

**COUNTY OF SAN BERNARDINO
DEPARTMENT OF PUBLIC WORKS
SOLID WASTE MANAGEMENT DIVISION**

AGREEMENT FOR THE DISPOSAL OF BIOSOLIDS

THIS AGREEMENT FOR THE DISPOSAL OF BIOSOLIDS (“Agreement”) is made as of the 1st day of July, 2021, by and between the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California (“County”) and MAMMOTH MOUNTAIN SKI AREA, LLC, a California limited liability company (“Contractor”).

RECITALS

- A. WHEREAS, County owns the San Bernardino County Solid Waste Disposal System;
- B. WHEREAS, Contractor is a California limited liability company under the laws of the State of California, located in Mono County;
- C. WHEREAS, Contractor desires to dispose of dried biosolids from their perk ponds at the County’s Waste Disposal System;
- D. WHEREAS, pursuant to the County Code §33.08151 of Title 3, Division 3, Chapter 8, Article 9: OUT-OF-COUNTY REFUSE, refuse haulers (including operators of transfer stations, material recovery facilities or like facilities) or refuse generators may discharge solid waste generated in counties other than San Bernardino County at facilities within the County Solid Waste Disposal System, if and only to the extent provided for in a written contract entered into with the County allowing for such disposal, on payment of all fees applicable to the discharge of such solid waste, as specified in §16.0222 of the San Bernardino County Code (including as specified in the required written contract);
- E. WHEREAS, the County Solid Waste Disposal System is financed through fees received upon delivery to a landfill site as determined by the weight of the refuse and the County carefully manages the waste stream and acceptance for disposal of waste generated outside of the County in order to achieve optimum life of the disposal sites within the County’s Solid Waste Disposal System;
- F. WHEREAS, the County Code recognizes the exportation of refuse generated by several west valley cities located in San Bernardino County to landfills located outside of this County, together with the expansion of landfilling capacity within the County’s Solid Waste Disposal System, has created some excess capacity within the County’s Solid Waste Disposal System and the County acknowledges that exportation of refuse continues to this day from many of those west valley cities;
- G. WHEREAS, the volume of the waste stream being delivered to the County’s Solid Waste Disposal System from within the County is anticipated to decrease due to new and anticipated State mandated recycling

laws, and therefore, the County has determined that there is existing and future capacity at the Barstow Sanitary Landfill that allows for the acceptance of the Contractor's out-of-County waste;

- H. WHEREAS, the County is willing to accept Contractor's waste and requires an agreement to be entered into for this purpose pursuant to County Code;
- I. WHEREAS, the Board of Supervisors finds and determines that the County's Solid Waste Disposal System, including the Barstow Sanitary Landfill, is capable of supplying a limited amount of disposal service and that the County should exercise its discretion to enter into this Agreement with Contractor setting the amount of waste that may be disposed of at the Barstow Sanitary Landfill and the fee to be paid for such disposal; and
- J. WHEREAS, County and Contractor each find, determine, and declare that entering into this Agreement will promote the public peace, health, safety and welfare of the County.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County and Contractor hereby agree as follows:

1. DISPOSAL OF WASTE

County agrees to accept Contractor's waste, and Contractor agrees to pay for the disposal of said waste for the period of time and in the amounts set forth below, at the County's landfill identified as the Barstow Sanitary Landfill ("Landfill"), located in Barstow, California.

2. TERM

2.1 **Initial Term.** The Term of this Agreement shall be five (5) years. The obligations of the parties pursuant to this Agreement shall commence on July 1, 2021. The Agreement shall terminate at 11:59 p.m. on June 30, 2026, unless sooner terminated or extended as herein provided.

2.2 **Option to Extend.** Provided that Contractor is not in default hereunder, either at the time of exercise or at the time the extended Term commences, the County, at its sole discretion, shall have the option to extend the initial term up to five additional years on the same terms, covenants and conditions provided herein.

3. DISPOSAL FEES

3.1 **Fee for Disposal of Biosolid Waste.** Contractor shall pay a disposal fee equal to the published gate rate for ordinary waste and the Special Handling Fee as described in the County's Fee Ordinance, Section 16.0222 (the fiscal year 2021-22 gate rate is \$47.25 per ton plus Perchlorate Fee of \$0.69 and the Special Handling Fee is \$53.14 per ton, for a total of \$101.08 per ton) for the immediate disposal of biosolids at the Barstow Sanitary Landfill.

3.2 **Late Payment Fees and Interest.** Contractor acknowledges that late payment by Contractor to County of all Fees will cause County to incur costs not contemplated by this Agreement and that the exact amount of such costs is extremely difficult and impracticable to fix. Such costs include, without limitation, administrative, processing, accounting, late charges and interest charges that may be imposed on County. Therefore, if County does not receive any payment of Fees due from Contractor within thirty (30) days after the date such Fee payment is due, Contractor shall pay to County an additional sum of fifteen percent (15%) of the overdue Fees as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs County will incur by reason of late payment by Contractor. Acceptance of any late charge shall not constitute a waiver of Contractor's default with respect to the overdue amount, nor prevent County from exercising any of the other rights and remedies available to County. In addition to the late charge of fifteen percent (15%), Fees not paid when due shall bear simple interest from the due date at the rate of five hundredths of a percent (.05%) per day. **All late payments shall be made with certified funds and shall be credited in the following order: (1) to past due late charges; (2) to interest; and (3) to the balance of the accrued Fees.**

3.5 **Place and Method of Payment.** All checks shall be made payable to: County of San Bernardino and shall be submitted to: Department of Public Works, Administrative Services, 825 East Third Street, Room 207, San Bernardino, California 92415-0835. The Contract Number is the account number for this Agreement and must be noted on the front of the Contractor's check. The Fees and all other monetary obligations of the Contractor pursuant to this Agreement shall be paid in lawful money of the United States. **The County reserves the right to demand at any time that payment of Fees, late charges or interest be made with certified funds.**

3.6 **Security Deposit Requirements.** Contractor is required to submit a security deposit. The minimum initial security deposit will be determined by the County based upon the estimated charges for the first three (3) months using current rates and the Contractor's estimated average monthly tonnage to be disposed. After the account has been active for three (3) full calendar months, the account may be reviewed by the County and adjustments may be made to the required security deposit amount. Security deposit amounts will be reviewed and adjusted when:

- (a) Changes are warranted based upon the initial three (3) month review.
- (b) Changes are warranted based upon an annual review. NOTE: If the twelve (12) month average indicates that the deposit amount is too low, the deposit will be recalculated using the following formula: Multiply the twelve (12) month average times the current fee times three (3) months.
- (c) Fee adjustments are approved by the County Board of Supervisors.
- (d) An account has been delinquent in any month during the preceding year beyond thirty (30) days (per the Accounts Receivable Summary Report). NOTE: The security deposit will be adjusted by using the actual charges for the three (3) highest months in the last calendar year period.

3.7 **Security Deposit Instruments.** Contractor may choose to obtain a bond on the County's approved form to cover the requirement through a certified bonding agency, in which case the County will retain the original bond form. Contractor may obtain a Certificate of Deposit or a Security or other payment for the County through a qualified institution, in which case the County will retain the deposit book. Contractor may have use of interest earned. Contractor may make a deposit in cash, which will be held in trust by the County until such time as the account is closed by either party or becomes delinquent. Zero (0) interest will be paid to the Contractor for cash funds held in trust by the County. Contractor may submit a Letter of Credit or other alternative security deposit instrument deemed acceptable by the County which will assure the County has access to appropriate cash resources if the deferred billing account becomes delinquent. Security deposits will be held as a guarantee for payment of monthly billings and shall be claimed only in the event that Contractor fails to pay timely for Contractor's use of County disposal facilities. Any security deposit claimed by the County, whether in whole or in part, must be immediately replaced or reinstated to the required amount within ten (10) business days. Failure to maintain the security deposit as required by the County will result in the termination of the Agreement, according to Section 10.2.

4. WASTE

4.1 **Qualifying Solid Waste.** Biosolid waste is defined as solid organic matter recovered from a sewage treatment process. The waste which qualifies to be disposed of pursuant to the terms of this Agreement shall be only Qualifying Solid Waste that is:

- (a) Otherwise qualified to be disposed of at a County Landfill pursuant to all applicable federal, state and local laws and regulations;
- (b) Generated outside the boundaries of the County of San Bernardino (i.e., collected for disposal in a County other than the County of San Bernardino);
- (c) Generated by the perk ponds located and owned by the Contractor at Mammoth Mountain Ski Area; and
- (d) Dried biosolid material that has been tested and the analytical results indicate the material is suitable for disposal in a Class III Municipal Solid Waste Landfill, as per the attached Waste Acceptance Plan for the Barstow Sanitary Landfill (Exhibit A).

Qualifying Solid Waste that satisfies all of the above conditions may be disposed of pursuant to the provisions of this Agreement and shall be referred to as **"Qualifying Solid Waste."**

4.2 **Amount Qualifying Solid Waste to be Delivered.** Beginning on July 1, 2021, the Contractor shall have the right to deliver, for each fiscal year July 1st through June 30th of the contract term, not more than one hundred and fifty (150) tons of Qualifying Solid Waste to the Disposal System under the provisions of this Agreement.

4.3 Facility to be Utilized. The Contractor shall deliver the Qualifying Solid Waste to the Barstow Sanitary Landfill, unless conditions exist not allowing delivery of solid waste to the Landfill. Contractor must notify the County's Scale Operations Supervisor II via telephone (909-386-9097 or 800-722-8004) within 24 hours of delivering the material to the Landfill informing him/her of the day, approximate time of delivery, and the amount that will be delivered. Upon arrival at the Landfill, Contractor shall notify the Scale Operator that they are disposing of dried biosolids that require immediate burial. Note – All customers with loads that require immediate burial are subject to delays while site personnel arrange burial locations. Waste loads must be covered and the cover on the transport vehicle must remain in place until landfill staff directs the driver to remove the cover and load the waste.

4.4 County Right of Refusal. Notwithstanding any other provisions hereof, the County may refuse delivery of:

- (a) Unacceptable Waste; which means Hazardous Waste; hazardous substances as that term is defined in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder; any medical or infectious waste prohibited or restricted under any federal, state or local law from being received by or disposed of at the Disposal System; explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine vessels and steel cable; hot loads; and any waste which the Disposal System is prohibited from receiving under federal, state or local law.
- (b) Hazardous Waste; which means (i) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under applicable law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute applicable law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (ii) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.
- (c) Qualifying Solid Waste delivered at hours other than those provided in Section 5.1 hereof.
- (d) Waste that does not constitute Qualifying Solid Waste.

4.5 **Identification of Unacceptable Waste.** The County, or County's operations contractor, shall have the right (but not the duty or obligation) to inspect the vehicles of the Contractor or its haulers delivering material to the Landfill, and may require that the Contractor or its hauler remove any Unacceptable Waste from such vehicle before it is unloaded. If the County or County's operations contractor determines that it is impractical to separate In-County and Out-of-County Qualifying Solid Waste from the waste described in Section 4.6 above in any vehicle, or if the Contractor or its hauler delivering such waste is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the County or County's operations contractor may reject the entire vehicle, and the Contractor or its hauler shall forthwith remove or cause the removal of the entire delivery from the Landfill. The County or County's operations contractor may take all reasonable measures to prevent waste from being blown or scattered before and during unloading. The Contractor shall cause its haulers to observe and comply with applicable law, the operating rules and regulations of the County, and the provisions of this Agreement prohibiting the delivery of the waste described in Section 4.4 above to the Disposal System.

4.6 **Hazardous Waste and Hazardous Substances.** The parties acknowledge that the Disposal System has not been designed or permitted, and is not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Hazardous Waste or Hazardous Substances. Neither the County nor the Contractor shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Disposal System.

4.7 **Disposal of Unacceptable Waste and Hazardous Waste.** If Unacceptable Waste or Hazardous Waste is discovered in a vehicle at any landfill within the Disposal System, the driver of the vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of the Landfill or any landfill within the Disposal System, County personnel or County's operations contractor will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading onto the delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with applicable law. Whenever Hazardous Waste is detected at any landfill within the Disposal System, the County or County's operations contractor shall take immediate action in accordance with applicable law.

5. MISCELLANEOUS OPERATIONAL MATTERS

5.1 **Operating Hours.** The County shall keep the Disposal System open for the receiving of Qualifying Solid Waste during such regular operating hours as may be established by the Department in the operating rules and regulations applicable to the Disposal System. The County shall utilize best efforts to maintain substantially similar hours, as are in effect as of July 1, 2021, for the receipt of waste through the term of this Agreement (subject to applicable law).

5.2 **Scales and Weighing.** The County shall operate and maintain permanent scales at the Disposal System. The County shall weigh all vehicles delivering waste by or on behalf of the Contractor (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery.

5.3 **Service Coordinator.** The County and Contractor each shall designate in writing thirty (30) days prior to July 1, 2021 a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each a "Service Coordinator"). Either party may designate a successor or substitute Service Coordinator at any time by notice to the other party.

6. INDEMNIFICATION

6.1 **Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor's sole cost and expense and with legal counsel approved by County, which approval shall not be unreasonably withheld), protect and hold harmless County, and all of its authorized representatives, designees, officers, consultants, agents, volunteers, successors and assigns, (collectively, the "Indemnified Parties"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, administrative actions, administrative orders, investigations, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs and County's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Agreement (including, without limitation, defects in workmanship or materials, or a release or threatened release of any hazardous substance or hazardous waste into the environment) or Contractor's presence or activities conducted on the Landfill (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) regardless of any active or passive negligence or strict liability of an Indemnified Party. As used in this Agreement, the phrases "hazardous material," "hazardous substance" and "hazardous waste" shall coincide with the broadest definition thereof contained in any present or future federal or state laws (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 *et seq.*, as amended and superseded, and the regulations contained in 40 CFR Parts 260-281; the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and regulations contained in 40 CFR Parts 761-766; the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); the California Public Resources Code, Section 40141 (West 1996); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder; radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in 10 CFR Part 40). Contractor understands and acknowledges that the indemnification obligation hereunder is intended to constitute a "Type I" indemnity under California law and extends to and includes Claims arising from the active or passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. This provision shall survive the termination of this Agreement or any other agreement between the Contractor and the County. The foregoing indemnity shall not have any dollar

limitation. The foregoing indemnity is for the exclusive benefit of the Indemnified Parties and in no event shall such indemnity inure to the benefit of any third party.

6.2 **Duty to Defend.** The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Contractor. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Contractor. Payment to Contractor by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. Contractor's indemnification obligation and duty to defend hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations or statute of repose. Contractor's liability for indemnification hereunder is in addition to any liability Contractor may have to County for a breach by Contractor of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement.

7. INSURANCE REQUIREMENTS

7.1 **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

7.2 **Waiver of Subrogation Rights.** The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

7.3 **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

7.4 **Severability of Interests.** The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

7.5 **Proof of Coverage.** The Contractor shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from July 1, 2016 until the completion of such services. Within fifteen (15) days of July 1, 2016, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7.6 **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

7.7 **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

7.8 **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

7.9 **Insurance Review.** Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

7.10 The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

- 7.10.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- 7.10.2 Commercial/General Liability Insurance - The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosions, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.

- 7.10.3 Automobile Liability Insurance - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

7.10.4 **Umbrella Liability Insurance** - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

7.10.5 **Environmental Liability Insurance** – Environmental liability insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

8. ASSIGNMENT

8.1 **County’s Consent Required.** Contractor shall not voluntarily or by operation of law, assign Contractor’s interest in this Agreement or in any options contained in this Agreement, without first obtaining County’s written consent. County’s consent shall be at its sole discretion.

8.2 **Terms and Conditions Applicable to Assignment.** The following provisions shall apply to any assignment pursuant to this Agreement:

8.2.1 Irrespective of County’s consent, any assignment shall not: (i) be effective without the express written assumption by such assignee of all of Contractor’s obligations under this Agreement; (ii) release Contractor of any of its obligations hereunder; nor (iii) alter the primary liability of Contractor for the payment of the Fees for Qualifying Solid Waste and other sums due County pursuant to this Agreement or for the performance of any of Contractor’s other obligations under this Agreement.

8.2.2 Each request for consent to an assignment shall be in writing. Contractor agrees to pay all costs incurred by County in reviewing Contractor’s request and provide County with such other and/or additional information and/or documentation as County may reasonably require in connection with Contractor’s request.

8.3 **Force Majeure.** Prevention, delay or stoppage due to Acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial

orders, enemy, or hostile governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of Contractor or County, shall excuse the performance by Contractor or County for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to Fees to be paid by Contractor pursuant to this Agreement.

9. DEFAULTS; REMEDIES

9.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default or breach of this Agreement by Contractor:

9.1.1 The failure by Contractor to make any payment of Fees or any other payment required to be made by Contractor hereunder, as and when due, where such failure shall continue for a period of thirty (30) business days after written notice thereof from County to Contractor;

9.1.2 The failure by Contractor to observe or perform any of the covenants, conditions or provisions of this Agreement in any material respect to be observed or performed by Contractor, where such failure shall continue for a period of thirty (30) days after written notice thereof from County to Contractor; provided, however, that if the nature of Contractor's default is such that more than thirty (30) days are reasonably required for its cure, then Contractor shall not be deemed to be in default, if Contractor commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

9.2 **Remedies.**

9.2.1 Other than as provided in Section 9.2.2, if Contractor fails to perform any affirmative duty or obligation of Contractor under this Agreement, within thirty (30) days after written notice to Contractor (or in case of an emergency, without notice), County may at its option (but without obligation to do so), perform such duty or obligation on Contractor's behalf, including, but not limited to, the obtaining of reasonably required insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by County shall be due and payable by Contractor to County within thirty (30) days of County's demand.

9.2.2 In the event of any material default or breach by Contractor, County may at any time thereafter, following any notice required by statute, and without limiting County in the exercise of any right or remedy which County may have by reason of such default or breach:

9.2.2.1 Pursue any other remedy now or hereafter available to County under the laws or judicial decisions of the State of California.

10. TERMINATION

10.1 **Termination by Contractor.** Contractor may terminate this Agreement for cause upon the giving of not less than thirty (30) days written notice to County if the following occurs:

- 10.1.1 If access to the Landfill is not available due to high winds or other Acts of God for a period of 45 consecutive days, or 90 calendar days in any given 12 consecutive months, and the Contractor haulers are required to deliver to other than the Landfill and the County has not provided the Contractor an acceptable alternative landfill at the same per ton disposal fee as the Landfill disposal fee, then the Contractor may terminate this Agreement.
- 10.1.2 **Termination by County.** In addition to as provided herein or as allowed by applicable law, County may terminate this Agreement for cause upon giving thirty (30) days written notice to Contractor if the following occurs:
- 10.1.3 Termination for cause shall mean that the Contractor has brought in waste to the Disposal System that that does not meet the conditions of Section 4, failure to pay the fees, including late charges and interest, as described in Section 3 within 90 days of when the fees were originally due, or failure to maintain an adequate security deposit as determined by the County.

11. GENERAL PROVISIONS

- 11.1 **Recitals.** The recitals first set forth above are true and correct and incorporated herein by this reference.
- 11.2 **Severability.** The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.
- 11.3 **Time of Essence.** Except as otherwise specifically provided, time is of the essence for each provision of this Agreement which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.
- 11.4 **Entire Agreement, Modification.** This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed authorized representatives of the parties at the time of the modification.
- 11.5 **Notices.** Any notice required or permitted to be given hereunder, including a Notice to Pay Fees, or Notice to Terminate, shall be in writing and may be given by personal delivery or by first class mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Contractor or to County at the address noted below:

Contractor: Mammoth Mountain Ski Area, LLC
Attention: Denise Schneider, Wastewater Operator
P.O. Box 24, 10001 Minaret Road
Mammoth Lakes, California 93546

County: Solid Waste Management Division
Attention: Darren J. Meeka, Deputy Director
222 West Hospitality Lane, Second Floor
San Bernardino, California 92415-0017

With copy to:

Office of County Counsel
County of San Bernardino
385 North Arrowhead Avenue, Fourth Floor
San Bernardino, California 92415

Each notice shall specify the paragraph of this Agreement, if any, pursuant or with reference to which it is given. Either party may by notice to the other specify a different address or contact person for notice purposes. A copy of all notices required or permitted to be given to County hereunder shall be concurrently transmitted to such party or parties at such addresses as County may from time to time hereafter designate by notice to Contractor.

11.6 **Waivers.** No waiver by County or Contractor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by County or Contractor of the same or any other provision. County's or Contractor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of their consent to or approval of any subsequent act. The acceptance of fees hereunder by County shall not be a waiver of any preceding breach by Contractor of a provision hereof, other than the failure of Contractor to pay the particular fees so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such fees.

11.7 **Cumulative Remedies.** No remedy or election under this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

11.8 **Binding Effect; Choice of Law.** Subject to any provisions hereof-restricting assignment or subletting by Contractor and subject to the provisions of Section 7, this Agreement shall bind the parties, their personal representatives, successors and assigns. The laws of the State of California shall govern this Agreement. The language of all parts of this Agreement shall be construed with its fair meaning and not strictly for or against the County or Contractor.

11.9 **Venue.** The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

11.10 Jury Trial Waiver. To the extent allowed by law, Contractor and County hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Contractor against the County or County against Contractor on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of Contractor and County, Contractor's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

11.11 Attorneys' Fees and Costs. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fee. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under the Sections related to INDEMNIFICATION and INSURANCE REQUIREMENTS, payable on account of Contractor violation of Section 4.7 or 4.8, or payable under Section 11.22, Public Records Disclosure.

11.12 Authority. If Contractor is a corporation, each of the persons executing this Agreement on behalf of Contractor represents or warrants the Contractor has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Agreement, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. Contractor agrees to furnish upon County's request a corporate resolution, or other appropriate documentation evidencing the authorization of Contractor to enter into this Agreement.

11.13 Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way amplify the terms or provisions hereof.

11.14 Non-Liability of Officials and Employees of the County. No official or employee of County shall be personally liable for any default or liability under this Agreement.

11.15 Non-Discrimination. During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

11.16 Independent Contractor. It is agreed that Contractor shall act and be an independent contractor and not an agent nor employee of County.

11.17 Conflict of Interest. Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for

purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

11.18 Provisions are Covenants and Conditions. All provisions, whether covenants or conditions, on the part of either party, shall be deemed to be both covenants and conditions.

11.19 Consent. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

11.20 Exhibits. Exhibits A and B referred to in this Agreement or attached to this Agreement are incorporated herein by reference.

11.21 Survival. The obligations of the parties, which by their nature continue beyond the term of this Agreement, will survive the termination of this Agreement.

11.22 Public Records Disclosure. All information received by the County from any source concerning this Agreement, including the Agreement itself, may potentially be treated by the County as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Sections 6250 et seq. (the "Public Records Act"). Contractor understands that although all materials received by the County in connection with this Agreement are intended for the exclusive use of the County, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which Contractor has reasonably requested County to hold in confidence, and marked as confidential, is made to the County, the County shall notify the Contractor of the request and shall thereafter disclose the requested information unless the Contractor, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides County a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the County harmless in any/all actions brought to require disclosure. Contractor waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event County fails to notify Contractor of any such disclosure request and/or releases any information concerning the Agreement received from the Contractor or any other source.

11.23 Former County Officials; Misrepresentation.

11.23.1 Contractor agrees to provide or has already provided information on former County administrative officials (as defined below) who are employed by or represent the Contractor. The information provided includes a list of former County administrative who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also

includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "B", List of Former County Officials.)

11.23.2 If during the course of the administration of this Agreement, the County determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.

12.0 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the Board of Supervisors of the County of San Bernardino and the Contractor have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

MAMMOTH SKI AREA, LLC
(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name Tom Hodges
(Print or type name of person signing contract)

Title Vice President, Mtn. Dev.
(Print or Type)

Dated: _____

Address P.O. BOX 24, 10001 Minaret Road

Mammoth Lakes, CA 93546

EXHIBIT A
WASTE ACCEPTANCE PLAN
FOR THE BARSTOW SANITARY LANDFILL

EXHIBIT B

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representation.

OFFICIAL'S NAME

REQUIRED INFORMATION