as any period of and right to cure said default, as may be required by State or local law, and Tenants' rights in that regard shall be solely as provided in this Lease.

## **ARTICLE 6 ENVIRONMENTAL**

**6.1 Compliance by Tenant.** During the Term, Tenant shall comply with all Environmental Laws and Environmental Permits (each as defined in Section 6.5) applicable to Tenant's use of the Premises, will cause all other persons occupying or using the Premises to comply with all such Environmental Laws and Environmental Permits, will immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, and will obtain and renew all Environmental Permits required for operation or use of the Premises.

**6.2 Prohibition.** Tenant shall not treat, release or dispose of, or permit the treatment, release or disposal of Hazardous Materials (as defined in Section 6.5) on the Premises.

**6.3 Notice to Landlord.** Tenant will immediately advise Landlord in writing of any of the following: (a) any pending or threatened Environmental Claim (as defined in Section 6.5) against Tenant relating to the Premises; (b) any condition or occurrence on the Premises or any Premises adjoining the Premises that could reasonably be anticipated to cause the Premises to be subject to any restrictions on the ownership, occupancy, use or transferability of the Premises under any Environmental Law; and (c) the actual or anticipated taking of any removal or remedial action by Tenant in response to the actual or alleged presence of any Hazardous Material on the Premises. All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and Tenant's response thereto. In addition, Tenant will provide Landlord with copies of all communications regarding the Premises with any government or governmental agency relating to Environmental Laws, all such communications with any person relating to Environmental Claims, and such detailed reports of any such Environmental Claim as may reasonably be requested by Landlord.



#### 6.4 Indemnification.

(a) Tenant agrees to defend, indemnify and hold harmless the Indemnitees (as defined in Article 7)) from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), cleanup costs, remediation expenses, response costs, fines, penalties, and other costs and expenses (including attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against such Indemnitees directly or indirectly based on, or arising or resulting from (a) the actual or alleged presence of Hazardous Materials in, on or under the Premises which is caused or permitted by Tenant or by Tenant's use of the Premises and (b) any Environmental Claim relating in any way to Tenant's operation or use of the Premises ("**Hazardous Materials Indemnified Matters**").

(b) Landlord agrees to defend, indemnify and hold harmless the Tenant Parties (as defined in Article 7)) from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), cleanup costs, remediation expenses, response costs, fines, penalties, and other costs and expenses (including attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against such Tenant Parties directly or indirectly based on, or arising or resulting from the actual or alleged presence of Hazardous Materials in, on or under the Premises which is caused by Landlord ("**Tenant Hazardous Materials Indemnified Matters**").

#### 6.5 Definitions.

(a) "**Hazardous Materials**" means (i) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde, foam insulation, and radon gas; (ii) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (iii) any other substance exposure which is regulated by any governmental authority.

(b) "**Environmental Law**" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the handling of solid waste, including recyclable materials and organic waste, the environment, public health, safety or Hazardous Materials, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Atomic Energy Act, 42 U.S.C. § 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §§ 25300 et seq., Division 20 of the California Health and Safety Code; Division 4.5 of Title 22 of the California Code of

Regulations; Division 30 of the California Public Resources Code; and Titles 14 and 27 of the California Code of Regulations.

(c) "Environmental Claims" means any and all third party, administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law or any Environmental Permit, including without limitation (i) any and all Environmental Claims by governmental or regulatory authorities (including but not limited to the California Department of Toxic Substances Control, the California Department of Resources Recycling and Recovery, the Monterey County Local Enforcement Agency, the Monterey County Dept. of Health, and Monterey County Hazardous Materials Management Services or CUPA) for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

(d) "Environmental Permits" means all permits, approvals, identification numbers, licenses and other authorizations required under any applicable Environmental Law.

**6.6 Survival.** The provisions of this Section shall survive the expiration or sooner termination of this Lease.

## **ARTICLE 7 MISCELLANEOUS**

**7.1 Indemnification by Tenant.** Tenant agrees to indemnify and hold harmless Landlord and its affiliated companies and their agents, servants, directors, officers, shareholders, and employees (as used in this Section, Landlord and its affiliated companies and their agents, servants, directors officers, shareholders, and employees are collectively called "**Indemnitees**") from and against any and all liabilities, losses, damages, liens, claims, suits, causes of action, costs (including court costs, attorneys' fees and costs of investigation), and actions of any kind arising out of, caused by, resulting from or alleged to arise by reason of injury to or death of any person or damage to or loss of Premises occurring on, in, or about the Premises or by reason of any other claim whatsoever of any person or party occasioned or alleged to be occasioned in whole or in part by any act or omission on the part of Tenant or any invitee, licensee, employee, director, officer, servant, contractor, subcontractor or Tenant of Tenant (the "**Tenant Parties**"), or by any breach, violation, or nonperformance of any covenant of Tenant under this Lease, even if such liability, losses, damages, liens, claims, suits, causes of action, costs, injuries, deaths or damages arise from or are attributed to the sole negligence of any Indemnitee. If any action or proceeding shall be brought by or against any Indemnitee in connection with any such liability or claim, Tenant, on notice from Landlord, shall defend such action or proceeding, at Tenant's expense, by or through attorneys reasonably satisfactory to Landlord. The provisions of this Section shall apply to all activities of Tenant with respect to the Premises, whether occurring before or after the Delivery Date of the Term and Tenant's obligations under this Section shall not be limited to the limits or coverage of insurance maintained or required to be maintained by Tenant under this Lease.



**7.2 Exemption of Landlord from Liability.** If the Premises, or any part thereof, is damaged by fire or other cause against which Tenant is required to carry insurance pursuant to this Lease, Landlord shall not be liable to Tenant for any loss, cost or expense arising out of or in connection with such damage. Tenant hereby releases Landlord, its directors, officers, shareholders, partners, employees, agents and representatives, from any liability, claim or action arising out of or in connection with such damage.

**7.3 Indemnification by Landlord.** Landlord agrees to indemnify and hold harmless Tenant and its affiliated companies and their agents, servants, directors, officers, shareholders and employees from and against any and all liabilities, losses, damages, liens, claims, suits, causes of action, costs (including court costs, attorneys' fees and costs of investigation), and actions of any kind arising out of, caused by, resulting from or alleged to arise from the gross negligence or the willful misconduct of the Landlord.

**7.4 Access to Premises.** Landlord and Landlord's employees, agents and representatives shall have the right to enter the Premises at any time in case of an emergency, and at all reasonable times upon prior reasonable notice to Tenant for any lawful purpose including, but not limited to, examining the Premises; making such repairs or alterations therein as may be necessary or appropriate in Landlord's sole judgment for the safety and preservation thereof, or as required by any law, rule, regulation, statute, order, permit or direction of any applicable governmental authority; erecting, installing, maintaining, repairing or replacing equipment running in, to, or through the Premises; and posting notices of non-responsibility. Any entry to the Premises by Landlord shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises, or an eviction, partial eviction or constructive eviction of Tenant from the Premises or any portion thereof, and shall not relieve Tenant of its obligations hereunder.

**7.5 Brokers.** Each of the parties represents and warrants there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and each of the parties agrees to indemnify and hold harmless the other from any and all liabilities, costs and expenses (including attorneys' fees) arising from any such claim.

**7.6 Relationship of Parties.** The relationship between the parties hereto shall be solely as set forth herein and neither party shall be deemed the employee, agent, partner or joint venturer of the other.

**7.7 Separability.** Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. Each and all of the rights and remedies given to either party by this Lease or by law or equity are cumulative, and the exercise of any such right or remedy by either party shall not impair such party's right to exercise any other right or remedy available to such party under this Lease or by law or equity.

**7.8 No Waiver.** No delay in exercising or omission of the right to exercise any right or power by either party shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by either

party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

**7.9 Attorneys' Fees.** In the event of any controversy arising under or relating to the interpretation or implementation of this Lease or any breach thereof, the prevailing party shall be entitled to payment for all costs and attorneys' fees (both trial and appellate) incurred in connection therewith.

**7.10 Entire Lease.** This Lease together with all Exhibits attached hereto constitutes and represents the entire agreement between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter herein.

**7.11 Amendment.** This Lease may be amended, supplemented, modified or discharged only upon an agreement in writing executed by all of the parties hereto.

**7.12 Successors and Assigns.** This Lease shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, subject, however, to the limitations contained herein.

**7.12 Partial Invalidity.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**7.13 Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are situated.

**7.14 Subordination.** This Lease is and shall be subject and subordinate, at all times, to the lien of any mortgages or deeds of trust which now affect the Premises; provided, however, that so long as Tenant shall not be in default in the performance of its obligations under this Lease, neither this Lease nor Tenant's right to remain in exclusive possession of the Premises shall be affected or disturbed by reason of any default under such mortgage or deed of trust, and, if such mortgage or deed of trust shall be foreclosed or if such mortgagee or trustee shall exercise any of its remedies under such mortgage or deed of trust, this Lease and all of Tenant's rights and obligations hereunder shall survive such foreclosure and continue in full force and effect. Landlord covenants that it shall, upon Tenant's request and at Tenant's expense, obtain and deliver to Tenant (a) evidence satisfactory to the Tenant of the existence of such a "non-disturbance" provision of any such mortgage or deed of trust, or (b) a separate "non-disturbance" agreement incorporating the provisions of this section, satisfactory to Tenant.

**7.15 Notices.** All notices or other communications shall be deemed given by: (a) personal delivery or overnight courier, or (b) a written notice mailed via certified mail, return receipt requested; such notices to be addressed to the parties at the addresses set forth below:

**Landlord:**

N Leasing Company, LLC  
c/o Republic Services, Inc.  
18500 North Allied Way  
Phoenix, AZ 85054  
Attn: Chief Legal Officer

**With copy to:**

Spotts Fain PC  
411 East Franklin Street, 6<sup>th</sup> Floor  
Richmond, VA 23219  
Attn: David A. Reed

**Tenant:**

Salinas Valley Solid Waste Authority  
128 Sun Street Suite 101  
Salinas, CA 95060  
Attn: Patrick Mathews, General Manager/CAO

**With copy to:**

Roy Santos, Authority Counsel  
Aleshire & Wynder LLP  
2440 Tulare Street Suite 410  
Fresno, CA 93721

**7.16 Recording.** Promptly following the satisfaction of the conditions set forth in Section 1.1 of this Lease, Landlord and Tenant shall execute a short form memorandum hereof in a customary form reasonably acceptable to both parties (the "**Memorandum**"). Tenant shall have the right to record the Memorandum in the applicable real property records at its sole cost and expense. Within 20 days after the expiration or earlier termination of this Lease, Tenant shall execute a termination of the Memorandum which may be recorded by Landlord in the applicable real property records.

**7.17 Estoppel.** Tenant agrees that it will from time to time upon request by Landlord within 10 business days execute and deliver to Landlord a written statement addressed to Landlord (and to a party[ies] designated by Landlord), which statement shall identify Tenant and this Lease, shall certify that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Landlord is not in default as to any obligations of Landlord under this Lease (or if Landlord is in default, specifying any default), shall confirm Tenant, and shall contain such other information or confirmations as Landlord may reasonably require.

**7.18 Force Majeure.** In the event that either party hereto shall be unable to carry out, in whole or in part, its obligations under this Lease by reason of acts of God, acts of war or conditions attributable to war, riots, insurrection, strikes, lockouts, labor troubles, diseases, epidemics, pandemics, quarantines, declarations of emergency by any federal, state or local governmental authority, enactment after the Effective Date of statutes, laws, or ordinances by legislative bodies, issuance of regulations or orders by administrative agencies or commissions, actions by federal, state, municipal or regulatory courts or recording offices, or other reason of like nature not the fault of the party delayed in performance but not including financial inability to perform ("**Permitted Delay**"), such party shall be excused from performance for the period of time equivalent to the delay caused by such Permitted Delay, shall not be deemed in default during such inability, and shall not be liable to the other party for any breach. Promptly following the occurrence of an event giving rise to a Permitted Delay, the affected party shall give written notice of the event to the other party, which notice shall include a description of the nature of the event, its cause and possible consequences, its direct impact on the party's inability to perform all or any part of its obligations under this Lease, and the expected duration of the event, if known.

#### **7.19 Surrender.**

(a) Tenant shall deliver and surrender to Landlord possession of the Premises (including all of Tenant's Alterations in and to the Premises and all replacements and all fixtures permanently attached to the Premises) immediately upon the expiration of the Term or the earlier termination of this Lease in as good condition and repair as the same were on the Delivery Date (loss by any insured casualty and ordinary wear and tear only excepted).

(b) In the event Tenant remains in possession of the Premises after the expiration of this Lease and without the execution of a new lease, it shall be deemed to be occupying said premises as a month-to-month Tenant and otherwise subject to all the conditions, provisions and obligations of this Lease. Neither any provision hereof nor acceptance by Landlord of rent after such expiration or earlier termination shall be deemed a consent to a holdover hereunder or result in a renewal of this Lease or an extension of the Term. Notwithstanding any provision to the contrary contained herein, (i) Landlord expressly reserves the right to reenter the Premises, and the right to assert any remedy at law or in equity to evict Tenant and collect damages in connection with any such holding over, and (ii) Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages (including consequential damages), obligations, costs and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease. In the event Tenant holds over, either with or without the consent of Landlord, Tenant hereby waives its rights to receive any prior written notice to quit and vacate the Premises as may be required by State or local law.

#### **7.20 Intentionally Deleted.**

**7.21 Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document. An electronic signature, and a ".pdf" or facsimile copy of any signature hereto shall be deemed an original.

**7.22 Exhibits.** Exhibits A, B and C attached hereto are incorporated herein by reference.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have each executed this Lease as of the Effective Date set forth above.

**TENANT:**

SALINAS VALLEY SOLID WASTE  
AUTHORITY, a California joint powers  
authority

By: DocuSigned by:  
Patrick Mathews  
830C5F813CA34CC  
Name: R. Patrick Mathews  
Title: General Manager/CAO

**LANDLORD:**

N LEASING COMPANY, LLC, a Delaware  
limited liability company

By: DocuSigned by:  
M. Caprio  
81241C580B094F2  
Name: Mike Caprio  
Title: Vice President

**ATTEST:**

DocuSigned by:  
Erika Trujillo  
087AC0EB22A74E8  
Erika J. Trujillo, Authority Clerk of the Board

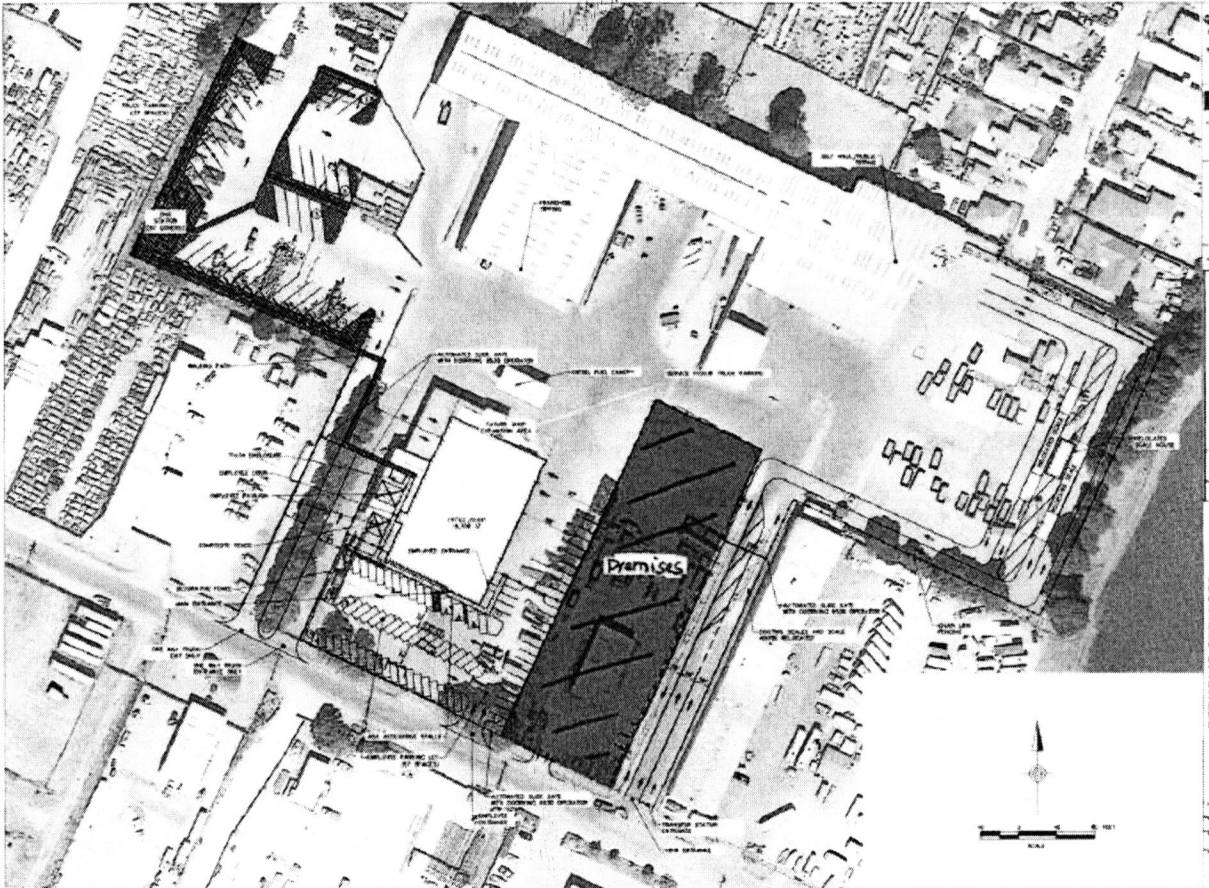
APPROVED AS TO FORM:

ALESHIRE & WYNDER LLP

By: DocuSigned by:  
Michelle E. Sassano  
C08FF486FEC248C  
Michelle E. Sassano, Assistant Authority  
General Counsel

**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY AND PREMISES**





## EXHIBIT "B"

### LANDLORD WORK



#### Mission

To manage Salinas Valley solid waste as a resource, promoting sustainable, environmentally sound and cost effective practices through an integrated system of waste reduction, reuse, recycling, innovative technology, customer services and education.

Vision: To reduce the amount of waste by promoting individual and corporate responsibility. To recover waste for its highest and best use while balancing rates and services. To transform our business from burying waste to utilizing waste as a resource. To eliminate the need for landfills.

## MLTS HHW Lease Area Improvements

Building cover receiving area to the west (60' x 15'). Example below:



- Install 6'w X 8't roll up door to the west side of building to accept drive through customer under cover area.

- Paint entire building and repair holes in metal siding to prevent water intrusion into HHW storage/operations area. Some damage may require full panel replacement.
- Southern storage area - similar cover system as above bullet (15'x25') and secured with 8' slated chain link for supplies storage, access via south facing roll up door.



- Pavement of all bare areas or damaged/sub-standard areas in need of pavement.
- Chain link fencing to secure the western portion of leased area.
- Relocate drainage swale to the west along fence line.
- Entrance gate to lease area off Madison to be 40' to handle incoming traffic.
- 53' trailer area to remain open (no fence) to the west to allow for docking of trailers and swaps.
- 20' Rolling gate to be installed to the North-east of MRC as detailed in layout.
- 40' gate to be established to the SE to allow customers to enter MLTS or exit onto Madison Lane.
- Fence line facing Madison Lane should be slated and either 8', electrified or both.
- Stripping of employee parking stall to the SE corner

**EXHIBIT C**

**CONFIRMATION LETTER**

**CONFIRMATION OF DELIVERY AND COMMENCEMENT DATES**

\_\_\_\_\_, 20\_\_

N Leasing Company, LLC  
c/o Republic Services, Inc.  
18500 North Allied Way  
Phoenix, AZ 85054  
Attn: Chief Legal Officer

Re: Lease Agreement ("**Lease**") dated \_\_\_\_\_, 2021, between N Leasing Company, LLC, a Delaware limited liability company ("**Landlord**"), and Salinas Valley Solid Waste Authority, a joint powers authority ("**Tenant**"). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

Landlord and Tenant agree as follows:

1. **Condition of Premises.** Tenant has accepted possession of the Premises pursuant to the Lease. Any improvements required by the terms of the Lease to be made by Landlord have been completed to the full and complete satisfaction of Tenant in all respects, and Landlord has fulfilled all of its duties under the Lease with respect to Landlord's Work.
2. **Delivery Date.** The Delivery Date of the Premises was \_\_\_\_\_, 20\_\_.
3. **Commencement Date.** The Commencement Date is \_\_\_\_\_, 2022.
4. **Contact Person.** Tenant's contact person at the Premises is:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

5. **Binding Effect; Governing Law.** Except as modified hereby, the Lease shall remain in full effect and this letter shall be binding upon Landlord and Tenant and their respective successors and assigns. If any inconsistency exists or arises between the terms of this letter and the terms of the Lease, the terms of this letter shall prevail. This letter shall be governed by the laws of the state in which the Premises are located.

[Signature Page Follows]

Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us.

Sincerely,

SALINAS VALLEY SOLID WASTE AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed and accepted:

N Leasing Company, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_