

**SECOND AMENDMENT
TO
AMENDED AND RESTATED
SOLID WASTE, RECYCLABLE MATERIALS,
AND ORGANIC MATERIALS
COLLECTION FRANCHISE AGREEMENT
BETWEEN
OCEANO COMMUNITY SERVICES DISTRICT
AND
SOUTH COUNTY SANITARY SERVICE, INC.**

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Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

This Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement (“Second Amendment”) is made and entered into between the Oceano Community Services District, a political subdivision of the State of California (hereafter “District”) and South County Sanitary Service, Inc., a California corporation (hereafter “Contractor”), each of which may be referred to individually as a “Party” or together as the “Parties.”

RECITALS

This Second Amendment is made and entered into on the basis of the following facts, understandings, and intentions of the parties:

WHEREAS: The Parties entered into the Amended and Restated Solid Waste Collection Franchise Agreement on July 14, 2010, and the First Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement on July 29, 2016, (“Agreement” capitalized terms used but not defined herein shall have the meanings given to them in the Agreement); and,

WHEREAS: Unless explicitly modified and/or changed by this Second Amendment, all terms and conditions of the amended and restated Solid Waste Collection Franchise Agreement shall remain in full force and affect; and,

WHEREAS: Section 4.1 of the Agreement provides the District with the right to direct the Contractor to modify the scope of one or more types of service described in the Agreement, or to otherwise modify its performance under the Agreement, subject to providing additional compensation; and,

WHEREAS: SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and,

WHEREAS: SB 1383 requires the District to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the District has chosen to delegate some of its responsibilities to the Contractor, acting as the District’s designee, through this Agreement; and,

WHEREAS: Both Parties have, in good faith, negotiated changes to the Agreement necessary to support the District’s compliance with SB 1383, as set forth herein; and

WHEREAS, The District intends to have a public hearing pursuant to Proposition 218 (“Public Hearing”) on or about July 27, 2022, in order to support costs incurred by Contractor related to the implementation of SB 1383 and other operational cost increases, and the District has agreed to compensate Contractor for certain costs incurred prior to the Public Hearing as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, District and Contractor do hereby agree as follows:

EFFECTIVE DATE

This Second Amendment shall become effective on the date this Amendment is signed by both Parties.

PAYMENT FOR SERVICES RENDERED

Upon the execution of the Second Amendment, the District shall pay Contractor the amount of \$54,437 in compensation for services rendered and costs incurred for the implementation of SB 1383 and other operational increases from May 1, 2022, to and through the effective date of the Proposition 218 rate increase on or about August 1, 2022. The Parties mutually acknowledge and agree that this amount has been reasonably calculated and adequately reflects services provided to the District.

AMENDMENTS TO FIRST AMENDMENT

Amendment to Article 1 (Definitions)

A. Article 1 of the First Amendment to the Franchise Agreement is hereby amended to read as follows: "**Amendment to Article 1 (Definitions)**. Article 1 of the Agreement is hereby amended to replace, as applicable, the following definitions:

"(iii) **"Food Waste"** means Source Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of Organic Materials."

AMENDMENTS TO FRANCHISE AGREEMENT

Article 1. Definitions

Modified Definitions

B. Article 1 of the Agreement is hereby amended to remove the definition numbering and modify the following definitions:

"Collect" or "Collection" means to take physical possession, Transport, and remove Discarded Materials within and from the District.

"Container" means Bins, Carts, and Compactors used for Collection and storing of Discarded Materials before Collection.

"District" means the Oceano Community Services District, a community services district organized and operated pursuant to §61000 et seq. of the Government Code of the State of California, and all the territory lying within the municipal boundaries of District as presently existing or as such boundaries may be modified during the term, acting through the Board or the General Manager. The District may designate responsibilities to one or more third parties, in writing, between the District General Manager and the designee.

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as solar panels from Residential Premises, and Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

"Multi-Family" or "MFD" or "Multifamily Dwelling Unit" means notwithstanding any contrary definition in the District Code, any Premises, other than a Single Family Dwelling Unit, used for Residential purposes, irrespective of whether residence therein is transient, temporary or permanent, including such Premises when combined in the same building with Commercial establishments, that receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address. Customers residing in Townhouses, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address shall be considered Multi-Family.

"Premises" means any land or building in the District where Discarded Materials are generated or accumulated.

"Recyclable Materials" means by-products or discards set aside, handled, packaged or offered for Collection from Residential, Commercial, governmental or industrial customers in a manner different from Solid Waste. Including, but not limited to, aluminum, newspaper, clear and colored glass, tin and bi-metal, all plastic containers (except polystyrene), cardboard, chipboard, magazines, mixed paper (including magazines, phone books and junk mail) and motor oil and filters. Acceptable Recyclable Materials may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the District. Contractor shall not add or remove materials to or from this list without written approval from the District General Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.

"Recycling" means the process of separating for Collection, Collecting, treating and/or reconstituting Recyclable Materials which would otherwise be discarded without receiving compensation or returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, Transfer, Transportation or Disposal of Recyclable Materials not intended for, or capable of, reuse is not Recycling. Recycling includes Processes deemed to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

"Single-Family" or "SFD" or "Single Family Dwelling Unit" means, notwithstanding any contrary definition in District Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Townhouses that maintain individual Collection service regardless of whether each unit is separately billed for their specific Service Level. Single-Family also includes duplex, tri-plex, or four-plex Residential structures regardless of whether each unit maintains individual Collection service or is separately billed for their specific Service Level.

"Solid Waste" means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container not Source Separated from Solid Waste at the site of generation.

"Waste Generator" or "Generator" means any Person as defined by the Public Resources Code, whose act or process produces Discarded Materials as defined in the Public Resources Code, or whose act first causes Discarded Materials to become subject to regulation."

New Definitions

- C. Article 1 of the Agreement is hereby amended to remove the definition numbering and add the following new definitions:

“AB 1826” means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

“AB 341” means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as “AB 341”, as amended, supplemented, superseded, and replaced from time to time.

“AB 901” means Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

“Applicable Law” means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.

“Approved Facility(ies)” means any one of or any combination of the: Approved Recyclable Materials Processing Facility; Approved Organic Materials Processing Facility; and/or Approved Disposal Facility.

“Approved Disposal Facility” means Cold Canyon Landfill as the primary and Chicago Grade Landfill, or the Santa Maria Landfill, as alternatives, which have been selected by the Contractor and approved by the District. Contractor shall notify District before using an alternative facility.

“Approved Organic Materials Processing Facility” means the Hitachi Zosen Inova (HZI) Kompogas Facility located at 4300 Old Santa Fe Rd, San Luis Obispo, CA 93401 and Engle & Gray Inc. Regional Compost Facility, located at 745 West Betteravia Rd, Santa Maria, CA, which have been selected by the Contractor and approved by the District.

“Approved Processing Facility(ies)” means any one of or any combination of the: Approved Recyclable Materials Processing Facility and/or Approved Organic Materials Processing Facility

“Approved Recyclable Materials Processing Facility” means the Materials Recovery Facility at Cold Canyon Processing Facility, which has been selected by the Contractor and approved by the District.

“Bin” means a Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading and/or rear-end loading Collection vehicle, including Bins with Compactors attached to increase the capacity of the Bin.

“Business Days” mean days during which the District and Contractor offices are open to do business with the public.

“California Code of Regulations” or “(CCR)” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

“CalRecycle” means California's Department of Resources Recycling and Recovery.

“Cart” means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).

“Commercial” shall mean of, from, or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Community-Service Districts (CSD’s)” means the Districts of Heritage Ranch Community Services District, Nipomo Community Services District, Ground Squirrel Hollow Community Services District, California Valley Community Services District, Cayucos Sanitary District, Templeton Community Services District, San Miguel Community Services District, San Miguel Sanitary District, Cambria Community Services District, Oceano Community Services District, Avila Beach Community Services District, and Los Osos Community Services District which have joined the IWMA through a Memorandum of Agreement (MOA).

“Compactor” means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard franchised Roll-Off Compactors serviced by franchised Roll-Off Collection vehicles.

“Complaint” shall mean each written or orally communicated statement made by any Person, whether to Jurisdiction or Contractor, alleging: (1) non-performance, or deficiencies in Contractor’s performance, of its duties under this Agreement; (2) a violation by Contractor of this Agreement; or, (3) an SB 1383 Non-Compliance Complaints required under 14 CCR Section 18995.3.

“Compost” (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product. **“Compostable Plastic”** means plastic materials that meet the ASTM D6400 standard for Compostability.

“County” means the County of San Luis Obispo, a political subdivision of the State of California.

“Customer” means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

“Customer Notice” means the Contractor’s notice to Customer(s) as described in Section 6.12.

“Designated Waste” means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment, and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

“Discarded Materials” means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

“Dispose” or “Disposal” (or any variation thereof) means the final disposition of Solid Waste, or Processing Residue at a Disposal Facility.

“Disposal Facility” means a landfill, or other facility for ultimate Disposal of Solid Waste.

“District General Manager” or “General Manager” means the District staff member or their designee responsible for contract management and maintenance.

“Divert” or “Diversion” (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the District.

“Dwelling Unit” means any individual living unit in a; Single-Family dwelling (SFD) or Multi-Family dwelling (MFD) structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a Hotel or Motel.

“Edible Food” means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

“Effective Date” means the date on which the latter of the two Parties signs this Agreement.

“E-Waste” means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or Disposal.

“Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or District to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

“Federal” means belonging to or pertaining to the Federal government of the United States.

“Food Recovery” means actions to Collect and distribute food for human consumption which otherwise would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

“Food Scraps” means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table Food Waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste.

“Food-Soiled Paper” means Compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, napkins, and pizza boxes. Food -Soiled Paper is a subset of Food Waste.

“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant", or "toxic substances", or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

“Holidays” are defined as New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

“Household Hazardous Waste” or “HHW” means Hazardous Waste generated at Residential Premises within the District. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, Used Motor Oil and Filter, Used Oil Filter, batteries, household batteries, fluorescent bulbs , tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

“Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

“Liquidated Damages” means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 12.3.

“Low Population Area(s)” means the certain regions of the District for which a valid low population waiver is applicable.

“Member Agency” means any jurisdiction that has allocated some or all of its Solid Waste powers to a Solid Waste Joint Powers Authority as defined by the Memorandum of Agreement related to the jurisdiction’s compliance with Applicable Law.

“Occupant” means the Person who occupies a Premises.

“Organic Materials” means Yard Trimmings and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Organic Materials are a subset of Organic Waste.

“Organic Waste” means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

“Party” or “Parties” refers to the District and Contractor, individually or together.

“Process” or “Processing” means to prepare, treat, or convert through some special method.

“Processing Facility” means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, or Reusable Materials for the purpose of making such material available for Recycling or reuse or the facility for the Processing and/or Composting of Organic Materials.

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the District’s Collection program; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable Organic Materials for the District’s Collection program; (iii) Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in the District’s Recyclable Materials or Organic Materials Containers or otherwise managed under the District’s Collection program; and, (iv) Excluded Waste placed in any Container.

“Residential” shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, Townhouse complexes, mobile home parks, and cooperative apartments.

“Residue” means those materials which, after Processing, are Disposed rather than Recycled due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the materials.

“Roll-Off” means an open-top or lidded Container with a capacity of seven (7) to forty (40) cubic yards that is serviced by a franchised Roll-Off Collection vehicle.

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing

methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

“Self-Haul” or “Self-Hauler” means a Person who hauls Discarded Materials, recovered material, or any other material, to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who back-hauls waste, as defined in 14 CCR Section 18982(a)(66)(A).

“Service Level” refers to the size of a Customer’s Container and the frequency of Collection service.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

“State” means the State of California.

“Subcontractor” means a Party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not be considered Subcontractor.

“Ton” or “Tonnage” means a unit of measure for weight equivalent to two thousand (2,000) standard pounds.

“Townhouse” means an attached or semi-attached Dwelling Unit within a group of attached or semi-attached Dwelling Units. A Townhouse shall be considered a Single-Family Dwelling Unit if each unit maintains individual Collection service subscription. A Townhouse shall be considered a Multi-Family Dwelling Unit if the Premise receives centralized, shared, Collection service for all units on the Premise. These shall be the designations regardless of whether the Premises are billed individually or through a central account (e.g., homeowner association, property manager).

“Transfer” means the act of transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

“Transport” or “Transportation” means the act of conveying Collected materials from one location to another.

“Yard Trimmings” means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of Organic Materials resulting from normal yard and landscaping maintenance that may be specified in District Legislation for Collection and Processing as Organic Materials under this Agreement. Yard Trimmings does not include items herein defined as Excluded Waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container. Acceptable Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the District. Contractor shall not add or

remove materials to or from this list without written approval from the District General Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.”

Article 2. Representations and Warranties of the Contractor

2.3 Compliance with Laws and Regulations

- D. Article 2, Section 3 of the Agreement is hereby amended to read as follows:
“Contractor shall comply with all existing and future Applicable Law, as amended.”

2.4 Grant and Acceptance of Agreement

- E. Article 2, Section 4 of the Agreement is hereby amended to read as follows:
“Subject to Section 3.4 (Conditions of the Effectiveness of Agreement), District hereby grants to Contractor the right and privilege to Collect and Dispose all Discarded Materials generated and/or accumulated within District.

District also hereby grants to Contractor an exclusive franchise to Collect, Process and market Recyclable Materials and Organic Materials accumulating at Single Family and Multi-Family Dwelling Units in the District and Commercially Generated Recyclable Materials and Organic Materials that are offered for Collection to Contractor in accordance with this Agreement.

Contractor shall perform all duties required under this Agreement in accordance with all applicable current and future laws, rules, and regulations at rates established by District pursuant to the procedures set forth herein below. For purposes of this Agreement, said laws, rules, and regulations shall include but not be limited to any policy, resolution, or ordinance adopted by a duly constituted governing body of a public agency, including joint powers authorities.

Contractor hereby accepts the Agreement on the terms and conditions set forth in this Agreement.”

Article 4. Scope of Agreement

4.1 Scope of Agreement

- F. Article 4, Section 1 of the Agreement is hereby amended to read as follows:
“Subject to Section 4.2 (Limitations to Scope), the Agreement granted to Contractor shall be exclusive for Discarded Materials, except where otherwise specified or precluded by law. It is specifically understood that the exclusive franchise granted in this Agreement does not include Discarded Materials Collected in roll-off (dumpster type) boxes. Contractor shall have a non-exclusive franchise with respect to Discarded Materials Collected in roll-off boxes.”

4.2 Limitations to Scope

- G. Article 4, Section 2 of the Agreement is hereby amended to read as follows:
“The Agreement for the Collection, processing and marketing of Recyclable Materials and Organic Materials granted to Contractor shall be exclusive (unless otherwise limited in this agreement) except as to the following categories of Recyclable Materials and Organic Materials listed in this Article. The granting of this Agreement shall not preclude the categories of Recyclable Materials listed below from being

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

delivered to and Collected and Transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any person from obtaining any authorization from District that is otherwise required by law:

- A. Source Separated Recyclable Materials separated from Solid Waste by the Waste Generator for which Waste Generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Waste Generator for such Recycling or related services; provided that such separation and Recycling or Disposal are actually performed by the Waste Generator and not by a Subcontractor or other third-party;
- B. Recyclable Materials donated to a charitable, environmental or other non-profit organization; provided, however, that all such Recyclable Materials are substantially separated from non-Recyclable Solid Waste by the Waste Generator;
- C. Recyclable Materials which are separated at any Premises and which are transported by the owner or Occupant of such Premises (or by his/her full-time employee) to a recycling center;
- D. Other non-District Governmental Agencies within the District which can contract for separate Discarded Materials Collection services.
- E. Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Edible Food Recovery efforts in the District.

This Agreement to Collect, Transport, Process, and market Recyclable Materials and Organic Materials shall be interpreted to be consistent with State and Federal laws, now and during the term of the Agreement, and the scope of this Agreement shall be limited by current and developing State and Federal laws with regard to Recyclable Materials and Organic Materials handling, Recyclable Materials and Organic Materials flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the District to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the District shall not be responsible for any lost profits and/or damages claimed by the Contractor as a result of changes in law.”

4.5.2 New Diversion Programs

- H. Article 4, Section 5, Subsection 2 of the Agreement is hereby amended to read as follows:
“Contractor shall present, within 30 days of a request to do so by District, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:
 - a. Collection methodology to be employed (equipment, personnel, etc.);
 - b. Equipment to be utilized (vehicle number, types, capacity, age, etc.);
 - c. Labor requirements (number of employees by classification);
 - d. Type of Containers to be utilized;
 - e. Provision for program publicity/education/marketing;
 - f. Approved Processing Facility to be utilized for Diversion and/or recovery of materials; and,
 - g. A projection of the financial results of the program's operations for the remaining Term of the Agreement in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

4.6 Ownership of Discarded Materials

- I. Article 4, Section 6 of the Agreement is hereby retitled and amended to read as follows:

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

“4.6.1 All Discarded Materials Collected, removed, and Transported by Contractor from the Premises where produced, generated, and/or accumulated pursuant to this Agreement shall be the property and responsibility of Contractor. Notwithstanding the foregoing, Contractor shall have no duty or obligation to Collect any Hazardous Waste or other material that does not meet the definition of Discarded Materials, and ownership of all such non-conforming materials shall remain with the Waste Generator.

4.6.2 Once Discarded Materials are placed in Containers and properly presented for Collection, ownership and the right to possession shall Transfer directly from the Generator to Contractor by operation of this Agreement. Contractor is hereby granted the right to retain, Recycle, Process, reuse, and otherwise use such Discarded Materials or any part thereof, in any lawful fashion or for any lawful purpose consistent with the hierarchy and goals of AB 939. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, Recycle, Process or reuse the Discarded Materials that it Collects. Discarded Materials or any part thereof, which are delivered to a Facility (Approved Processing Facility or Approved Disposal Facility) shall become the property of the owner or operator of the Facility(ies) once deposited there by Contractor. The District may obtain ownership or possession of Discarded Materials placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that District has such ownership or possession unless such written notice has been given to Contractor.”

4.7 District’s Right to Perform Service

J. Article 4, Section 7 of the Agreement is hereby amended to read as follows:

“4.7.1 In the event Contractor fails to Collect, remove, and Process or Dispose of Discarded Materials on a Customer’s regularly scheduled Collection day within twenty-four (24) hours of a request from District or a customer to do so, District may Collect said materials and Contractor shall be liable for all related expenses incurred by District. Such expenses include but are not limited to Disposal, administrative, and legal costs. Contractor shall reimburse District for such expenses as required.

4.7.2 In the event Contractor does not Collect any item or Container of Discarded Materials due to a Customer’s non-compliance with rules and regulations, Contractor shall attach a Customer Notice securely to the item or container not Collected specifying the reasons for non-Collection in accordance with Section 6.12 The tag shall contain Contractor’s name and telephone number”

Article 5. Direct Services

5.1 General

K. Article 5, Section 1 of the Agreement is hereby amended to read as follows:

“5.1.1 The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not.

5.1.2 The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the District are provided reliable, courteous and high-quality Discarded Materials Collection services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor

of the duty of accomplishing all other aspects in the manner provided in this Article, whether such aspects are enumerated elsewhere in the Agreement or not.

5.1.3 Areas that qualify for Low Population waivers as described in Section 6.13 of this Agreement are exempt from certain services, subject to application by the District and approval by CalRecycle.”

5.2 Discarded Materials Services

L. Article 5, Section 2 of the Agreement is hereby retitled and amended to read as follows:

“5.2 Discarded Materials Services

5.2.1 **General** Except as otherwise provided in this Agreement and/or District Code, Contractor shall provide regular weekly Collection of Solid Waste, Recyclable Materials, and Organic Materials for all Single Family Dwelling Units, Multi-Family Dwelling Units, Commercial Premises and other Developed Properties within the Franchise Area at rates established by this Agreement.

Contractor shall provide regular Collection of Recyclable Materials and Organic Materials placed in Containers at the designated Collection locations for Single Family Dwelling Units, Multifamily Dwelling Units and Commercial businesses, all at the Rates established by this Agreement and in Containers that comply with the requirements of this Agreement. Contractor shall Transport all Discarded Materials to the Approved Facility(ies) as specified in Sections 5.7 and 5.11. Residential Recyclable Material and Organic Materials Collection shall be Collected weekly on the same day of the week as Solid Waste Collection service, unless in-yard service is provided, or Customer has received a waiver pursuant to Section 6.13. Commercially Generated Recyclable Materials and Organic Materials Collection shall be on a schedule as determined by Contractor and the Waste Generator.

No later than the Effective Date, Contractor shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, Source Separated Organic Materials, and Solid Waste as specified in this Agreement, using Containers that comply with the requirements of Section 5.6.3.

5.2.2 Contractor shall Collect and remove all Recyclable Materials and Organic Materials placed in Containers (one Container for all commingled Recyclable Materials and one Container for all commingled Organic Materials at the designated Collection locations for Single Family Dwelling Units and Multifamily Dwelling Units) and shall also Collect and remove all Commercially Generated Recyclable Materials and Organic Materials. Recyclable Material Collection shall be weekly on the same day of the week as Solid Waste Collection service.

5.2.3 Contractor recognizes that because of an unusual circumstance, a Single Family Dwelling Unit may generate more Recyclable Material than will fit in the blue Recyclable Materials Container. The excess Recyclable Material may be neatly placed next to the blue Container and Contractor will Collect the excess Recyclable Material at no additional charge. This extra service to a Single Family Dwelling Unit shall be limited to a frequency of once per month and a quantity to an amount that will fit into the existing blue Recycling Materials Container.

5.2.4 Handicapped residents who reside in a Single Family Dwelling Unit shall have the option of placing their Containers near their dwelling, visible from the curb without obstacles (i.e. uneven surfaces, incline/declines, behind gates) and within reasonable distance that do not cause a safety concern and

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

Contractor will Collect their Containers at this location and return the Containers to the same location. To be eligible for this Collection option, residents must present proof of their physical incapacity to Contractor.

5.2.5 Contractor shall provide Solid Waste Collection service, in accordance with this Section of the Agreement. Contractor shall Transport the Solid Waste to the Approved Disposal Facility as specified in Section 5.7. Contractor may allow carpets and textiles to be placed in the Solid Waste Containers as long as lids can close. Prohibited Container Contaminants shall not be Collected in Solid Waste Containers. The Containers shall comply with the requirements of Section 5.6.3.

5.2.6 Contractor shall provide Source Separated Recyclable Materials Collection service, in accordance with this Section of the Agreement.. Contractor shall Transport the Source Separated Recyclable Materials to the Approved Recyclable Materials Processing Facility, as specified in Section 5.11.

5.2.7 Contractor shall provide Organic Materials Collection service, in accordance with this Section of the Agreement. Organic Materials that are to be accepted for Collection in the Organic Materials Collection program include the following: Food Scraps; Food-Soiled Paper; Yard Trimmings, which are defined in Section 1. Contractor shall Transport the Organic Materials to the Approved Organic Materials Processing Facility, as specified in Section 5.11. No later than the Effective Date, Contractor shall implement an Organic Materials Collection program that allows Generators to commingle Food Waste and Yard Trimmings in the Organic Materials Containers to all Residential, Multi-family, and Commercial business with exception to any waivers granted pursuant to Section 6.13.

”

5.3 Recyclable Materials to be Collected

M. Article 5, Section 3 of the Agreement is hereby deleted in its entirety.

5.4 Refusal to Provide Collection Services

N. Article 5, Section 4 of the Agreement is hereby amended to read as follows:

“Contractor may refuse to Collect Recyclable Materials from any participant in the Recycling program who, after reasonable warning by Contractor, fails to properly sort and set out Recyclable Materials. Contractor shall report monthly to District any Customer Notices issued.”

5.6.1 Schedules

O. Article 5, Section 6, Subsection 1 of the Agreement is hereby amended to read as follows:

“To preserve peace and quiet, no Discarded Materials shall be Collected from or within two-hundred (200) feet of Residential Premises between 5:00 P.M. and 6:00 A.M. on any day. Residential Discarded Materials shall be Collected, Monday through Friday on the same day. The one exception is the Contractor may elect to Collect motor oil and filters with a separate vehicle using an on-call program. When the regularly scheduled Collection day falls on Christmas, Collection shall take place on the following regularly scheduled Collection day, which may include a Saturday or Sunday. In the event the Contractor misses the Collection of set out Discarded Materials, the Contractor shall Collect the missed pickups within one (1) Business Day of notification.”

5.6.2.B Specifications

P. Article 5, Section 6, Subsection 2.B of the Agreement is hereby amended to read as follows:

“B. Specifications. All vehicles used by Contractor in providing Discarded Materials Collection services under this Agreement shall comply with all Federal, State, and local requirements for such vehicles as they now exist or may be amended in the future, and be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage and/ or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations. Contractor will, in good faith, consider incorporating natural gas trucks into its Collection fleet, to the extent commercially practicable.”

5.6.3 Discarded Materials Containers

Q. Article 5, Section 6, Subsection 3 of the Agreement is hereby retitled and amended to read as follows:

“5.6.3 Discarded Materials Containers

- A. Contractor shall supply each Single Family Dwelling Unit with a 32, 64 or 96-gallon Container for Solid Waste. The monthly service fee for each size Container is shown in Exhibit A or the most recent Board approved Proposition 218 rates. In addition, each Single Family Dwelling Unit will receive from Contractor a 64 or 96-gallon Container for Recyclable Materials and a 96-gallon Container for Organic Materials. If requested, the customer may switch between a 32-, 64- or 96-gallon Recyclable Materials Container and either a 32-, 64- or 96-gallon Organic Materials Container.
- B. Contractor shall supply each Multi-Family Unit and commercial or governmental agency with appropriately sized Containers for Solid Waste, Recyclable Materials and Organic Materials if needed. Contractor agrees to provide additional Containers, as requested, by all Persons at the rate as shown on Exhibit A. Note that all Multi-Family Units and Commercial or governmental agency customers shall be entitled to the Collection of an unlimited quantity of Recyclable Material with a frequency and container service size at rates approved by the District . Contractor agrees not to limit the specific type of Recyclable Material (such as cardboard only) that can be placed in a Container unless approved by District on a customer by customer basis.
- C. On and after the Effective Date, Contractor-provided Containers shall be clean, and shall comply with the Container standards set forth in Section 5.6.3. All Containers shall display identifying and contact information approved by the General Manager, including telephone number, capacity, and identifying inventory or serial number (carts only).
- D. Contractor shall use the Contractor-provided Collection Containers that are currently located at Customers’ Premises. If Customer is currently utilizing Collection Containers that are were not provided by the Contractor, Contractor shall provide Containers from current inventory.
- E. Solid Waste Cart lids shall be black/grey, all Recyclable Materials Cart lids shall be blue, and all Organic Materials Cart lids shall be green. Solid Waste Bin, Compactor, and franchise Roll-Off lids or bodies shall be black/grey, all Recyclable Materials Bin, Compactor, and franchise Roll-Off lids or bodies shall be blue, and all Organic Materials Bin, Compactor, and franchise Roll-Off lids or bodies shall be green. No later than December 31, 2035, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. The final color and signage, including the in molded graphic or sticker on the Containers shall be approved by the General Manager or his/her designee.
- F. District and Contractor acknowledge that from time to time, Containers become damaged or destroyed District and Contractor also acknowledge that from time to time Containers may be

stolen from the curb or damaged due to normal use. . If an existing Container breaks or is otherwise rendered non-functional on or after the Effective Date, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section 5.6.3. Contractor shall bear the cost of repairing or replacing, as the case may be, Containers that are damaged by Contractor, stolen from the curb, vandalized, graffitied, or otherwise damaged due to no fault of the customer Contractor may charge customers a fee to cover Contractor's costs of repair or replacement of Containers that are damaged due to abuse by or negligence of the customer and to replace Carts that are lost by the customer for any reason other than the theft of the Container from the curb The fee schedule to replace damaged or lost Containers is shown on Exhibit A. Notwithstanding this Section, the Contractor is not required to replace functional Containers, including Containers purchased prior to the Effective Date, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

- G. Per the existing Agreement, Contractor shall ensure a label on the body or lid of each existing Container has been provided to a Customer that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container.
- H. On or before the Effective Date, Contractor shall imprint new Container bodies or lids with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the General Manager for approval.
- I. On or before the Effective Date, Contractor shall imprint new Container bodies or lids with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the General Manager for approval.
- J. All Contractor supplied Containers for shall remain the property of Contractor throughout the Term of this Agreement. Containers damaged due to lack of reasonable care by the customer may be replaced by Contractor, the fee for which shall be the same as for lost or damaged Containers as set forth on Exhibit A. Contractor may recover Containers used by customers for other than their intended purpose."

5.6.4 Litter Abatement

R. Article 5, Section 6, Subsection 4 of the Agreement is hereby amended to read as follows:

"Contractor shall use due care to prevent Discarded Materials from being spilled or scattered during the Collection or Transportation process. If any Discarded Materials are spilled during Collection, Contractor shall promptly clean up all spilled materials. Each Collection vehicle shall carry a broom, shovel and oil spill kit at all times for this purpose."

5.7 Disposal Requirements

S. Article 5, Section 7 of the Agreement is hereby amended to read as follows:

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

“5.7.1 Contractor shall Process and/or Dispose of all Discarded Materials Collected under this Agreement at Contractor's own expense and in accordance with all Applicable Law. Contractor shall be responsible for securing an appropriate location for Disposal of all Solid Waste and Processing of all Recyclable Materials and Organic Materials Collected by Contractor pursuant to this Agreement.

5.7.2 Contractor shall secure within ninety (90) days of the Effective Date of this Agreement, sufficient Disposal site capacity commitment including landfill Disposal site capacity to adequately serve the reasonable anticipated Solid Waste Disposal needs of Contractor's customers. The landfill Disposal site must be designed and constructed in accordance with all applicable State and local laws (e.g., CEQA, California Code of Regulations, etc.). District reserves the right to review and require approval for said Disposal capacity commitments.

5.7.3 If Contractor receives notice from an Approved Facility operator or otherwise finds, during the term of this Agreement, to be prevented from delivering any Discarded Materials to the appropriate Approved Facility, Contractor shall immediately notify, in writing, the General Manager, stating the reason(s) Contractor is prevented, or expects to be prevented, from delivering Discarded Materials to the Approved Facility. Contractor shall expeditiously identify and evaluate alternative sites. An alternative Disposal and/or Processing Facility shall be arranged for and secured by Contractor.

5.7.4 The parties understand and agree that District intends to commence and participate in waste Diversion and resource recovery programs pursuant to regional and/or local implementation of AB 939, AB 341, AB 1826, SB 1383 and other Applicable Laws, as amended or such other programs as may be established by District.

5.7.5 Contractor shall deliver all Solid Waste to the Approved Disposal Facility which collects the San Luis Obispo County AB 939 Tipping Fee Surcharge and Waste Management Program Fund Fee, pursuant to County Resolution No. 90-383. If Contractor delivers Solid Waste to a landfill which does not collect the County Tipping Fee Surcharge and Waste Management Program Fund Fee, Contractor will make, on a monthly basis, the equivalent payment directly to the County's Waste Management Tipping Fee - AB 939 Trust Fund #0159 and Waste Management Tipping Fee Trust - Site Fund # 0160.

5.7.6 Payment of the equivalent fees shall be made to County within thirty (30) days after the end of each calendar month, or prorated portion thereof, in which Contractor delivers waste to an alternate facility. In the event that Payment is not received by County within thirty (30) days after the date specified, then Contractor shall pay a penalty of ten percent (10%) on the outstanding balance, and Contractor shall also pay to County interest on the outstanding balance at a rate of ten percent (10%) per annum, or the maximum legal rate of interest, whichever is greater, from the date of Contractor's failure to pay.

5.7.7 As of March 1, 2007, the Tipping Fee Surcharge for Fund # 0159 is \$3.00 per Ton and the Waste Management Program Fund Fee for Fund # 0160 is \$0.40 per Ton. Payments made by Contractor shall be sent to the County Franchise Coordinator along with an itemized statement regarding how the payment was calculated. Payments shall be adjusted to reflect any future changes in the amount of these fees.”

5.8 Cleaning Containers

- T. Article 5, Section 8 of the Agreement is hereby retitled and amended to read as follows:
“**Cleaning Commercial Bins.**

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

Contractor shall steam clean and refurbish all Commercial Containers at Contractor's own expense every 6 months upon request. Customers desiring more frequent cleaning may arrange additional cleaning with Contractor at a rate established by District, including pick-up, cleaning, and replacement of Container. Contractor shall set a steam cleaning fee and/or a clean Container exchange fee for Organics Materials Containers to Residential Customers requesting such service up to two (2) times per year per Organics Container."

5.9 Clean-Up Days

U. Article 5, Section 9 of the Agreement is hereby amended to read as follows:

"5.9.1 At least twice per year throughout the term of this Agreement, Contractor shall provide, in addition to regularly scheduled service, two clean-up events pursuant to guidelines established by Contractor and approved by District, for Solid Waste placed at the curb for each Single Family Dwelling Unit and at pre-arranged locations for Multi-Family Residential properties in addition to each Customer's normal Collection service. The dates for each event shall be an on-call basis. The Single Family Dwelling Unit and Multi-Family Residential property would contact the Contractor to schedule collection of Discarded Materials, including white goods, bundled yard trimmings, bagged garbage, bulky item, etc.

5.9.3 Contractor shall record by class and weight (in Tons) the Discarded Materials, white goods, etc., Collected during the clean-up events. Contractor shall record the kinds and weights (in Tons) of Discarded Materials Diverted during these clean-ups from the landfill through Recycling, reuse, transformation or other means of Diversion."

5.11 Material Processing

V. Article 5, Section 11 of the Agreement is hereby amended to read as follows:

"5.11.1 Receipt of Recyclable Materials and Organic Materials

The Contractor shall have in place or have made arrangements for all necessary Approved Processing Facilities to receive and accept all deliveries of Recyclable Materials and Organic Materials generated in the District.

5.11.2 Status of Approved Processing Facilities

A. Contractor shall Transport all Discarded Materials to the Approved Facility(ies) and shall Transfer, Process, and Dispose of Discarded Materials in accordance with this Section 5.7 and 5.11. The Approved Facilities shall comply with the following requirements.

i. Approved Recyclable Materials Processing Facility. Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Recyclable Materials Container.

ii. Approved Organic Materials Processing Facility. Contractor's Approved Organic Materials Processing Facility shall be a Facility that Processes Single-Family, Multi-Family, and Commercial Source Separated Organic Materials to recover Organic Waste.

B. The Approved Processing Facilities used by Contractor must be designed and constructed in accordance with all applicable State and local laws (e.g., CEQA, California Code of Regulations, etc.). The Approved Processing Facility(ies) must keep active all existing permits and approvals from Federal, State, regional, County and District agencies necessary for it to operate as a Processing Facility and must be in

full regulatory compliance with all such permits. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from the Processing Facility Subcontractor if necessary) to the District General Manager .

C. The Approved Processing Facility(ies) must be authorized to accept, under its existing permit, and have sufficient uncommitted capacity to accept, all Recyclable Materials and/or Organic Materials delivered to it by, or on behalf of, the District for the term of this Agreement. Contractor shall immediately notify District of any notice of breach or default received from Approved Processing Facility(ies).

5.11.3 Alternative Processing Facility

A. If Contractor is unable to use the Approved Processing Facility(ies) due to an event that meets the requirements for excusing Contractor from performance of this specific obligation as described in Section 12.3, Contractor shall use an Alternative Processing Facility provided that the Contractor provides written notice to District General Manager. Within forty-eight (48) hours of emergency or sudden and unforeseen closure, the Contractor shall provide a written description of the reasons the use of the Approved Facility is not feasible, and the period of time Contractor proposes to use the Alternative Processing Facility. Such a change in Processing Facility shall be temporarily permitted until such time as the District General Manager is able to consider and respond to the use of the proposed alternative Processing Facility. If the use of the proposed Alternative Processing Facility is anticipated to or actually does exceed thirty (30) days in a consecutive twelve (12) month period, the use of such Processing Facility shall be subject to approval by the District General Manager. The District General Manager may, in their sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the use of the proposed Alternative Processing Facility. If the District disapproves the use of the proposed Alternative Processing Facility, the Parties shall meet and confer to determine an acceptable Processing Facility.

B. If Contractor becomes unable to deliver District's Discarded Materials to any Approved Facility due to causes within its control and which could have been avoided by the exercise of due care, Contractor shall arrange for it to be accepted at another Facility, in which case Contractor shall pay for any increased Transportation costs, any differences in the fees charged at such Facility and the fees then in effect under this Agreement. If Contractor's inability to deliver District's Recyclable and/or Organic Materials to the Approved Recyclable Materials and/or Organics Processing Facilities is not due to causes within its control or which could have been avoided by the exercise of due care, then Contractor shall propose alternative Processing and/or Disposal Facilities including all related costs and District shall, after conducting reasonable due diligence with regard to such alternative facility, have the right to approve the alternative to be used. District shall pay for the increased cost of using an alternative facility.

5.11.4 Disposition of Unauthorized Waste

It is understood that Contractor is not authorized and is not required hereunder to Collect and Transport Hazardous Waste or restricted or other waste that is not acceptable or permitted for Disposal at Approved Facilities. In addition, Contractor shall not be required to Collect Containers that are not set out or filled in accordance with, or do not meet Contractor's Collection requirements. Regardless of the reason, when any Discarded Material is not Collected by Contractor, Contractor shall leave a Customer Notice on the Container stating the reasons for Contractor's refusal to Collect the same. Adequate records of the Customer Notices shall be maintained by Contractor and shall be submitted along with Contractor's monthly reports to the District. If Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully Disposed of or released in reportable quantities in District, including on, in, under or about District property, including streets, easements, rights of way and District waste Containers, Contractor shall immediately notify District of the same. If Contractor

discovers Hazardous Waste, or other material that may not be legally accepted, among materials that it has inadvertently accepted, Contractor may either return such materials to the applicable Waste Generator or Dispose of such waste at its own expense and pursue all legal rights and remedies it may have against the Waste Generator(s) of such Hazardous Waste, if the Waste Generator(s) can be identified.

5.12 Disposal

Contractor shall ensure that the Residual from the Recyclable Materials and Organic Materials delivered to any Approved Processing Facility by the Contractor are Disposed of at a permitted Disposal site in full regulatory compliance.

Article 6. Other Services

6.10 Public Education

W. Article 6, Section 10 of the Agreement is hereby deleted and replaced as follows:

“6.8 Public Education.

- A. **Program Objectives.** Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve requirements of Applicable Law including but not limited to, AB 939, AB 341, AB 1826, SB 1383 and other current or future Federal regulations as amended. Accordingly, Contractor agrees to take direction from District to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse, and Recycle Discarded Materials and to cooperate fully with District in this regard.
- B. **Contractor Cooperation and Support for District Educational Efforts.** Contractor acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. Contractor shall cooperate and coordinate with the District General Manager on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. The Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of public education and outreach programs or campaigns conducted by the District.
- C. **Supplemental Education.** Contractor shall obtain approval from the District General Manager on all Contractor provided public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. District shall have the right to request that Contractor include District identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.
- D. **Community Events and Local Activities.** At the direction of District, Contractor shall participate in and promote activities of AB 939, AB 341, AB 1826, and SB 1383 and other current or future Federal, State, or local regulations, as amended and other Solid Waste management techniques at community events and local activities at no additional cost. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of District’s Collection program.
- E. **Bill Inserts.** Contractor agrees to insert and distribute brochures, newsletters, or other information developed by the District as single sheet, double-sided inserts in Contractor’s Customer invoices at no additional charge to the District. Up to letter-sized bill inserts shall be designed and produced by the District with review and comment by Contractor, and final approval by the District. Annually, Contractor shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the District as attachments to Customer invoices at no additional charge to the District. Contractor

shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon the District's, request for such inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.

- F. **Annual Notice of Requirements.** Not less than once per year during each calendar year, Contractor shall prepare and distribute to each Generator in the District a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Contractor to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website."

6.12 Customer Notices (NEW)

- X. Article 6 of the Agreement is hereby amended to add the following new Section:

"A. **General.** If the Contractor observes twenty percent (20%) or more Prohibited Container Contaminants in a Customer's Container or does not Collect any item or Container of Discarded Materials due to a Customer's non-compliance with rules and regulations for proper set-out, Contractor shall attach a Customer Notice, subject to District's approval, securely to the item or Container specifying the identified non-compliance issues. The Customer Notice shall contain Contractor's name, telephone number, and information described below.

The Customer Notice shall, at a minimum:

1. Inform the Customer of the reason for the Customer Notice; and
2. Include the date and time the issue was observed.

In addition, upon the identification of Prohibited Container Contaminants in a Customer's Container as specified in this Section, the Contractor shall provide the Customer with the following information in the Customer Notice, or through another form of communication such as mail, e-mail, text message, or over the phone: Information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in each Container;

1. Inform the Customer of the contaminated materials on this occasion with information that the Contractor may assess contamination Processing fees and/or may not Collect the Container in the future; and,
2. Include photographic evidence of the violation(s).

- B. **Upon identification of Prohibited Container Contaminants.** If the Contractor Collects contaminated Recyclable Materials and/or Organic Materials Containers, Contractor shall either Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with the Solid Waste and Transport the contaminated materials to the Approved Disposal Facility. A Collection of contaminated Recyclable Materials or Organic Materials where the materials are sent to the Approved Disposal Facility may be made with a Solid Waste Collection vehicle, provided that the contaminants may safely and lawfully be Collected as Solid Waste.

- C. **Communications with Customer.** Whenever a Container at the Premises of a Customer is properly set out and is not Collected, Contractor shall contact the Customer on the scheduled Collection by telephone, email, text message, or other verbal or electronic message to explain why the Container was not Collected. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss, and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.
- D. **Contractor Return for Collection.** Upon request from Customer, Contractor shall Collect Containers that received Customer Notices specifying non-Collection within one (1) Working Day of Customer's request. Contractor shall bill Customer for the extra Collection service event ("extra pick-up") at the applicable District-approved Rates only if Contractor notifies Customer of the premium Rate for this service at the time the request is made by Customer.
- E. **Assessment of Contamination Processing Fees.** If the Contractor observes twenty percent (20%) or more Prohibited Container Contaminants and has issued a Customer Notice specifying a Collection, the Contractor may impose a contamination rate approved by the District for that Customer's Service Level, if and only if Contractor has informed the Customer of the potential for a Processing fee pursuant to this Section. The intent of contamination fees is to provide a behavioral tool to educate and prevent Customers from placing Source Separated Discarded Material into the improper designated Container(s). To ensure that assessment of fees are to be used for the intended purposes and not as a form of revenue generation, After the first issuance of a Customer Notice for the observance of Prohibited Container Contaminants in one (1) calendar year, Contractor may issue a fee of ten (10) dollars. After the second observance of Prohibited Container Contaminants in the same calendar year, Contractor may issue a fee of twenty (20) dollars. After the third observance of Prohibited Container Contaminants in the same calendar year, Contractor may issue a fee of thirty (30) dollars. In the fourth and any subsequent observances of Prohibited Container Contaminants in the same calendar year, Contractor may increase the contamination Processing fee by ten (10) dollar increments and may Collect the contaminated materials with the Solid Waste and Transport the contaminated materials to the Approved Disposal Facility, provided that the contaminants may safely and lawfully be Collected as Solid Waste.
- F. **Suspension of Contamination Processing Fee Program.** Contractor agrees that contamination fees shall not exceed one percent (1%) of Contractor's Gross Receipts in any calendar quarter. In the event that contamination fees exceed one percent (1%) of Contractor's Gross Receipts in any calendar quarter, the assessment of contamination fees shall be suspended immediately and indefinitely pending a program assessment by the District and Contractor. Upon program suspension or at the request of the District at any time during the Term of the Agreement, District and Contractor shall meet and confer regarding the application and effectiveness of contamination fees in accomplishing the behavior change. If the program is suspended due to excessive revenue generation, the District may require Contractor to either: i) modify the program parameters; ii) modify the amount of the contamination fee; or, iii) return to the District any funds generated by the contamination fee which exceed one percent (1%) of Contractor's Gross Receipts for a given period of time.
- G. **District Actions upon Identification of Prohibited Container Contaminants.** The District or its designee shall perform SB 1383 activities required for the identification of Prohibited Container Contaminants which includes but is not limited to, record keeping, provision of educational notices and reporting."

6.13 Generator Waivers (NEW)

Y. Article 6 of the Agreement is hereby amended to add the following new Section:

“6.13 Generator Waivers.

- A. General. The District or its designee may grant waivers described in this Section to Commercial or Multi-Family Generators that impact the scope of Contractor’s provision of service for those Customers; provided, the Generator shall continue to subscribe with Contractor for franchised Collection services to the extent such services are not waived by the District. Waivers issued shall be subject to compliance with SB 1383 requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the District.
- B. Generator Waivers.
 - a. De Minimis Waivers. The District or its designee may waive a Multi-Family’s, Commercial business’, or its Property Owner’s obligation to comply with some or all of the Source Separated Recyclable Materials and Organic Materials requirements set forth in this Agreement, SB 1383 Regulations, and the District Municipal Code if the Multi-Family, Commercial business, or its Property Owner provides documentation, or the District has evidence demonstrating one of the following de minimis conditions:
 - i. The Multi-Family’s or Commercial business’ total Solid Waste Collection service is two (2) cubic yards or more per week, and Organic Materials subject to Collection comprises less than twenty (20) gallons per week, per applicable Container, of the Multi-Family’s or Commercial business’ total waste; or,
 - ii. The Multi-Family’s or Commercial business’ total Solid Waste Collection service is less than two (2) cubic yards per week, and Organic Materials subject to Collection comprises less than ten (10) gallons per week, per applicable Container, of the Multi-Family’s or Commercial business’ total waste.
 - b. Space Constraint. The District or its designee may waive a Multi-Family’s, Commercial business’, or its Property Owner’s obligation to comply with some or all of the Source Separated Recyclable Materials or Organic Materials Collection service requirements set forth in this Agreement, SB 1383 Regulations, and District Code, in the event that the Generator qualifies for a space constraint waiver under the District Code.
- C. District Exemptions.
 - a. **Low Population.** Some Collection service requirements are waived for the Low-Population Areas, as described in Section 5.2. Low-population waivers granted by CalRecycle are only valid for a period of up to five (5) years. If, during the Term of this Agreement, the District is granted a waiver that expands the Low-Population Areas, or if the District’s waiver(s) are no longer valid, resulting in a reduction in the number of the Low-Population Areas, any resulting Collection service changes shall be addressed as a change in scope in accordance with Section 5.2.
- D. Waiver Requests. Generators may submit requests for de minimis waivers and space constraint waivers to the District. If a Generator submits a request for a waiver to the Contractor, the Contractor shall refer the Generator to the District. Upon request of the District or its designee, the District, the Contractor shall support the District in the waiver review process by providing requested Customer information. If the District or its Designee grants a waiver to a Generator, the District shall notify the Contractor and Contractor shall update the Customer’s information and Service Level.”

6.14 Procurement of Recovered Organic Waste Products (NEW)

Z. Article 6 of the Agreement is hereby amended to add the following new Section:

“6.14 Procurement of Recovered Organic Waste Products.

Power. To the extent that electricity produced from the Approved Organic Materials Processing Facility qualifies for District's procurement credit under SB 1383, District shall be allocated its proportional share of such qualified electricity usage based on the inbound Tonnage delivered by the District divided by the total inbound Tonnage of the Approved Organic Materials Processing Facility for that same time period.”

Article 7. Payments to District

7.3 AB 939/SB 1383 Reimbursement

AA. Article 7, Section 3 of the Agreement is hereby retitled and amended to read as follows:

“7.3 AB 939/SB 1383 Reimbursement

If requested by District, Contractor shall pay, an AB 939/SB 1383 Reimbursement fee to District each month, to be specified annually by District, and, in addition, if the San Luis Obispo Integrated Waste Management Authority "IWMA" currently implements an AB 939, SB 1383, or Solid Waste Management fee, shall pay that fee directly to the IWMA. Said fees shall be an allowable cost in Contractor's rate application. All AB 939 fees, SB 1383 fees, or Solid Waste Management fees paid to District or IWMA shall be considered a pass-through cost for purposes of rate setting, and, as such if the District or IWMA changes these fees the Contractor's rates shall be adjusted accordingly subject to all Applicable Laws and regulations. The District or the IWMA shall have the right to establish and adjust the AB 939, SB 1383, or Solid Waste Management fee at any time, provided that any changes are considered a pass through cost for the purposes of rate setting, at the time of the change in the AB 939, SB 1383, or Solid Waste Management fee.”

Article 9. Records, Reports and Information, Studies and Hearing Requirements

9.1 Records

BB. Article 9, Section 1 of the Agreement is hereby amended to read as follows:

“9.1.1 Contractor shall maintain records required to conduct its operations, to support requests it may make to District, and to respond to requests of District. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data and records shall be protected and an adequate backup system shall be provided for such data and records. The protection and backup systems shall be subject to approval by District. Contractor shall respond to requests to retrieve records in a timely manner, not to exceed ten (10) days of a request by the District and made available to the District; including any record or documentation that the District in their sole discretion, may deem necessary, for the District to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, SB 1383, and other current or future Federal, State, or local regulations, as amended. Records and data shall be in chronological and organized form that is readily and easily interpreted to facilitate the flexible use of data to structure reports. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor. At the written direction or approval of District, the records and reports to be maintained and provided by Contractor in accordance with this Section, Exhibit G and other Sections of the Agreement may be adjusted in number, format, and frequency, if required to comply with State or Federal regulatory or reporting requirements. Information from Contractor's records and reports can be used to, among other things, determine or evaluate objectives outlined in Exhibit G.1.

9.1.2 The following records shall be maintained for District in form and detail satisfactory to District, relating to:

- i. Customer services and billing;
- ii. Weight of Discarded Materials, especially as related to reducing and Diverting Discarded Materials. Information is to be separated by kind of account;
- iii. Special annual clean-up event results;
- iv. Routes
- v. Facilities, equipment and personnel used;
- vi. Facilities and equipment operations, maintenance and repair;
- vii. Processing and Disposal of Discarded Materials;
- viii. Complaints; and,
- ix. Missed pick-ups

9.1.3 Contractor shall maintain records of Transfer, Diversion and Disposal of all Discarded Materials Collected in District for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Contractor discontinues providing Discarded Materials services to District, Contractor shall provide all records of Diversion and Disposal of all Discarded Materials Collected within District to District within thirty (30) days of discontinuing service. Records shall be in chronological order, and organized in a form readily and easily interpreted.

9.1.4 Records for other programs shall be tailored to specific needs. In general, they shall include:

- i. Plans, tasks, and milestones; and,
- ii. Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.”

9.2 Waste Generation / Characterization Studies

CC. Article 9, Section 2 of the Agreement is hereby amended to read as follows:

“Contractor acknowledges that the District may cause to be performed Solid Waste, Recyclable Materials, and/or Organic Materials generation and Disposal characterization studies periodically to comply with AB 939 requirements. Contractor agrees to participate and cooperate with District and its agents, such as the Integrated Waste Management Authority, to accomplish studies and data collection and prepare reports as needed to determine weights and volumes of Solid Waste generated, Diverted, Disposed, transformed, or otherwise handled/Processed to satisfy AB 939 requirements.”

9.3 Report Formats and Schedule

DD. Article 9, Section 3, Subsection 6 is hereby added to the Agreement as follows:

“9.3.1 Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, pursuant to Exhibit G. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- Determine and set rates, and evaluate the financial efficacy of operations; and
- Evaluate past and expected progress towards achieving goals and objectives; and
- Determine needs for adjustment to programs; and
- Evaluate Customer service and Complaints.

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

- Meet District's current and future reporting requirements to CalRecycle, including AB 939, AB 341, AB 1826, and SB 1383 statutes and corresponding regulations, or any other State or Federal agency statutes and regulations throughout the Term of this Agreement.

9.3.2 District may at no cost to itself request that Contractor provide such additional information in the reports set forth below as District deems necessary or appropriate to meet its needs, including provision of AB 939, AB 341, AB 1826, and SB 1383 report information.

9.3.3 Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall meet requirements outlined in Exhibit G.3 and be subject to approval by District.

9.3.4 Monthly reports shall be submitted with ten (10) calendar days after the end of the report month. Quarterly reports shall be submitted within fifteen (15) calendar days after the end of the quarter. Quarters end on November 30, February 28, May 31, and August 31. Annual reports shall be submitted within forty-five (45) calendar days after the end of the reporting year.

9.3.5 All reports shall be submitted as described in Exhibit G.3 to:

General Manager
Oceano Community Services District
P.O. Box 599
Oceano, CA 93475

9.3.6 Electronic Reporting. Contractor submit all reports to the District, with electronically via e-mail using software acceptable to the District. The District reserves the right to require the Contractor to maintain records and submit the reports required herein through use of the District-selected web-based software platform and/or Microsoft Excel spreadsheet, at the Contractor's expense.

9.3.7 Failure of Contractor to comply with the reporting requirements as set forth in this Section may result in an assessment of Liquidated Damages in accordance with the Liquidated Damages provision in Section 12.3 of this Agreement. Contractor's repeated failure to submit reports, and/or failure to submit reports on time, may be deemed an event of default and may result in the termination of the Agreement at the discretion of the General Manager, in accordance with Section 12 of this Agreement."

9.4 Monthly Reports

EE. Article 9, Section 4 of the Agreement is hereby amended as follows:

"Monthly Reports shall, at a minimum include all data and information described in the list below and in Exhibit G:

1. Solid Waste, Recyclable Materials, and Organic Materials Collected, Transferred, Diverted and Disposed of, by sector (Commercial, industrial, Residential) of Waste Generator-Collected by Contractor in Tons, by month.
2. Complaint summary, for month and cumulative for report year, as above. Summarized by nature of Complaints.
3. Narrative summary assessment of problems encountered and actions taken with recommendations to District for improvement.
4. Customer Service Level information for each Customer or Waste Generator served by Contractor under this Agreement.

5. Contamination Monitoring Report (including Customer Notices) as described in Exhibit G.”

9.7 Additional Reporting (NEW)

FF. Article 9, Section 7 is hereby added to the Agreement as follows:

“9.7 Additional Reporting.

- A. The Contractor shall provide an Annual Report, covering the most recently completed calendar year as described in Exhibit G.
- B. The Contractor shall provide Annual Reports as described in Exhibit G.”

Article 12. Default, Remedies, and Liquidated Damages

12.1.E Failure to Perform

GG. Article 12, Section 1, Subsection 5 of the Agreement is hereby amended to read as follows:

“**Failure to Perform.** If Contractor ceases to provide Solid Waste, Recyclable Materials, or Organic Materials services as required under this Agreement for a period of two (2) days or more, for any reason within the control of Contractor.”

12.3 Liquidated Damages

HH. Article 12, Section 3 of the Agreement is hereby amended to read as follows:

“

12.3.1 General. District finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by District as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

12.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties acknowledge that consistent, reliable Discarded Materials service is of utmost importance to District and that District has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, comply with complaint resolution criteria, or fails to submit required documents in a timely manner, District and its residents will suffer damages and that it is and will be impractical

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

and extremely difficult to ascertain and determine the exact amount of damages that District will suffer. Therefore, without prejudice to District's right to treat such non-performance as an event of default under this Article 12, the parties agree that the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to District that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Recognizing the importance of resolving any failure to meet the service performance standard, the District shall contact Contractor within two (2) days of any failing reported directly to the District.

12.3.3 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth below:

Collection Reliability and Quality

For each failure over five (5) annually to commence service to a new Customer account within seven (7) days after order: \$150.00

For each failure over twenty-four (24) annually to Collect Discarded Materials which have been properly set out for Collection, from an established Customer account on the scheduled Collection day: \$150.00

For each failure to Collect Discarded Materials, which have been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150.00

For each occurrence over five (5) annually of damage to private property: \$250.00

For each occurrence over five (5) of discourteous behavior: \$250.00

For each failure over ten (10) annually to clean up Discarded Materials spilled by Contractor from Containers: \$150.00

For each occurrence over five (5) annually of Collecting Solid Waste, Recyclables or Organic Materials, during unauthorized hours: \$250.00

For each failure to respond to a Customer complaint within twenty-four (24) working hours \$100.00

Timeliness of Submissions to District

REPORTS Any report shall be considered late until such time as District receives a correct and complete report. For each calendar day a report is late, the daily assessment shall be:

Monthly Reports: For each infraction \$25 per day

Annual Reports: For each infraction \$50 per day

SB 1383 Related Events of Non-Performance

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

District wishes to establish standards of performance under the Agreement in each of the six (7) “Performance Areas” listed below. The District General Manager may monitor Contractor’s performance in each of those areas based on the “Specific Performance Measures” within that performance area. In the event that the District Contract Administrator determines that Contractor has failed to meet the performance standard established for any “Specific Performance Measure”, the District may assess Liquidated Damages pursuant to this Article 12 of the Agreement. Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other measure in excess of the acceptable performance level.

	SB 1383 Related Event of Non-Performance	Liquidated Damage
1	Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded Materials to a Facility other than an Approved Facility(ies) for each Discarded Material type under this Agreement.	\$0 for first five (5) failures; \$1,000 per each subsequent failure
2	Failure to Implement Three-Container System. For each occurrence of failing to provide Customers with the three-Container system required by and compliant with Section 5.2 and 5.4 excluding Generators and Customers granted waivers pursuant to Section 6.13 of this Agreement and excluding Generators and Customers that demonstrate compliance with Recycling and Organic Materials Self-Hauling requirements pursuant to District Code and 14 CCR Division 7, Article 12, Article 7.	\$100/ Generator or Customer / occurrence / Day until compliance achieved
3	Failure to Comply with Container Labeling and Colors. For each occurrence of Contractor’s failure to comply with Container labeling and color requirements pursuant to Section 5.6.3 of this Agreement.	\$180 / Container / occurrence
4	Failure to Perform Public Education and Outreach. For each failure to perform any individual education and outreach activity as required and, in the timeframe, specified by this Agreement.	\$180/ occurrence
5	Failure to Submit Reports or Allow Access to Records. For each failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this Agreement. Incomplete and/or inaccurate reports shall be considered a failure to submit until such time as all information in the report has been provided in a complete and accurate form. In the event District determines an errant or incomplete report more than ten (10) Business Days after submittal by Contractor, Contractor shall be given ten (10) Business Days to complete and correct and any pending Liquidated Damages shall be tolled during that period.	\$120/ day

	SB 1383 Related Event of Non-Performance	Liquidated Damage
6	Failure to Issue Customer Notices. For each failure of Contractor Collection personnel to issue contamination notices and maintain documentation of issuance as required by Section 6.12 of this Agreement.	\$100 / Contractor Route / day
7	Improper Fee Issuance. For each fee that is issued to a Generator without prior authorization from District under this agreement.	\$100 /Customer/Day

Liquidated damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages, as described in this Agreement (e.g., twenty-four (24) working hours to respond to a complaint). District may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of Customer complaints.

Prior to assessing Liquidated Damages, District shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of District relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with District. If a meeting is requested, it shall be held by the General Manager or his/her designee. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The General Manager or designee will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of Liquidated Damages. The decision of the General Manager or designee shall be final.

12.3.4 Amount. The General Manager or his/her designee may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

12.3.5 Timing of Payment. Contractor shall pay any Liquidated Damages assessed by District within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, District may proceed against the security fund required by this Agreement or order the termination of this Agreement, or both.”

**Article 13.
Default, Remedies, and Liquidated Damages**

13.6 Subcontracting

- II. Article 13, Section 6 of the Agreement is hereby amended to read as follows:
 “Except as approved in writing by the District, Contractor shall not enter into an agreement to have another Person perform Contractor's duties of this Agreement. Contractor must obtain written agreements with Processing Subcontractors, including the Approved Organic Materials Processing Facility, to the Facility's capacity to Process Discarded Materials. Contractor shall undertake to pay District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed sub-

Contractor, and to review and finalize any documentation required as a condition for approving any such subcontracting agreement..”

Exhibit G. Record Keeping and Reporting

JJ. Exhibit G, Record Keeping and Reporting is hereby included with the Agreement as follows:

EXHIBIT G RECORD KEEPING AND REPORTING

G.1 General

Information from Contractor’s records and reports can be used to, among other things:

1. Determine and set Rates and evaluate the financial efficacy of operations;
2. Evaluate past and expected progress toward achieving the Contractor’s Landfill Disposal reduction or Diversion goals and objectives;
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law;
4. Determine needs for adjustment to programs;
5. Evaluate Customer service and Complaints; and,
6. Determine Customer compliance with AB 341, AB 1826, and SB 1383 statutes and corresponding regulations; and, any subsequent State-mandated landfill disposal reduction, Recycling, recovery, or Diversion statutes, regulations, or other requirements.

G.2 Record Keeping

- A. **General.** Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, and other records related to its performance as shall be necessary to provide reporting required by this Agreement and Applicable Law and to demonstrate compliance with this Agreement and Applicable Law (such as, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations).

Record keeping and reporting requirements specified in this Agreement shall not be considered a comprehensive list of reporting requirements. In particular, this Exhibit is intended to highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define the scope and content of the records and reports that Contractor is required to maintain and report by Applicable Law or this Agreement. Upon written direction or approval of District, the records and reports required by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

Contractor shall maintain adequate records, and corresponding documentation, of information required by this Exhibit, such that the Contractor is able to produce accurate monthly and annual reports, and is able to provide records to verify such reports. Contractor will make these records available and provide to the District any record or documentation necessary for the District to fulfill

obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations; and, other current or future Federal, State, or local statutes and regulations, as amended. Upon request by the District, Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) Business Days from the time of District's request to Contractor.

- B. **Record Retention and Security.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, pursuant to this Exhibit. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor. District reserves the right to require the Contractor to maintain the records required herein through the use of a District-selected web-based software platform, at Contractor's expense. Unless otherwise required in this Exhibit, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination.

Records and data shall be in chronological and organized form and readily and easily interpreted. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. To the extent that Contractor utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

- C. **Compilation of Information for State Law Purposes.** Contractor shall maintain accurate records for its operation, including, but not limited to, Discarded Materials quantities Collected and quantities Transported to or Transferred to each Approved Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor will make these records available and provide to the District, any record or documentation necessary for the District to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and, other current or future local, Federal or State statutes and regulations, as amended.

G.3 Reporting

G.3.1 General

- A. **General Purpose.** Reports are intended to compile recorded data into useful forms of information that can be used by the District. All reports shall be adequate to meet District's current and future reporting requirements to CalRecycle, including AB 939, AB 341, AB 1826, and SB 1383 statutes and corresponding regulations, or any other State or Federal agency statutes and regulations throughout the Term of this Agreement.
- B. **Failure to Report.** Failure of Contractor to comply with the reporting requirements as set forth in this Section may result in an assessment of Liquidated Damages in accordance with the Liquidated Damages provision in Section 12.3 of this Agreement. Contractor's repeated failure to submit reports, and/or failure to submit reports on time, may be deemed an event of default and may result in the termination of the Agreement at the discretion of the General Manager, in accordance with Article 12 of this Agreement.

- C. **Report Format.** Contractor shall submit all reports to the District electronically via e-mail using software acceptable to the District. The District reserves the right to require the Contractor to maintain records and submit the reports required herein through use of the District-selected web-based software platform and/or Microsoft Excel spreadsheet, at the Contractor's expense.
- D. **Submittal Process.** All reports shall be submitted to the District, Department of Public Works, Solid Waste Planning and Recycling Program and the Department of Environmental Health Local Enforcement Agency or as directed by the General Manager. Reports shall be submitted electronically via email or uploaded to a document sharing platform agreed upon by the Parties. District reserves the right to require the Contractor to maintain records and submit the reports required herein through use of a District-selected web-based software platform, at the Contractor's expense.

Monthly reports shall be submitted within fifteen (10) days after the end of the reporting month; and annual reports shall be submitted within forty-five (45) days after the end of the reporting year.

G.3.2 Monthly Reports

Monthly reports shall be submitted by Contractor to District and shall include the following information pertaining to the most recently-completed calendar month. In addition, each monthly report shall include a year-to-date summary page that includes the data submitted from the monthly report(s) submitted in the calendar year prior to the submittal of the current monthly report. Contractor shall report the information included in the following subsections.

A. Tonnage Report

- 1. Contractor shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Contractor, all of which shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocol. Tonnage shall be reported separately by:
 - a. Material type, which shall include, at a minimum, separate reporting of Source Separated Recyclable Materials, Source Separated Organic Materials, Solid Waste, and any other type of Discarded Material separately Collected by Contractor (including, but not limited to used oil, mixed C&D, dirt, rock, metals, cardboard, wood waste, salvageable materials, etc.);
 - b. Customer/sector type (Single-Family, Multi-family, Commercial franchised Roll-off, franchised C&D); and,
 - c. Approved Facility and Facility type.
- 2. Report Residue level and Tonnage for all Discarded Materials Processed, listed separately by material type Collected and Approved Facility(ies) used.
- 3. Source Separated Recyclable Materials Tonnage Marketed, by commodity, and including average commodity value for each, and Processing Residue Tonnage Disposed, listed separately by material type Collected and Approved Facility(ies) used.
- 4. Documentation of all Discarded Materials exported out of State, as provided in 14 CCR Sections 18800 through 18813.

B. Collection and Subscription Report

- 1. Number of Containers at each Service Level by Customer Type and program, including:

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

- a. A summary of the total gallons of Cart service, cubic yards of Bin service, and pulls; and cubic yards or Tons of franchised Roll-Off and Compactor service by Customer Type.
 - b. Calculation of the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
2. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Cart, Bin, and franchised Roll-Off Service Level listed separately for Single-Family, Multi-Family, and Commercial and separately for each type of Discarded Material; and,.

C. Contamination Monitoring Report

The Contractor shall submit the following information regarding Contractor conducted contamination monitoring Customer Notices conducted pursuant to Section 6.12 of this Agreement:

1. Description of the Contractor's process for determining the level of contamination;
2. Summary report of Customer Notices issued, which for each notice shall include the date of issuance, Customer name, and service address.
3. A record of each inspection and contamination incident, which shall include, at a minimum:
 - a. Name of the Customer
 - b. Address of the Customer
 - c. The date the contaminated Container was observed
 - d. The staff who conducted the inspection
 - e. The total number of violations found and a description of what action was taken for each
 - f. Copies of all contractor notices issued to Generators with Prohibited Container Contaminants
 - g. Any photographic documentation or supporting evidence.
4. Any other information reasonably requested by the District or specified in contamination monitoring provisions of this Agreement.

D. Customer Service Report

Contractor shall maintain a record of all SB 1383 Regulatory non-compliance Complaints as defined in 14 CCR Section 18995.3 and responses and submit the following information:

1. Total number of SB 1383 non-compliance Complaints received and total number of SB 1383 non-compliance Complaints investigated
2. Copies of documentation recorded for each SB 1383 non-compliance Complaint received, which shall at a minimum include the following information:
 - a. The SB 1383 non-compliance Complaint as received;
 - b. The name and contact information of the complainant, if the SB 1383 non-compliance Complaint is not submitted anonymously;
 - c. The identity of the alleged violator, if known;

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

- d. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant;
 - e. Any relevant photographic or documentary evidence submitted to support the allegations in the SB 1383 non-compliance Complaint; and,
 - f. The identity of any witnesses, if known.
3. Copies of all SB 1383 non-compliance Complaint reports submitted to the District.
 4. Copies of all investigation reports submitted to the District which shall include at a minimum:
 - a. The SB 1383 non-compliance Complaint as received;
 - b. The date the Contractor investigated the SB 1383 non-compliance Complaint;
 - c. Documentation of the findings of the investigation;
 - d. Any photographic or other evidence collected during the investigation; and,
 - e. Contractor's recommendation to the District on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Contractor's investigation.

E. Education Program Report

The monthly status of activities identified in the annual public education plan described in Section 6.10 of this Agreement.

G.3.3 Annual Reports

In addition to the monthly reporting requirements in this Exhibit, the Contractor shall provide an Annual Report, covering the most recently-completed calendar year, in accordance with the format and submittal requirements of this Exhibit. The Annual Report shall include the information in the following subsections.

A. Collection and Subscription Report

1. A summary of all data provided in the Tonnage report section, including quarterly and annual totals and averages.
2. The type(s) of Collection service(s) provided; and as required by law, a list of all hauler routes serviced, and a record of the addresses served for the District.
3. A summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Contractor for service, listed separately by Service Level and Container type (Cart, Bin, and Roll-Off service), separately by Single-Family, Multi-Family, and Commercial Customers, and separately for each type of Discarded Material.

B. Processing Facility Report

1. Approved Organic Materials Processing Facility: Contractor shall provide documentation demonstrating the actual percent of the material removed for landfill Disposal that is Organic Waste is less than the percent specified in 14 CCR Section 17409.5.8(c)(2) or 17409.5.8(c)(3), whichever is applicable, and, if applicable, demonstrations compliance with the digestate handling requirements specified in 14 CCR Section 17896.5.

Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

2. Temporary Equipment or Operations Failure: If the Contractor is granted a Processing facility temporary equipment or operational failure waiver, in accordance with Sections 5.7 and 5.11 of the Agreement, the Contractor shall include the following documents and information:
 - a. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
 - b. Copies of any notifications sent to the District pursuant to Section 5.11 of the Agreement, and copies of District notices to Contractor pursuant to Section 5.11 of the Agreement;
 - c. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,
 - d. A record of the Tons of Organic Materials, Recyclable Materials, and Solid Waste redirected to an Alternative Facility or Disposed at an Approved Disposal Facility as a result of the waiver, recorded by Collection vehicle or Transfer vehicle number/load, date, and weight.

C. Compliance Monitoring and Enforcement Report

1. A summary of the total number of SB 1383 Regulatory non-compliance Complaints that were received and forwarded to the District or its designee.
2. The total number of Prohibited Container Contaminant Customer Notices and Contamination Process Fees issued, categorized by type of Generator.
3. The number of violations that were resolved, categorized by type of Generator.
4. Copies of all Prohibited Container Contaminant Customer Notices and Contamination Processing Fees issued and educational materials issued to non-compliant Generators.

C. Public Education and Outreach Report

1. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with this Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
2. A record of the date and to whom the information was disseminated or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
3. For any mass distribution through mailings or bill inserts, the Contractor shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
4. A copy of electronic media, including the dates posted of: social media posts, e-mail communications, or other electronic messages.
5. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
6. The annual public education plan required by Section 6.10 of the Agreement for the upcoming then-current calendar year. For example, Contractor submittal of a 2021 annual report in February 2022 shall include Contractor submittal of the annual public education plan for calendar year 2022.

G.3.4 Additional Reports

- A. **Upon Request Reporting.** District reserves the right to request additional reports or documents in the case of unforeseen legislative or regulatory changes, requests from CalRecycle, or additional requirements imposed upon the District. The Contractor shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the General Manager, which shall not to exceed ten (10) days.
- B. **AB 901 Reporting.** At District option, District may require that Contractor provide the District with the aggregate Tonnage data related to AB 901 reporting that the District needs for its SB 1383 reporting, to the extent available to Contractor within five (5) Business Days of District request, or mutually agreed time. At the District's option, the District may review specific Customer information; however, District shall not be permitted to make copies or take records specific to Customer information.
- C. **Facility Capacity Planning Information.** To the extent such information is available to Contractor, District may require Contractor to provide District with information of available Organic Waste Processing capacity for any Approved Processing Facilities, where available capacity may include identification of monthly Tons of additional Organic Waste such Approved Facilities have the ability to receive within permitted limits. Contractor shall respond to District within sixty (60) days of District's request for information regarding available new or expanded capacity, to the extent such information is available to Contractor and, at District's option, may be required to submit reports on a more regular basis (such as monthly, quarterly, or annually). If Contractor uses a Subcontractor to perform some or all of the Facility-related services required by this Agreement, Contractor shall use commercially reasonable efforts to secure any District-requested Facility capacity planning information from its Subcontractor(s). The annual Facility capacity planning report shall comply with the following:
1. Include reports of current throughput and permitted capacity and available capacity for Organic Materials Processing for any Facility in the District that Processes Organic Materials. Existing capacity may include identification of monthly Tons of additional Source Separated Recyclable Materials, Source Separated Organic Materials, and/or Solid Waste capacity such Facility has the ability to receive within permitted limits.
 2. Include description of potential new or expanded Processing capacity at those Facilities, operations, and activities for Processing of Organic Materials, including information about throughput and permitted capacity necessary for planning purposes.
 3. Be submitted using a form or format approved by the General Manager.

Oceano Community Services District / South County Sanitary Service, Inc.
Second Amendment to the Amended and Restated Solid Waste Collection Franchise Agreement

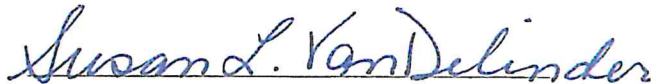
IN WITNESS WHEREOF, District and Contractor have executed this Second Amendment to Amend and Restate the Solid Waste, Recyclable Materials, ND Organics Materials Collection Franchise Agreement on the day and year herein above set forth below.

DISTRICT:

CONTRACTOR:



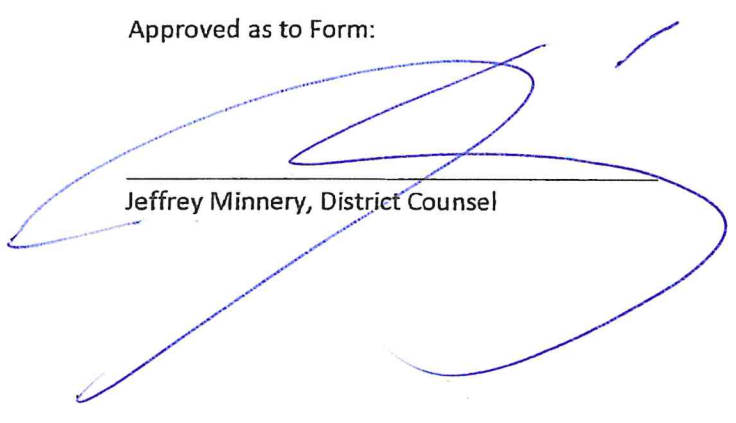
Karen M. White, President
Board of Directors of the Oceano Community
Services District



Susan VanDelinder, Division Vice President
South County Sanitary Service, Inc

Date: 6/8/2022

Approved as to Form:



Jeffrey Minnery, District Counsel