

AGREEMENT RELATED TO GRANT FUNDS FROM THE ALAMEDA COUNTY SOURCE  
REDUCTION AND RECYCLING BOARD

AND

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between CSI-Derby Street Non-Profit Housing Corporation, hereinafter referred to as "Grantee," and the Alameda County Source Reduction and Recycling Board, hereinafter referred to as "Recycling Board" or "Grantor"

WHEREAS, pursuant to the Alameda County Source Reduction and Recycling Act of 1990 (Sections 64.010 et seq. of the Alameda County Charter) herein "the Act", a Recycling Fund was established based on a per ton surcharge on all refuse accepted for landfilling in the unincorporated areas within Alameda County.

WHEREAS, pursuant to the Act, the Recycling Board is responsible for administering the Act and carrying out tasks consistent with the purposes of the Act including the administration of the Fund;

WHEREAS, as part of its duties under the Act, the Recycling Board disburses monies from the Fund under Section 64.060 B of the Act in order to, inter alia, administer a grant program for non-profit organizations engaged in maximizing recycling, composting and reducing waste in Alameda County and support certain other activities described in the Act; and

WHEREAS, Grantee has applied for grant monies under the Act; and the Recycling Board has determined that the Grantee is qualified under the Act to receive grant funds;

NOW THEREFORE, the parties hereto agree as follows:

1. Term

The term of this Agreement commences on \_\_\_\_\_ 2013 and extends through \_\_\_\_\_. The total amount of compensation tendered by Recycling to Grantee pursuant to this Agreement shall not exceed \$ \_\_\_\_\_

2. Scope of Grantee Services

As a condition of receiving grant funds as payment for services or work, Grantee shall provide work or services specified in Appendices B and C, attached hereto and incorporated into this Agreement. (The term "Agreement" shall refer to this document and all Appendices.) Grantee agrees to perform all work and services authorized by this Agreement in accordance with the established schedule and requirements specified in those Appendices.

As part of this Agreement, where applicable, Grantee also agrees to purchase materials, equipment or other property specified in Appendices B and C for use in connection with work or services authorized by this Agreement or as otherwise permitted under this Agreement. In accepting grant funds, Grantee agrees that it shall use or expend grant funds, or any portion thereof, only as provided for in this Agreement and consistent with the Act.

Failure to comply with the provisions of Appendices B or C is a material breach of this Agreement and may result in withholding of grant funds pending cure of the breach (if cure is permitted by the Recycling Board or otherwise allowed under this Agreement), whole or partial suspension or termination of this Agreement, recovery of funds paid to Grantee under this Agreement, withholding of future grant awards or other legal or equitable remedies provided by law.

In addition to the other duties or obligations provided for in this Agreement, Grantee shall:

a. Perform Grantee's duties to the best of Grantee's ability and in accordance with the generally accepted professional and ethical standards of Grantee's profession and community. Grantee agrees to perform Grantee's duties at all times in strict accordance with currently approved methods and practices in Grantee's field and in accordance with the standards required by the Recycling Board. All duties shall be performed and rendered in a safe, competent, efficient, timely and satisfactory manner.

b. Observe and comply with all general rules and regulations established by Recycling Board.

c. Observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal and local safety regulations. All services performed by Grantee must be in accordance with these laws, ordinances, codes and regulations.

d. Observe and comply with the Recycling Board's Environmentally Preferable Purchasing Policy which is incorporated herein by reference. A copy of the Policy is either attached herewith or may be obtained from the Executive Director of the Board.

### 3. Distribution of Grant Funds

Terms and conditions for the distribution of grant funds are described in Appendix C attached hereto and hereby incorporated herein.

### 4. Independent Contractor

No relationship of employer and employee is created by this Agreement. It is understood by Grantee that Grantee is acting and shall act as an independent Contractor. In performing the work, services or purchase of property authorized by this Agreement, Grantee at all times shall ensure that its activities shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards of the Recycling Board and those set forth in Appendix B.

Grantee shall also perform said work and services in strict accordance with currently approved methods and practices in Grantee's field and at the sole interest of Recycling Board.

Likewise, no relationship of employer and employee is created by this Agreement between the Recycling Board and any subcontractor or employee of Grantee.

5. Benefits and Taxes.

Except as set forth in Appendix C, Grantee shall not have any claim under this Agreement or otherwise against Recycling Board for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Except as specified in Appendix C, Grantee shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes. Grantee shall indemnify, defend and hold harmless the Recycling Board from any and all liability that the Recycling Board may incur because of Grantee's failure to pay such taxes.

6. Recycling Board Representative

Recycling Board shall appoint a representative or representatives with respect to work or services to be to be undertaken under this Agreement. Recycling Board's representative(s) shall have complete authority to transmit instructions, receive information, and interpret and define Recycling Board's policies consistent with this Agreement.

7. Responsibility of Recycling Board

The Recycling Board shall provide, at its expense, such services of its officers and employees and such use of its premises, facilities, supplies and equipment as the Recycling Board in its sole discretion determines is necessary in connection with the administration or monitoring of this Agreement. Grantee shall not use Recycling Board services, premises, facilities, supplies or equipment for any purpose other than in the performance of Grantee's obligations under this Agreement.

8. Travel Expenses

Grantee shall not be allowed or paid travel expenses except to the extent expressly authorized in Appendix C.

9. Other Business or Activities

Nothing contained in this Agreement shall be construed as limiting the right of Grantee to engage in business or other activities separate and apart from this Agreement; provided, however, that Grantee agrees that not to engage in any business or other activity that will interfere or conflict with Grantee's performance of any of the obligations set forth herein and in Appendix B. Interference or conflict will be determined at the sole discretion of the Recycling Board.

10. Assignment and Subcontracts

Except as expressly provided for in this Agreement or as required by law, Grantee shall not assign or transfer by Grantee of grant funds or any rights under this Agreement and such assignment or transfer is expressly prohibited and void. However, with the consent of the Recycling Board given in writing, Grantee is entitled to subcontract such portions of the work or services or purchases to be undertaken as part of this Agreement as may be

specified in writing by the Recycling Board. Failure to comply with this section shall constitute a material breach of this Agreement.

#### 11. Retention of Records

Until the expiration of five years after completing all any work or services, including the purchase of any property, under this Agreement, Grantee shall make available to the Recycling Board or any party designated by the Recycling Board, upon written request by the Recycling Board, all of its financial and other books, documents and records (and any books, documents, and records of any of Grantee's subcontractors) in order to allow the Recycling Board or its designated agent (i) to certify that Grantee is and remains qualified to receive grant funds under the Act and this Agreement, (ii) to determine the reasonable cost of work, services or other activities provided by Grantee or its subcontractors under this Agreement, (iii) to evaluate whether or not Grantee is performing as required under this Agreement, and (iv) to evaluate the Grantee's business or other activities to confirm continued ability to perform as required under this Agreement.

#### 12. Conflict of Interest

a. The Grantee warrants that, to the best of the Grantee's knowledge and belief, there are no relevant facts or circumstances which could give rise to a conflict of interest, or that the Grantee has already disclosed all such relevant information.

b. The Grantee agrees that, if an actual or potential conflict of interest is discovered after this Agreement is approved by the Recycling Board, Grantee will make a full disclosure in writing to the Recycling Board. This disclosure shall include a description of actions which the Grantee has taken or proposes to take, after consultation with the Recycling Board to avoid, mitigate, or neutralize the actual or potential conflict. Within 45 days, the Grantee shall have taken all necessary steps to avoid, mitigate, or neutralize the conflict of interest to the satisfaction of the Recycling Board.

c. No officer, member or employee of the Recycling Board and no member of the Recycling Board governing body shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Neither Grantee nor any member of any Grantee's family shall serve on any Recycling Board or committee or hold any such position which either by rule, practice or action nominates, recommends, or supervises Grantee's operations or authorizes funding to Grantee.

d. Failure to comply with this section shall constitute a material breach of this Agreement.

#### 13. Discrimination Prohibited

Grantee assures that Grantee will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era veteran's status, political affiliation, or any other non-merit factors be excluded from participating in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement. Failure to comply with this section shall constitute a material breach of this Agreement.

#### 14. Rights to Material Produced or Property Purchased

Recycling Board shall have a royalty-free, exclusive, and irrevocable license to reproduce, publish, use, and to authorize others to do so, all original writings, sound recordings, pictorial reproductions, drawings, computer programs, and other works of similar nature produced in the course of or under this Agreement. Grantee agrees to deliver a reproducible copy of such documents and materials to the Recycling Board on completion of the work or services or other activities under this Agreement. Grantee shall have the right to keep copies of all documents and materials developed under this Agreement. The Grantee shall not be prevented from disclosing or using the documents and materials, or any portion thereof, which: (a) has been previously made available to the public or which is made available by Recycling Board hereafter, or (b) which was already in the Grantee's possession prior to services performed under this Agreement. The Recycling Board recognizes Grantee's need to make reference to this project as a part of the experience qualifications for future work of a similar nature. The Recycling Board, therefore, agrees to allow Grantee to describe this project in its statements of qualifications and related materials. Grantee shall not publish any such material without prior written consent of Recycling Board.

The Recycling Board may, in its sole discretion, require Grantee to identify or credit the Recycling Board as the funding agency or source for all materials or products generated or produced by Grantee as part of this project. This identification or credit may take the form of a logo or other representative mark of the Recycling Board or representative wording (e.g. "funded in whole or in part by the Alameda County Source Reduction and Recycling Board") which is printed or applied directly on or to those materials or products.

Except as otherwise expressly provided in this Agreement, Grantee shall have and retain title to all real or personal property purchased or funded with grant funds; provided, however, that the Recycling Board may require, as an additional conditions of eligibility for grant funds and in advance of approval of this Agreement, that the Grantee provide security to the Recycling Board in order to ensure the performance of Grantee's obligations under this Agreement and that those obligations are performed consistent with the terms and conditions of this Agreement and with the Act.

#### 15. Confidential Information

Grantee will hold any confidential information received from Recycling Board and its member agencies in the course of performing this Agreement in trust and confidence and will not reveal such confidential information to any person or entity, either during the term of the Agreement or at any time thereafter. Upon expiration of this Agreement, or termination as provided herein, Grantee will return materials which contain any confidential information to Recycling Board. Grantee may keep one copy for its confidential file. For purposes of this paragraph, confidential information is defined as all information disclosed to Grantee which relates to Recycling Board's and its member agencies' past, present, and future activities, as well as activities under this Agreement, which information is not otherwise of public record under California law. Failure to comply with this section shall constitute a material breach of this Agreement.

#### 16. Insurance

**See Appendix A**

#### 17. Indemnification

Grantee shall indemnify, defend and hold harmless the Recycling Board, its officers, employees, and agents (collectively "Indemnitees") from and against any and all claims, lawsuits, loss, liability, expense, costs, fines, penalties, consequences, and suits and damages of every kind, nature and description, including reasonable attorney fees incurred in the defense thereof (collectively "Claims") directly or indirectly arising from the performance of this Agreement or the negligent or intentional acts, errors, or omissions of Grantee, except for those Claims arising solely out of the intentional or willful misconduct of an Indemnitee. Grantee shall pay all claims, damages, judgments, legal costs, adjustors' fees and attorneys' fees and attorneys' fees related to those Claims.

#### 18. Drug-Free Workplace

Grantee and Grantee's employees shall comply with the Recycling Board's policy of maintaining a drug-free workplace. Neither Grantee nor Grantee's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or work-site used in any manner in connection with performing services pursuant to this Agreement. If Grantee or any employee of Grantee is convicted or pleads nolo contendere to a criminal drug statute violation occurring at such a facility, premises, or work-site, the Grantee, within five days thereafter, shall notify the Recycling Board. Failure to comply with this section shall constitute a material breach of this Agreement.

#### 19. Employment Eligibility

Persons providing work or services under this Agreement shall be required to provide the necessary documentation to establish identity and employment eligibility as required by the Immigration Reform and Control Act of 1986. Failure to provide the necessary documentation shall constitute a material breach of this Agreement and will result in the termination of the Agreement as required by the Immigration Reform and Control Act of 1986.

#### 20. Environmentally Preferable Purchasing

Grantee and Grantee's employees shall comply with the Recycling Board's Environmentally Preferable Purchasing Policy of instituting practices that reduce waste and purchasing products that include recycled content, are durable and long-lasting, conserve energy and water, and otherwise minimize environmental impacts, toxics, pollution and hazards to worker and community safety to the greatest extent practicable. At a minimum, this shall include all of the following for services and products purchased and used on behalf of the Recycling Board:

a. All products for which the U.S. Environmental Protection Agency (EPA) has established minimum recycled content standard guidelines, such as paper and non-paper office products, shall contain the highest post-consumer content practicable, but no less than the minimum recycled content standards established by the U.S. EPA Guidelines.

b. Paper products that are unbleached or that are processed without chlorine or chlorine derivatives, shall be purchased whenever possible. To the greatest extent practicable, recycled content shall be included in products that also meet this specification.

c. All photocopying and printing shall be double-sided.

d. All pre-printed recycled content materials intended for distribution that are purchased or produced shall include a statement that the material is recycled content.

e. Elimination of packaging or use of the minimum amount necessary for product protection is requested, to the greatest extent practicable. Packaging that is reusable, recyclable or compostable is preferred, when suitable uses and programs exist. Take back and reuse of packaging materials by the Grantee is encouraged.

Upon request, Grantee shall submit to the Recycling Board written certification that the environmental attributes claimed are accurate. A copy of the Recycling Board's Environmentally Preferable Purchasing Policy may be obtained from the Recycling Board representative.

## 21 Dispute Resolution

The parties shall make a good faith effort to settle any dispute or claim arising under this Agreement. If the parties fail to resolve such disputes or claims, they may, with the consent of both parties, submit them to non-binding mediation in California. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all parties, or litigation may be pursued. In the event any of these dispute resolution processes are involved, each party shall bear its own costs and attorneys fees.

## 22. Jurisdiction and Severability

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

## 23. Notice of Non-Renewal

Grantee understands and agrees that there is no representation, implication, or understanding that Grantee may be entitled to grant funds in the future or that the work or services or other activity performed by Grantee pursuant to this Agreement will be retained by the Recycling Board under a new agreement following expiration or termination of this Agreement.

Grantee waives all rights or claims to notice or hearing respecting any failure by Recycling Board to continue to retain all or any such services from Grantee following the expiration or termination of this Agreement.

## 24. Termination

The Recycling Board may terminate this Agreement, with or without cause, by providing written notice to Grantee at least 15 days in advance of the effective date of the termination. Unless otherwise specified in the notice, the effective date of the termination shall be 15 days after the date the notice is mailed or delivered to Grantee.

The Recycling Board also may terminate this Agreement at any time without prior notice in the event that Grantee commits a material breach of the terms of this Agreement.

Upon the mailing of the notice of termination, this Agreement shall become of no further force or effect whatsoever, and Grantee shall be discharged from the Agreement.

Notwithstanding the foregoing, the provisions of this Agreement concerning Retention of Records, Rights to Material Produced, Confidential Information, Indemnification, and Jurisdiction and Severability shall survive termination of this Agreement.

## 25. Default and Remedies

a. Each of the following shall constitute an event of Grantee Default hereunder:

1. Failure to perform any obligation under this Agreement; or
2. Failure to promptly cure any failure to perform under or breach of this Agreement after the Recycling Board has requested cure; or
3. Without limiting the generality of the foregoing, any Material Breach of any term of this Agreement ("Material Breach" as used in this Agreement shall include, but not be limited to, any failure to comply with the provisions of any section of this Agreement stating that failure to comply with that section shall constitute a material breach of this Agreement).

b. Upon any Grantee Default, the Recycling Board shall have the right to immediately suspend or terminate the Agreement, seek specific performance, and/or seek damages including incidental, consequential and/or special damages to the full extent allowed by law.

## 26. Litigation

If any litigation is commenced between parties to this Agreement concerning any provision hereof or the rights and duties of any person in relation thereto, each party shall bear its own attorneys' fees and costs, except as provided in paragraph 17 above.

## 27. Parties in Interest

This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.

## 28. Amendments Not Valid Without Additional Written Agreement

No alteration or variation in the terms of this Agreement shall be valid unless made in writing and signed by an authorized representative of each of the parties.

## 29. Entire Agreement



This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Grantee for the Recycling Board and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECYCLING BOARD:

By: \_\_\_\_\_ DATE \_\_\_\_\_  
Gary Wolff, Executive Director  
Alameda County Waste  
Management Authority and Recycling Board

GRANTEE:

\_\_\_\_\_ DATE \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_ DATE \_\_\_\_\_  
Audrey Beaman  
Deputy County Counsel

Attachments

- Appendix A - Insurance Requirements
- Appendix B - Scope of Work
- Appendix C - Contract Payment and Reporting Schedule

**Appendix A**  
**Insurance Requirements:**

- a. During the life of this Agreement, Contractor shall maintain the following minimum insurance:
  1. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
  2. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
  3. Statutory workers' compensation and employer's liability insurance as required by state law. Neither Contractor nor its carrier shall be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this Agreement.
  4. Professional Liability Insurance. The limit of liability shall be not less than \$1,000,000

Upon request, Contractor shall submit to the Authority Board certificates of insurance for the policies listed above. Contractor shall not cancel, assign, or change any policy of insurance required by this Contract or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this Contract except after providing 30 days prior written notice to the Authority Board. If an insurance policy required by this Contract is unilaterally cancelled or changed by the insurer, the Contractor shall immediately provide written notice to the Authority Board and obtain substitute insurance meeting the requirements of this Contract. Nothing in this subsection relieves Contractor of its obligation to maintain all insurance required by this Contract at all times during the term of the Contract.

- b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify Authority by telephone. Contractor shall promptly submit to Authority a written report, in such form as may be required by Authority of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) names and address of Contractor's subcontractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of accident and whether any of Authority's equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this Agreement.

***\*Any insurance modifications must be approved by the Agency's Contract Administrator\****

Insurance Modification Approved \_\_ (Yes) \_\_ (No) Date Approved \_\_\_\_\_ (CAS Initials) \_\_\_\_\_

Type of Insurance Waived \_\_\_\_\_ (Auto) \_\_\_\_\_ (Worker's Comp) \_\_\_\_\_ (PL) \_\_\_\_\_