



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by:  Date: 11/25/2020
General Manager

DATE: November 25, 2020
TO: General Manager
FROM: Director of Engineering & Compliance
SUBJECT: 10-Year Lease Agreement with Keith Day Company, Inc. for Composting Facilities

RECOMMENDATION: That the Board Authorize General Manager to Execute 10-Year Lease Agreement with Keith Day Company, Inc. for Composting Facilities (Subject to Final Review by Legal Counsel) at an Initial Annual Rate of \$44,081.

BACKGROUND

Composting operations have been performed on a 60-acre lease parcel at the District by a third-party operator since 1998. The Keith Day Company, Inc. (KDCI) assumed operations of the Composting Facilities in 2009 on the leased parcel. During that time the size of the lease area has decreased to approximately 30 acres in size. The current lease agreement for the Composting Facilities has an initial 1-Year term with a supplemental 1-Year extension term clause that can be used annually to extend the lease agreement one more year. For the past ten years the District and KDCI have agreed to extend the lease every year so that the processing of wood, yard, and food wastes can continue at the Composting Facilities operated by KDCI.

DISCUSSION

Based on recent Finance Committee and Board Meetings, staff was directed to prepare a 10-Year Lease Agreement for KDCI's operation of the Composting Facilities on property leased from the District. Staff was provided this direction for several reasons, namely the following:

- Recognition of KDCI's recent capital equipment investments on the order of \$3 million for improvements in the processing of wood, yard, and food wastes for the District and its community members,
- Approval of \$2.5 million of District Capital Funds for capital improvements to the composting facilities to comply with the General Order Waste Discharge Requirements (WDR) for Composting Operations (Order WQ 2015-0121-DWQ) issued by the California Regional Water Quality Control Board, and
- The formal issuance of SB1383 regulations by the State of California for recycling organic wastes and reducing food wastes (e.g., the primary purpose of composting facilities).

The KDCI's operations of the composting facilities have been instrumental in the processing and recycling of wood, yard, and food wastes for the District. For the past 22 years, the diversion of these organic wastes from landfill disposal has helped the District consistently exceed the State's goal of 50% diversion. With the recent enactment of the SB1383 regulations for recycling and diversion of 75% of organic wastes (2014 basis), and both the District's and KDCI's capital investment commitments in the composting facilities, it is operationally critical to secure a minimum ten year period of operations from KDCI in the form a new lease agreement. The proposed lease agreement and its exhibits are attached for your review and consideration.

FINANCIAL IMPACT

There is no financial impact to the District's FY 2020/21 operating budget by entering into the proposed 10-Year lease agreement with KDCI for the composting facilities. The lease rate paid to the District by KDCI and the processing rate charged by KDCI to the District both remain the same as the current rate until July 1, 2021. The lease rate will be adjusted annually on July 1st in accordance with a specified regional inflation index. It is proposed that the processing rate follow the rate schedule presented below. This planned schedule of processing rates is inclusive of an annual inflation amount and a capital equipment capital recovery amount. Staff estimates that these future rates would be the same, or very similar to, rates that might have developed over the same time thru the annual extension process of the current 1-Year lease agreement. Thus, there is no significant change to the financial impact currently projected for the composting operations in those future years.

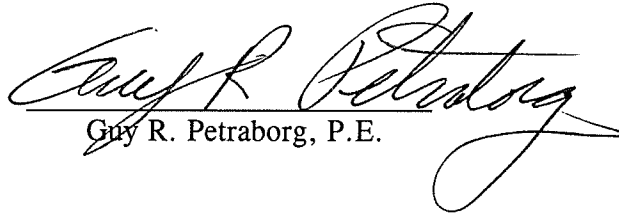
START DATE	PROCESSING RATE \$/ton
7/1/2021	\$26.25
7/1/2022	\$27.56
7/1/2023	\$28.67
7/1/2024	\$29.81
7/1/2025	\$30.71
7/1/2026	\$31.63

STRATEGIC PLAN

The District's lease of land for the KDCI's composting facilities operations fits under several general policy directives cited in the District's "Pillars of Sustainability" plan. Principally under the Finance, Community, and Environment pillars which speak to the District's stewardship of the Community's interests. The continued diversion of organic wastes away from landfill disposal and to the composting facilities for recycling and beneficial reuse represents an important contribution to the District's Mission of Turning Wastes into Resources.

CONCLUSION

Staff therefore recommends that the Board authorize the General Manager to execute a 10-Year Lease Agreement with Keith Day Company, Inc. for Composting Facilities (Subject to Final Review by Legal Counsel) at an Initial Annual Rate of \$44,081.


Guy R. Petrabor, P.E.

Attachments:
Lease Agreement
Exhibit A
Exhibit B
Exhibit C

**LEASE AGREEMENT
FOR
COMPOSTING FACILITIES**

THIS LEASE (the "Lease") is made and entered into on December _____, 2020, by and between the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT, a public entity duly organized pursuant to the provisions of California Health and Safety Code §§4170 *et seq.*, (the "District" or the "Landlord"), and KEITH DAY COMPANY, INC., a California corporation, doing business as Gabilan AG Services (the "Tenant"), as follows:

Recitals

This Lease is entered into with reference to the following facts and circumstances, which are hereby found and determined by the parties:

- A. The District owns and operates, under a Use Permit from the County of Monterey and a Solid Waste Facility Permit (SWFP) and Waste Discharge Requirement (WDR) Permit from the State of California, a three hundred fifteen (315) acre Class III sanitary landfill for the disposal of municipal solid waste and other acceptable waste streams. A portion of the permitted landfill disposal area has been set aside for the subject composting facility for the duration of this lease.
- B. The Tenant, since 2009 under a year-to-year rental agreement, has designed and been operating the District's composting facility to process organic materials, including yard waste, clean wood waste and, most recently, food waste upon the request of and for the benefit of the District and its member communities.
- C. A primary purpose and intent of the District and Tenant in entering into this Lease is to facilitate their joint implementation of the General Order Waste Discharge Requirements for Composting Operation (Order WQ 2015-0121-DWQ) enacted in 2015 by the Regional Water Quality Control Board, for completion in FY 20/21.
- D. The District has recently authorized a capital expenditure of up to \$2.5 million for improvements to the composting area site to accomplish the regulatory requirements of Order WQ 2015-0121-DWQ, and in recent years Tenant has invested approximately \$3 million in capital equipment for its operations on the District's site.
- E. As a lease of an existing public facility this Lease is categorically exempt from the California Environmental Quality Act ("CEQA") in accordance with CEQA Categorical Exemptions 15301.
- F. It is mutually agreed by the parties hereto that this Lease is upon and subject to the following terms, covenants, conditions and provisions, and the Tenant covenants, as a

material part of the consideration of this Lease, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Lease is made and entered into upon the condition of such performance and compliance.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and Tenant agree to the following terms and conditions:

Terms and Conditions

ARTICLE I. PREMISES AND TERM

1.02 Leased Premises. District, for and in consideration of the lease payments, covenants and conditions herein contained to be kept, performed and observed by Tenant, does hereby lease to Tenant, and Tenant does hereby lease and accept from Landlord, a parcel of real property, hereinafter referred to as the "Premises," consisting of approximately 30 acres, more or less, of the District's sanitary landfill site near the Salinas River and north of Marina, California, the specific location of which Premises are designated and outlined on the map of the landfill site and the Premises is attached as Exhibit A hereto, which is incorporated herein and initialed by both parties hereto. The specific acreage of the leased Premises shall be determined by a survey of the property, along with a legal description which is required for Tenant's operating permit with the California Department of Resources Recycling and Recovery (CalRecycle). Any redesignations or changes in the specific location of the Premises during the term of this Agreement, or any extensions hereof, or any revisions in the total number of acres leased to the Tenant, shall occur only with the prior written approval of the District's General Manager and the District's Board of Directors.

1.03 Term. The term of this Lease shall be ten (10) years, commencing on the date first written above. This Lease may be extended, at the District's option, for two extended terms of not more than five (5) years each, at terms and provisions to be mutually agreed upon in writing by the parties. District shall provide Tenant with notice of District's exercise of its option to extend the term not later than 180 days prior to the conclusion of the initial and any extended term.

ARTICLE 2. LEASE PAYMENTS/RENT

2.01 Rent. Effective December _____, 2020, Tenant agrees to and shall pay to District, at the District's office at 14201 Del Monte Boulevard, Monterey County, California, or at Post Office Box 1670, Marina, California, 93933, as lease payments and rent ("rent) for the leased Premises, the sum of \$3,733.42 per month, payable in advance on the first day of each month.

2.02 Adjustment of Rent. The rent provided for in paragraph 2.01 shall be increased as of July 1 each year during the initial or an extended term of this Lease, starting with July 1, 2022, by the lesser of a) the rate of increase in the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose Region, for the prior calendar year period, or b) eight per cent (8%).

2.03 Interest on Late Rent Payments. If Tenant defaults or is late in the payment of any monthly installment of rent due hereunder, such installment shall bear interest at the rate of ten per cent (10%) per annum from the day it is due until actually paid.

2.04 Holding Over. Any holding over by the Tenant after the expiration of the initial or an extended term of this Lease with the consent of the District shall be construed to be a tenancy from month-to-month at a monthly rental equal to 125% of the of the monthly rental for the final month of the previous term. Tenant's occupancy during any period of holding over shall otherwise be on the same terms and conditions herein specified so far as applicable.

ARTICLE 3. UTILITIES AND TAXES

3.01 Tenant to Pay Utilities. Tenant shall pay all charges for water, heat, gas, electricity, telephone service, rubbish removal, portable toilet service and any and all other utility services of any kind and nature whatsoever, supplied to and used on the Premises, or any office trailer located off the Premises, throughout the initial or any extended term of this Lease, including any connection fees. All utility lines shall be installed underground by Tenant at Tenant's expense, except where approved otherwise with the prior written permission of Landlord.

3.02 Tenant to Pay Taxes. In addition to rent, Tenant shall pay and discharge any and all taxes, general and special assessments and other charges of every description, including possessory interest taxes, which during the term of this Lease may be levied upon or assessed against the Premises and all interests therein and all improvements and other property thereon. Provided, however, that Tenant shall not be responsible or liable for any permanent improvement bonds or assessments which are not based upon or do not relate to the use made of the Premises by Tenant. Tenant is hereby specifically notified that although the District is a public entity not normally subject to property taxes upon its real property, the Premises leased hereby to Tenant and Tenant's possessory interest therein may well be subject to the payment of property taxes levied thereon by a governing agency, for which Tenant shall be solely liable.

ARTICLE 4. USE AND OCCUPANCY

4.01 Use of Premises. Tenant shall use the premises solely for the purpose of conducting and carrying on the business of composting organic materials, final product processing and packaging, the wholesale and retail sale of same, and for other uses normally incident thereto, and for no other purpose without first obtaining the prior written consent of the District. Tenant agrees to utilize District's feedstock materials to the extent possible. Tenant may also import feedstock materials. To the extent such imports may interfere with use of District's feedstock materials, District and Tenant agree to discuss and resolve such issues. In no event may any imported feedstock materials that would otherwise be sent to the landfill be accepted by Tenant for a tipping fee without the prior written consent of the District. The intent of these terms is that the Tenant's activities do not compete with the District's market area activities and responsibilities.

4.02 Experimental Composting. As part of the consideration for the lease of the Premises to Tenant, the Tenant agrees that it will continue to make good faith efforts to experiment

with the composting and possible reuse of woodwaste and yardwaste materials, wastewater sludge (biosolids), food waste and other organic wastes as may be received by the District for disposal at its landfill site.

4.03 Maintenance and Restoration. Tenant shall, at its own cost and expense, keep and maintain the Premises and all improvements and facilities on the Premises in good order and repair and in as safe and clean a condition as they were when received from the District, reasonable wear and tear excepted, and upon termination of this Lease or abandonment by Tenant of the Premises, Tenant shall restore the Premises to a reasonably similar condition as existed prior to Tenant's entry thereon, and shall remove all improvements, personal property and stored composting materials therefrom except those improvement(s) that receive the District's written approval to remain. The District and Tenant agree that the condition of the lease area shall be the condition resulting from the site improvements planned for Fiscal Year 2020-21 to satisfy the requirements of the General Order WDR issued by the California Regional Water Quality Board and the Solid Waste Facility Permit issued by CalRecycle.

4.04 Access to Premises. The District shall provide Tenant with access to said Premises by means of an access road across District's property from Del Monte Boulevard (the old Highway 1), and such access road may be used by persons wishing to purchase from or conduct business with Tenant during those hours that the District's disposal site is otherwise open to the public. Composting and any other business operations of Tenant shall not be conducted in such a manner as to restrict the access to any of the District's remaining property.

4.05 Tenant Improvements. Tenant shall be responsible for constructing all Tenant improvements, including, without limitation, an all-weather working surface and stormwater drainage facilities. Tenant shall be permitted to place a temporary industrial-type building on the premises and to pave the outside equipment work areas adjacent thereto, but only after first submitting the plans and specifications therefor to the District and obtaining District's written approval of same, which approval shall not be unreasonably withheld.

4.06 Drainage. Drainage from any improvements to or alterations of the Premises shall be engineered by Tenant so that District's remaining lands are not adversely affected and so that surface flows over and above those generated by such land in its present unimproved state are retained in an engineered structure approved by the appropriate permitting jurisdiction(s). Tenant shall be responsible for maintaining the working surface grade to avoid the accumulation of standing water caused by creation of low spots.

4.07 Public Health and Safety. Tenant shall supply systems for the protection of public health and safety, including without limitation, a fire control program, a dust and odor control program, and provisions for vector control. Tenant shall operate the composting facility so as to minimize potential health and safety problems for employees of both Tenant and District, other tenants, and users of the landfill site and neighboring properties. Tenant shall operate and maintain the composting facility in a neat and orderly manner and shall monitor the area as frequently as necessary to prevent litter from blowing off the premises of the composting facility.

4.08 Odor Control. Tenant shall conduct the composting operation in such a manner as to minimize odors, especially the migration of odors to adjacent properties on and off the landfill disposal site. The compost material shall be maintained in an aerobic condition to avoid odors produced by anaerobic conditions. It is specifically acknowledged by District that by its nature, even a well-designed and operated aerobic composting facility may occasionally generate odors which are perceived by some to be offensive. Tenant shall not be considered in default if offensive odors are generated occasionally, provided the facility is operated according to the provisions of this Lease and the requirements of all applicable permits and regulations for the composting facility. In the event that offensive odors are generated occasionally which result in complaints and Tenant is operating the facility in accordance with this Lease and applicable permits and regulations, Tenant and District shall work together in resolving such complaints.

4.09 Waste and Nuisance Prohibited. Tenant shall not commit or permit the commission by others of any waste on the Premises, shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code on the Premises, and shall not use or permit the use of the Premises for any unlawful purpose.

4.10 Dust Control. To minimize the generation of fugitive dust leaving the Premises, Tenant shall apply water to the composting facility area or undertake other dust mitigation measures as necessary to control dust or as necessary to maintain compliance with any Air District permits issued for the composting operations.

4.11 Fire Control. Tenant shall design the composting facility so that a fire control program can be implemented by the Tenant. The fire control program shall be implemented in accordance with requirements of the local fire department providing fire protection and suppression services to the District's landfill disposal site, insurance underwriters requirements, the permits for the composting facility, and all applicable local rules.

4.12 Materials Storage Requirements. Long-term storage of compost materials is only acceptable to the extent that satisfactory odor, vector, dust, and fire control measures are employed to eliminate nuisance, health and safety problems. In the event Tenant fails to store materials in an acceptable manner as set forth in this Lease, Tenant shall defend and indemnify the District from all liability and expense resulting from such failure, including, without limitation, nuisance claims by neighboring land users and owners.

4.13 Environmental Requirements. Tenant shall ensure that the operations of the composting facility are in compliance with all permit conditions issued for the facility, including without limitation, permits issued by the California Integrated Waste Management Board, the California Regional Water Quality Control Board, the Monterey Bay Unified Air Pollution Control District, and the County of Monterey. The District holds the Land Use Permit from Monterey County.

4.14 Educational Opportunities. Upon notice, and with supervision, Tenant will allow public education opportunities to be conducted at the site with the Landlord's prior approval. Such opportunities may be arranged by either the Tenant or the District.

4.15 Compliance with Governmental Authorities. Tenant shall comply with and shall observe in its use of the Premises all requirements of all governmental authorities, local, state, and federal, in force now or in the future, affecting the Premises or the Landlord's landfill operations.

4.16 Inspection by Landlord. Tenant, upon notice, shall permit the District or District's agents, representatives or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Tenant is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect District's interest in the Premises under this Lease.

4.17 Liens and Claims. Tenant shall promptly pay when due all amounts payable for labor and materials furnished to Tenant, so as to prevent any lien or other claim under any provision of law from arising against the District or the Premises and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

ARTICLE 5. INDEMNITY AND INSURANCE

5.01 a) No Liability of Landlord for Tenant's Acts. The District, its Board of Directors, officers, employees and agents shall not be liable at any time for any loss, damage, injury to the property or person or any person whomsoever, claims, lawsuits, costs, expenses, attorney's fees, court costs or any other cost at any time occasioned by or arising out of any act or omission of the Tenant, or any employee or agent of Tenant, or of anyone holding under Tenant or from the occupancy or use of the Premises or any part thereof by or under the Tenant, or directly or indirectly from any state or condition of the Premises or any part thereof during the term of this Lease.

b) Indemnification of District. Notwithstanding anything to the contrary in this Lease, to the full extent permitted by law, Tenant shall defend, protect, indemnify, and hold the District, its Board of Directors, officers, employees and agents, and the Premises, free and harmless from any and all damages, liabilities, claims, suits, actions, proceedings, costs and expenses of whatsoever nature, without limitation or restriction, arising under the terms of this Lease or arising out of or in connection with the operation carried on by Tenant on, or the use or occupancy of, the Premises.

5.02 Insurance Requirements. Without limiting the Tenant's duty to indemnify, the Tenant shall maintain in effect throughout the initial and any extended term of the Lease the insurance coverage set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Tenant will have the District, its board, officers, employees and agents named as additional insureds or covered parties with respect to claims arising out of the performance of Tenant's operations under this Lease, including ongoing and completed operations, and shall further provide that its coverage is primary to any insurance or self-insurance maintained by the District, and that the insurance of an additional insured or covered party shall not be called upon to contribute to a loss covered by the Tenant's primary coverage.

5.03 Certificate of Coverage. A certificate of coverage, certifying the Tenant's coverage which shall meet all requirements of this Lease, shall be provided to the District prior to the

execution of this Lease. Acceptance of the certificate of coverage shall in no way modify or change the indemnification provisions of this Lease, which shall remain in full force and effect. District shall be provided with thirty (30) days' prior written notice of any reduction in coverage or limit, cancellation or intended cancellations.

5.04 Compliance with Insurance Policies. Tenant shall comply with all of the terms and conditions of each insurance policy maintained pursuant to the terms of this Lease to the extent necessary to avoid invalidating such insurance policy of impairing the coverage available thereunder.

5.05 Limits. The limits of insurance maintained by the Tenant shall not be construed as limits on its indemnification obligations set forth in the Lease.

ARTICLE 6. DEFAULT AND REMEDIES

6.01 Default. District may, at its option and without limiting District in the exercise of any other right or remedy it may have on account of a default or breach by Tenant, exercise the rights and remedies specified in paragraph 6.02 if:

- a) Rent Default. Tenant defaults in the payment of any money agreed to be paid by Tenant to District for rent or to be paid for utilities or for any other purpose under this Lease, and if such default continues for ten days after written notice to Tenant by Landlord.
- b) Other Default: Tenant defaults in the performance of any other of its agreements, permits, conditions, or covenants under this Lease and such default continues for ten days, plus such period of delay as Tenant may encounter in the performance of its agreements by reason of matters beyond the control of Tenant.

6.02 Remedies. On any breach or default district may exercise any of the following rights after the periods of time stated in paragraph 6.01:

- a) Re-entry and Removal and Storage of Property and Repairs. Immediately re-enter and remove all persons and property from the Premises, storing the personal property in a public warehouse or elsewhere at the cost of, for the account of, and at the risk of Tenant.
- b) Collection of Rent Installments. To collect by suit or otherwise each installment of rent or other sum as it becomes due hereunder, or to enforce, by suit or otherwise, any other term or provision hereof on the part of Tenant required to be kept or performed, it being specifically agreed that all unpaid installments of rent or other sums shall bear interest at the rate specified in paragraph 2.03 hereinabove.
- c) Termination of Lease and Damages. Terminate this Lease, in which event Tenant agrees to immediately surrender possession of the Premises, and to pay to District, in addition to any other remedy District may have, all damages District may incur by reason of Tenant's defaults, including the cost of recovering the Premises.

6.03 No Waiver of Default. District's failure to take advantage of any default or breach of covenant on the part of Tenant shall not be, or be construed as, a waiver hereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Lease be construed to waive or to lessen the right of District to insist upon the performance by Tenant of any term, covenant, or condition hereof, or to exercise any rights given it on account of any such default. A waiver of a particular breach, or default, shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, or be construed to be a waiver of any term, covenant, or condition of this Lease.

6.04 Remedies Cumulative. The rights, powers, elections, and remedies of the District contained in this Lease shall be construed as cumulative and no one of them is or shall be considered exclusive of the other or exclusive of any rights or remedies allowed by law, and the exercise of one or more rights, powers, elections, or remedies shall not impair District's right to exercise any other.

ARTICLE 7. GENERAL PROVISIONS

7.01 Dispute Resolution.

- a) Duty to Meet and Confer. If any dispute arises between the parties as to proper interpretation or application of this Lease, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. Representatives of each party will personally meet and attempt in good faith to resolve the dispute.
- b) Mediation. If their representatives are unable to resolve the dispute within 15 days thereafter, the parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of the Judicial Arbitration and Mediation Service ("JAMS"). The expenses of witnesses for either side shall be paid for the party producing such witnesses. All other expenses of the mediation shall be borne equally by the parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 through 1128), unless otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. Mediation shall be completed within 30 days after request for the mediation by either party or such additional time as may be mutually agreed upon in writing by both parties.
- c) Arbitration. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted under the rules of JAMS. The decision of the arbitrator shall be binding, unless within 30 days after issuance of the arbitrator's written decision a party

files an action in a court of law. Venue and jurisdiction for any legal proceeding between the parties shall lie in the Superior Court for the County of Monterey.

7.02 Conditions and Covenants. All of the provisions of this Lease shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

7.03 No Waiver of Breach. No failure by either District or Tenant to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

7.04 Time of Essence. Time is of the essence of this Lease, and of each provision hereof.

7.05 Subleasing and Assigning. Tenant shall not encumber, assign or otherwise transfer this Lease or any right or interest in this Lease, or any right or interest in the Premises, without the express written consent of the District. Neither shall Tenant sublet the Premises or any part thereof or allow any other persons, other than Tenant's agents, employees and customers to occupy or use the premises or any part thereof without the prior written consent of District. A consent by District to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any encumbrance, assignment, transfer or subletting without the prior written consent of the District, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of District, terminate this Lease.

7.06 Insolvency of Tenant. The insolvency of Tenant as evidenced by a receiver being appointed to take possession of all or substantially all of the property of Tenant, the making of a general assignment for the benefit of creditors by Tenant, or the adjudication of Tenant as a bankrupt under the Federal Bankruptcy Act, shall terminate this Lease and entitle District to re-enter and regain possession of the Premises.

7.07 Binding on Heirs and Successors. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this paragraph contained shall be construed as a consent by District to any assignment of this Lease or any interest therein by Tenant except as provided in paragraph 7.05 of this Agreement.

7.08 Entire Agreement. This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Lease, shall be binding or valid.

7.09 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

7.10 Attorney's Fees. Should either party commence any legal action or proceeding against the other based on this Lease, the prevailing party shall be entitled to an award of attorney's fees.

7.11 Modification. This Lease is not subject to modification except in writing.

7.12 a) Delivery of Notices-Method and Time. All notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the end of the second full day following the date of mailing.

b) Notices to District. All notices, demands, or requests from Tenant to District shall be given to District at the District's offices at 14201 Del Monte Boulevard, Monterey County, California, or at Post Office Box 1670, Marina, California, 93933-1670.

c) Notices to Tenant. All notices, demands, or requests from District to Tenant shall be given to Tenant at Keith Day Company, Inc. at 1091 Madison Lane, Salinas, California 93907.

d) Change of Address. Each party shall have the right, from time-to-time, to designate a different address by notice given in conformity with this section.

7.13 Counterparts. This Lease, consisting of ten (10) pages, plus Exhibit A and B, has been executed by the parties hereto in two counterparts, each of which shall be deemed to be an original copy.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement in duplicate on the date first hereinabove stated at Marina, California.

LANDLORD:

MONTEREY REGIONAL WASTE
MANAGEMENT DISTRICT

By _____
Chairman

And by _____

TENANT:

KEITH DAY COMPANY, INC.

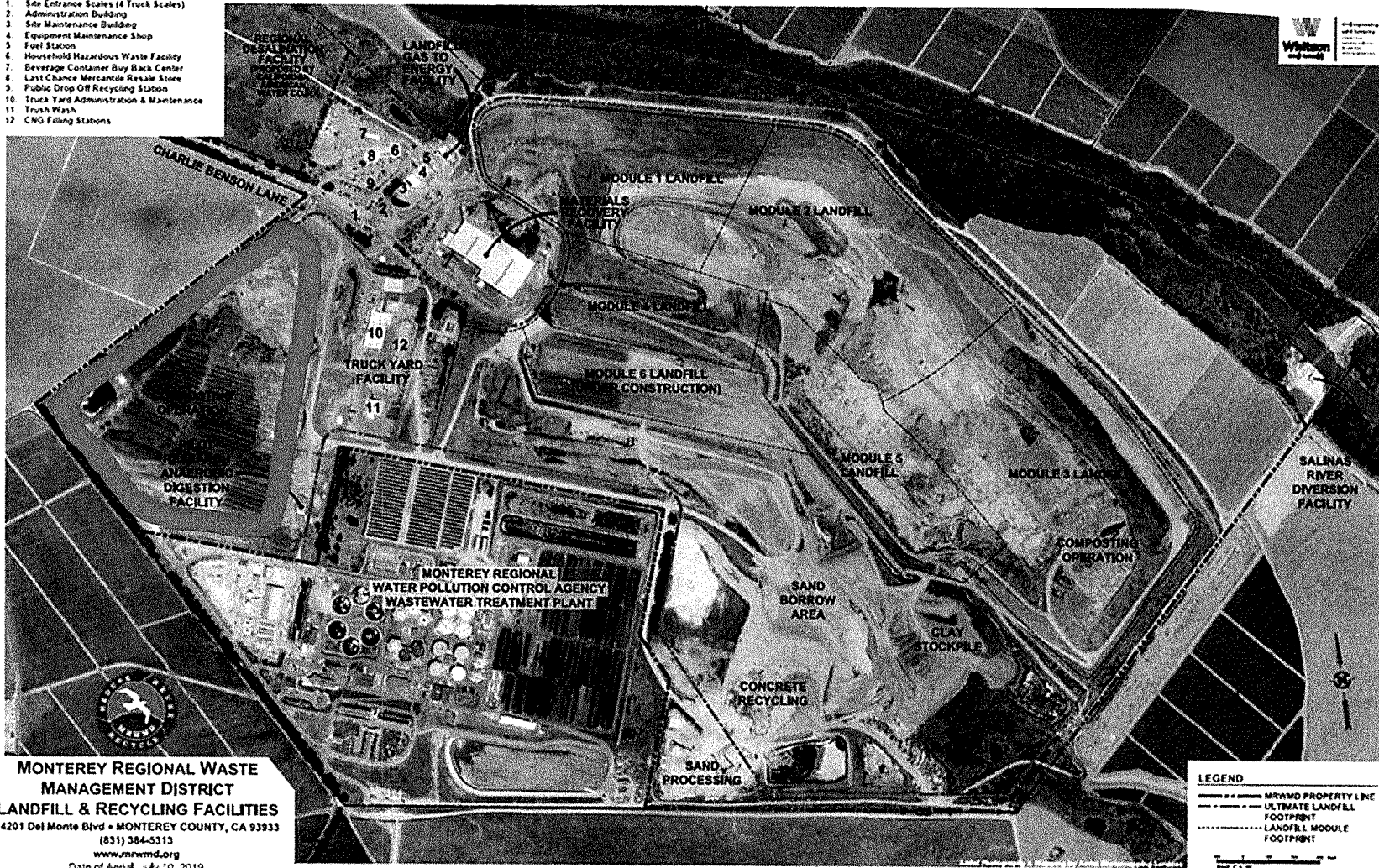
By _____
Keith Day, President

General Manager

EXHIBIT A - Map showing location of premises [to be initialed by the parties and attached.]
EXHIBIT B - Insurance Requirements

EXHIBIT A - COMPOST FACILITY AREA MAP

1. Site Entrance Scales (4 Truck Scales)
2. Administration Building
3. Site Maintenance Building
4. Equipment Maintenance Shop
5. Fuel Station
6. Household Hazardous Waste Facility
7. Beverage Container Buy Back Center
8. Last Chance Mercantile Resale Store
9. Public Drop Off Recycling Station
10. Truck Yard Administration & Maintenance
11. Truck Wash
12. CNG Filling Stations



Compost Facility Area – Approximate Limits

EXHIBIT B
INSURANCE REQUIREMENTS

Without limiting Tenant's indemnification obligations to District under this Lease, Tenant shall provide and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the leased premises. The cost of such insurance shall be borne by the Tenant.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.

B. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office Form CA0001.

C. Workers Compensation, as required by State of California and Employer's Liability Insurance.

D. Property Insurance against all risk or special form perils, including Replacement Cost and debris removal coverage for any Improvements, without deduction for depreciation, constructed or erected by Tenant, and the personal property of Lessee, its agents and employees.

E. Pollution Legal Liability and Remediation and/or Errors & Omissions applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year. This policy shall be endorsed to cover materials to be transported by the Tenant.

2. Minimum Limits of Insurance

Tenant shall maintain limits no less than:

A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.

B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.

C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of the District.

D. Property: Full replacement cost with no coinsurance penalty provision.

3. Deductibles and Self-Insured Retentions

Any liability deductible or self-insured retention must be declared to and approved by the

District's General Manager or his or her designee. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by the Tenant.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement: Any general liability policy provided by Tenant shall contain an additional insured endorsement applying coverage to the District, the members of the District Board of Directors and the officers, agents and employees of the District, individually and collectively.

B. Primary Insurance Endorsement: For any claims related to this Lease, the Tenant's insurance coverage shall be primary insurance as respects the District, the members of the Board of Directors of the District and the officers, agents and employees of the District, individually and collectively. Any insurance or self-insurance maintained by the District, the members of the Board of Directors, the District's officers, officials or employees shall be excess of the Tenant's insurance and shall not contribute with it.

C. Notice of Cancellation: Each required insurance policy shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District at the address shown in section of the Lease entitled "Notices".

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by District's Risk Manager.

6. Evidence of Insurance

Prior to commencement of this Lease Tenant shall furnish the District with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Tenant shall furnish certified copies of the actual insurance policies specified herein, within thirty days after commencement of Lease. Thereafter, copies of renewal certificates and amendatory endorsements shall be furnished to District within thirty days of the expiration of the term of any required policy. Tenant shall permit District at all reasonable times to inspect any policies of insurance of Tenant which Tenant has not delivered to the District. Policies, renewal certificates and amendatory endorsements shall be delivered to the District at the address shown in the section of the Lease entitled "Notices."

7. Failure to Obtain or Maintain Insurance;

District's Remedies. Tenant's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to

make premium payments required by such insurance, shall constitute a material breach of the Lease, and District may, at its option, terminate the Lease for any such default by Tenant.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Tenant, and any approval of said insurance by the District are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Tenant pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

District retains the right at any time to review the coverage, form and amount of insurance required herein and may require Tenant to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Sub-tenants' Insurance

Tenant shall require any District-approved sub-tenant, of all or any portion of the Premises, to provide the insurance coverage described herein prior to its occupancy of the Premises.

EXHIBIT C
PROCESSING SERVICES AGREEMENT

Without limiting Tenant's obligations to District under this Lease, Tenant shall provide processing services to the District in accordance with this Lease, permit conditions, and applicable statutes and laws. The Tenant, since 2009 under a year-to-year rental agreement, has designed and operated the composting facility on District property to process organic materials, including yard waste, clean wood waste and, most recently, food waste upon the request of and for the benefit of the District and its member communities. It is mutually agreed by the parties hereto that the processing services are subject to the following terms, covenants, conditions and provisions, and the Tenant covenants, as a material part of the consideration of the processing services, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and entered into upon the condition of such performance and compliance.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and Tenant agree to the following terms and conditions for processing services of green wastes, yard wastes, wood wastes, and food wastes:

Terms and Conditions

ARTICLE I. PROCESSING SERVICES

1.01 Location. Tenant shall receive and process materials on the District property that is defined in this Lease except where otherwise agreed to in writing by the District.

1.02 Term. The term of processing services shall be the term of this Lease.

1.03 Tenant Receipt of Materials. The commercial route trucks that deliver green waste, yard waste, and/or food waste materials to the District will be directed to the Lease facility and received by the Tenant, at which point all such material shall be owned by and the responsibility of the Tenant. At no cost to the Tenant, the District shall supply to the Tenant an empty roll-off or similar container for the Tenant's use to deposit trash and non-organic debris removed from the green/yard/food waste materials delivered to the Tenant. The District shall periodically remove and dispose of the trash and return empty containers to the Tenant at no cost to the Tenant. The Tenant shall immediately notify the District, upon receipt of the load, of any loads that contain excessive amounts of trash. The parties acknowledge that both the Tenant and the District may have additional costs to which additional fees are charged to the customer involved. The District will accept the "overs" remaining after processing all material at no charge to the Tenant. All such "overs" shall be hauled by the District from the Lease Facility to a location at the landfill at no cost to the Tenant. The District will also provide a trommel screen to be used, operated and maintained by the Tenant. The District shall assist the Tenant, if necessary, to

receive electrical power utility service. The Tenant shall perform normal routine maintenance on the District's trommel equipment, such as cleaning and lubricating to ensure proper operation. The District shall be responsible for repair and replacement of major components of the trommel equipment except that caused by the Tenant's improper or negligent use of the equipment. Should the District request that the Tenant perform any such major repairs on the District's trommel equipment, a quote will be provided to the District by the Tenant before any work is undertaken. The District and the Tenant acknowledge that the quantity of food waste material is likely to increase in the future and that the Tenant's operations of the Lease Facility may need to be modified with both new personnel and equipment. The District and the Tenant agree that should the annual food waste volume exceed 8,000 tons per year, the processing rate paid to the Tenant by the District may need to be renegotiated to accommodate the additional labor and equipment costs needed to process the food waste material.

The delivery of green/yard/wood waste materials that are received by the District at its Material Recovery Facility (MRF) will be sorted and cleaned by the District. Once the material from the public has been processed by the District, the clean green/yard waste will be segregated from the clean wood waste and piled neatly for routine pick up by the Tenant at no cost to the District. Upon pick up by the Tenant, the materials shall be owned by and the responsibility of the Tenant. The District will reduce the size of the wood waste so as not to damage the Tenant's trailers when loading and unloading the trailers, which will be performed by the Tenant at no cost to District on the northeast side of the District's MRF or at a mutually agreed to alternative location. Alternatively, the Tenant may choose to use Tenant's grinding equipment to grind the wood waste in-place on the northeast side of the District's MRF, or at a mutually agreed to alternative location, and transfer the wood grindings to the Lease facility at no cost to the District.

The Tenant shall assure the District that all organic waste received and processed by the Tenant from the District for processing on the Lease Facility shall be diverted from landfill disposal to the greatest extent possible so that such materials shall receive Diversion Credit in accordance with any and all waste diversion requirements under Applicable Law, except regarding non-organic material that is removed during the processing of waste at the Lease Facility.

ARTICLE 2. PROCESSING SERVICES PAYMENTS

2.01 Payments. Effective upon signing this Lease, District agrees to and shall pay to Tenant, a processing service payment at a processing rate of \$25.00 per ton until June 30, 2021. The parties acknowledge that the processing rate is inclusive of minimal to zero amounts of oversized logs and tree trunks. In the event that significant quantities of oversized logs and tree trunks are present, separate compensation to reimburse the Tenant for additional services that are necessary to reduce the size of the materials to permit the processing services to be employed shall be mutually agreed to by the parties and recorded in the form of an addendum to this Exhibit.

Tenant shall invoice the District on a bi-weekly basis and District shall pay the Tenant with a payment term of "Net 15 calendar days" from date of receipt of the invoice. The District shall

electronically submit scale tickets to the Tenant within seven (7) business days of the scale ticket transaction date. After June 30, 2021, and until June 30, 2027, the processing rate shall be as defined in the following table. District and Tenant acknowledge that annual inflation rates are included in the processing rates presented in the table below.

START DATE	PROCESSING RATE \$/ton
7/1/2021	\$26.25
7/1/2022	\$27.56
7/1/2023	\$28.67
7/1/2024	\$29.81
7/1/2025	\$30.71
7/1/2026	\$31.63

2.02 Adjustment of Processing Rate. After June 30, 2027, the processing rate shall be increased as of July 1 each year thereafter by the lesser of a) the rate of increase in the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose Region, for the prior calendar year period, or b) eight per cent (8%); and no less than 2% during the lease term.

2.03 Interest on Late Payments. If District is late in the payment of any invoices for processing services by the Tenant, such payments shall bear interest at the rate of ten per cent (10%) per annum from the day it is due until actually paid.

2.04 Adjustment of Processing Rate for Changes in Scope of Services. Any changes to the scope of services, either increases or decreases in the processing services performed by the Tenant, represent a basis for the District and/or the Tenant to request a change in the processing rate. The parties agree to provide a basis for the magnitude of the rate change and to negotiate the rate change in good faith. Mutually agreed changes in the processing rate shall be recorded in an addendum to this Exhibit, In the event that the parties cannot reach an agreement of the rate change, the dispute resolution terms of this Lease shall be used to achieve an agreement.

2.05 Diesel Fuel Surcharge. A surcharge will be applied for any increase above \$3.00 per gallon based on the average California diesel fuel price per gallon as published each Monday by the Energy Information Administration of the US Department of Energy. The base fuel rate of \$3.00 per gallon is included in the above processing rate. Should the cost of diesel fuel exceed this base fuel rate, or fall below the base fuel rate, the calculated fuel surcharge shall be used to determine the extra costs to KDCI for an increase above the base rate or a credit to the Landlord for a cost below the base rate. Tenant shall report to Landlord on a weekly basis the amount of fuel used in the prior week and the Tenant’s cost of fuel purchase for every purchase of fuel by the Tenant. The fuel surcharge will be calculated by the Tenant every week and the credits to the Tenant and Landlord determined accordingly and presented in the Tenant’s invoice to the Landlord.