

AMENDED AND RESTATED
SOLID WASTE COLLECTION FRANCHISE AGREEMENT

THIS AMENDED AND RESTATED SOLID WASTE COLLECTION FRANCHISE AGREEMENT (this “**Agreement**”) is entered into on the ___th day of _____, 2010, by and between 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 (“**District**”) and SOUTH COUNTY SANITARY SERVICE, INC., a California corporation (“**Contractor**”) for Contractor to provide Solid Waste, Recycling and Greenwaste services within the boundary of District and is entered into with the following Recitals:

RECITALS

WHEREAS, District and Contractor are parties to that certain Solid Waste Franchise Agreement, dated April 28, 1999 (the “**Prior Agreement**”);

WHEREAS, District and Contractor have entered into subsequent amendments, modifying certain provisions of the Prior Agreement;

WHEREAS, District and Contractor now desire to further amend and restate, in its entirety, the Prior Agreement, as set forth herein;

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“**AB 939**”) Division 30 of the California Public Resources Code, commencing with Public Resources Code Section §40000, has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Recyclable Materials handling and services within their jurisdictions;

WHEREAS, District has determined that an Agreement granted to a private company for the Collection, processing and marketing of commercial and residential Recyclable Materials is the most effective and efficient way to collect and divert commercial and residential Recyclable Materials within District;

WHEREAS, District declares its intention of maintaining reasonable rates and high quality service for Solid Waste Service and the Collection, processing, and marketing of Recyclable Materials;

WHEREAS, Contractor is investing several million dollars to expand the Cold Canyon Landfill and Materials Recovery Facility to provide the additional capacity necessary to serve District in the Collection and processing of Solid Waste for the term of this Agreement; and

WHEREAS, by this Agreement, the parties wish to set forth the terms and conditions of Contractor’s provision of Solid Waste Collection and disposal.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the adequacy of which is hereby acknowledged, it is hereby agreed by and between District and Contractor as follows:

ARTICLE 1 DEFINITIONS

1.1 “**AB 939**” means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.

1.2 “**Affiliate**” means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect common ownership interest or common management shall be deemed to be “**Affiliated with**” Contractor and included within the term “**Affiliates with**” Contractor and included within the “**Affiliates**” as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

1.3 “**Agreement**” means this residential and commercial Amended and Restated Solid Waste Collection Franchise Agreement (including all exhibits and attachments, and any amendments thereto) between District and Contractor.

1.4 “**Billings**” means any and all statements of charges for services rendered by Contractor pursuant to this Agreement.

1.5 “**Board**” means the Board of Directors of District.

1.6 “**California Integrated Waste Management Act of 1989**” means Public Resources Code, §40000 et seq.

1.7 “**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.

1.8 “Collect” or “Collection” means to take physical possession, transport, and remove Solid Waste and Recyclable Materials within and from District.

1.9 “Commercially Generated Recyclable Materials” means Recyclable Materials generated at commercial, governmental and/or industrial property and separated by the Waste Generator for Collection.

1.10 “Container” means any waste wheeler can or bin used for Collection and storing of Solid Waste or Recyclable Materials before removal.

1.11 “Contractor” means South County Sanitary Service, Inc. a California corporation, and its officers, directors, employees, agents, companies and subcontractors where applicable.

1.12 “Environmental Laws” means all federal and state statutes, county, local and District ordinances and regulations concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC 6901 et seq.; the Federal Clean Water Act, 33 USC 1251 et seq.; the Toxic Substances Control Act, 15 USC 2601 et seq.; the Occupational Safety and Health Act, 29 USC 651 et seq.; the California Hazardous Waste Control Law, California Health and Safety Code §25100 et seq.; the California Hazardous Substances Account Act, California Health and Safety Code §25300 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; currently in force and as hereinafter amended, and all rules and regulations promulgated there under.

1.13 “Facility” means any plant or site, owned or leased and maintained and/or operated or used by Contractor for the purposes of performing the duties to fulfill this Agreement.

1.14 “Fiscal Year” means the period commencing July 1 and concluding June 30.

1.15 “Greenwaste” includes grass clippings, leaves, weeds, brush, wood, Christmas Trees and branches.

1.16 “Gross Revenues Collected” means any and all revenue or compensation actually collected by Contractor from customers under this Agreement for the exclusive Collection, transportation, processing, Recycling and disposal of Solid Waste, Recyclables, and Green Waste within District, in accordance with Generally Accepted Accounting Principals (“GAAP”), net of Franchise Fees and AB 939 fees. The term Gross Revenues Collected, for purposes of this Agreement, shall not include any: (a) District, or other federal, state, or local taxes or surcharges; or (b) any revenues generated from the sale of Recyclables or any Recycling rebates received from the State.

1.17 “Hazardous Waste” means any discarded material or mixture of materials, which is toxic, corrosive, flammable, radioactive or which, because of its quantity, concentration, physical, chemical or infectious characteristics may do harm to either humans, animals or the

environment, or as defined in Section 2, Chapter 6.5 §25117 of the Health and Safety Code and Public Resources Code §40141.

1.18 “Materials Recovery Facility” means a permitted Facility where Solid Waste or Recyclable Materials are sorted, processed, transferred or separated for the purposes of Recycling or reuse.

1.19 “Multifamily Dwelling Unit” means any Premises, other than a Single Family Dwelling Unit, used for residential purposes, irrespective of whether residence therein is transient, temporary or permanent.

1.20 “Owner” means the person(s) holding legal title to the real property constituting the Premises to which Solid Waste collection service is to be provided under this Agreement.

1.21 “Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Luis Obispo, local agencies, cities and special purpose districts.

1.22 “Premises” means any land or building in District where Solid Waste is generated or accumulated.

1.23 “Recyclable Materials” or “Recyclables” 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, cardboard, chipboard, magazines, mixed paper (including magazines, phone books and junk mail) and motor oil and filters (separately collected). Greenwaste is included in this definition.

1.24 “Recycling” means the process of separating, 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.

1.25 “Related Party Entity” means any Affiliate that has financial transactions with Contractor.

1.26 “Residential Recyclable Materials” means Recyclable Materials generated at Single Family Dwelling Units and separated by the Waste Generator for Collection.

1.27 “Single Family Dwelling Unit” means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex or triplex in all cases in which there is separate or individual Solid Waste Collection services.

1.28 “Solid Waste” shall mean all putrescible and nonputrescible solid, semisolid, and liquid wastes, as further defined in Section 40191 of the Public Resources Code, excluding, however,

Hazardous Waste (except household Hazardous Waste inadvertently commingled with Solid Waste).

1.29 “**Term**” means the term of this Agreement, as provided for in Article 3 (Term of Agreement).

1.30 “**Transfer Station**” includes those facilities used to receive Solid Waste, temporarily store, separate, convert, or otherwise process the materials in the Solid Waste, or to transfer the Solid Waste directly from smaller to larger vehicles for transport and those facilities used for transformations.

1.31 “**Waste Generator**” means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

2.1 **Contractor Status.** Contractor and District hereby agree and confirm that Contractor’s relationship with District shall be as an independent contractor. No partnership is intended by this Agreement, nor shall Contractor act or represent itself as an agent or employee of District.

2.2 **Contractor Authorization.** Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Contractor have the authority to do so.

2.3 **Compliance With Laws and Regulations.** Contractor shall comply with all existing and future District, county, State, and Federal laws, including all Environmental Laws.

2.4 **Grant and Acceptance of Agreement.** Subject to Section 3.4 (Conditions of the Effectiveness of Agreement), District hereby grants to Contractor the exclusive right and privilege to collect and dispose all Solid Waste generated and/or accumulated within District. Subject to Section 4.2 (Limitations to Scope), District also hereby grants to Contractor the exclusive right and privilege to collect Recyclable Materials including Greenwaste generated and/or accumulated at Single Family and Multi-family dwelling units in District and Commercially Generated Recyclable Materials including Greenwaste 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 Federal, State, and local laws and regulations at rates established by this Agreement and by District pursuant to the procedures set forth herein. 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 and districts. Contractor hereby accepts this Agreement on the terms and conditions set forth in this Agreement.

2.5 Serve Without Interruption. Contractor shall perform all duties throughout the term of this Agreement without interruption.

2.6 Permits and Licenses. Contractor shall procure, and keep in full force and affect, all permits and licenses, pay all charges and fees, and give all notices as necessary.

2.7 Preservation of District Property. Contractor shall pay to District, on demand, the cost of all repairs to public property made necessary by any of the operations of Contractor under this Agreement directly caused by Contractor.

2.8 Enforcement of Exclusivity of Franchise. District may, in its sole discretion, enforce the exclusivity provisions of this Agreement against third-party violators, taking into account the cost of doing so and other factors. Contractor may independently enforce the exclusivity provisions of this Agreement against third-party violators, including but not limited to seeking injunctive relief and/or damages, and District shall use good-faith efforts to cooperate in such enforcement actions brought by Contractor.

ARTICLE 3 TERM OF AGREEMENT

3.1 Effective Date. The effective date of this Agreement shall be the first date set forth in this Agreement (the “Effective Date”).

3.2 Term of Agreement. The term of this Agreement shall be fifteen (15) years commencing on the Effective Date and expiring fifteen (15) years thereafter, unless extended by the parties as provided in Section 3.3 (Option to Extend). In the event of a change of law which would render the collection and disposal services to be implemented under this Agreement illegal, District reserves the right to terminate this Agreement upon the giving of a six (6) month prior written notice of District’s election to so terminate this Agreement.

3.3 Option to Extend. District shall have the sole option to extend this Agreement up to thirty-six (36) months in periods of at least twelve (12) months each. If District elects to exercise this option, it shall give written notice not later than one hundred eighty (180) days prior to the initial termination date, or, if one extension has been exercised, one hundred eighty (180) days prior to the extended termination date. The terms and conditions of this Agreement shall be applicable during said extension option unless the parties mutually agree upon any changes.

3.4 Conditions to Effectiveness of Agreement. The obligation of District to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by District.

3.4.1 Accuracy of Representations. The representations and warranties made by Contractor throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.

3.4.2 Absence of Litigation. There is no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

3.4.3 Furnishing of Insurance and Performance Bond. Before the effective date of this Agreement, Contractor shall provide proof of insurance in the form, coverages, and amounts specified in Section 10.2 (Insurance) and the performance bond set forth in Section 10.3 (Performance Bond).

3.4.4 Effectiveness of Board Action. District's approving this Agreement shall become effective pursuant to California law on or prior to the effective date of this Agreement.

ARTICLE 4 SCOPE OF AGREEMENT

4.1 Scope of Agreement. Subject to Section 4.2 (Limitations to Scope), this Agreement granted to Contractor shall be exclusive for Solid Waste and Recyclable Materials, including Greenwaste, except where otherwise precluded by law. This Agreement does not include construction and demolition debris; however, District reserves the right to add construction and demolition debris, at its sole discretion, at some point in the future. In addition, this Agreement does not include either animal waste or remains from slaughterhouse or butcher shops or by-products of sewage treatment, including sludge, sludge ash, grit and screening.

4.2 Limitations to Scope. This Agreement for the Collection, processing and marketing of Recyclable Materials granted to Contractor shall be exclusive except as to the following categories of Recyclable Materials listed in this Section. The granting of this Agreement shall not preclude the categories of Recyclable Materials listed below from being 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:

4.2.1 Recyclable Materials separated from Solid Waste by the Waste Generator and 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;

4.2.2 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

4.2.3 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;

4.2.4 Other non-District Governmental Agencies within District which can contract for separate Solid Waste and Recycling services.

This Agreement to Collect, transport, process, and market Recyclable Materials shall be interpreted to be consistent with State and Federal laws, now and during the term of this Agreement, and the scope of this Agreement shall be limited by current and developing State and Federal laws with regard to Recyclable Materials handling, Recyclable Materials flow control, and related doctrines. In the event that changes in law limit the ability of District to lawfully provide for the scope of services as specifically set forth herein, Contractor and District agree to work in good faith to amend the scope of this Agreement so as to comply with such changes in law, and District shall not be responsible for any lost profits and/or damages claimed by Contractor as a result of changes in law.

4.3 **Administration of Agreement.** The General Manager or his/her designee shall administer this Agreement and shall supervise Contractor compliance with this Agreement's terms and conditions.

4.4 **Use of District Streets.** Contractor shall have the right and privilege to operate Collection vehicles and equipment on any and all streets, public ways, rights-of-way, or easements of District, as necessary to provide the services contracted for in this Agreement.

4.5 **District Request to Direct Changes.**

4.5.1 **General.** District may request Contractor to perform additional services (including new diversion programs, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new Collection methods, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes that District may request. Contractor shall present, within thirty (30) days of a request to do so by District, a proposal to provide additional or expanded diversion services pursuant to the terms of Section 4.5.2 (New Diversion Programs). Contractor shall be entitled to proceed with an adjustment in its compensation in accordance with Section 8.4 (Special Interim Rate Review), for providing such additional or modified services.

4.5.2 **New Diversion Programs.** Contractor shall present, within thirty (30) days of a request to do so by District, a proposal to provide additional or expanded diversion or other services. The proposal shall contain a complete description of the following:

- (A) Collection methodology to be employed (equipment, manpower, 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) Materials Recovery 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 this Agreement in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

4.5.3 District's Right to Acquire Services. If pursuant to Section 4.5.2 (New Diversion Programs), Contractor and District cannot agree on terms and conditions of such new services in ninety (90) days from the date when District first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that District may permit Persons other than Contractor to provide such services.

4.6 Ownership of Solid Waste and Recyclable Materials.

4.6.1 All Solid Waste 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 Solid Waste, and ownership of all such non-conforming materials shall remain with the Waste Generator.

4.6.2 Once Recyclable 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 Recyclable 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 Recyclable Materials that it Collects. Recyclable Materials or any part thereof, which are delivered to a Facility (processing Facility, transformation Facility, transfer station, or Material Recovery Facility) shall become the property of the owner or operator of the Facility(ies) once deposited there by Contractor.

4.7 District's Right To Perform Service; Tagging of Improper Set-Outs.

4.7.1 In the event Contractor fails to Collect, remove, and dispose of Solid Waste or Recyclable Material 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, or may contract with a third-party contractor to 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. Nothing in this Section 4.7.1 shall release or excuse Contractor from its obligation to collect, remove, and dispose of the Solid Waste or Recyclable Material if District cannot or does not remove the materials.

4.7.2 In the event Contractor does not Collect any item or Container of Solid Waste, Recyclable Materials or Greenwaste material due to a customer's non-compliance with rules and regulations for proper set-out, if possible Contractor shall attach a tag securely to the item or container not Collected specifying the reasons for non-collection. The tag shall contain Contractor's name and telephone number.

4.8 **Contractor as Arranger.** District and Contractor mutually agree that District's granting of this franchise shall not be construed as District "arranging for" the Collection and disposal of Solid Waste or Recyclables within the meaning of CERCLA. The parties further mutually agree that the granting of this Agreement to Contractor by District shall be construed as an action whereby Contractor is granted, and accepts the rights, responsibilities, benefits and liabilities of collection and disposal of Solid Waste. Commencing on the effective date of this Agreement and, to the extent that Contractor's performance under this Agreement requires the collection and disposal of Solid Waste, and may be construed as "arranging for" collection and disposal of Solid Waste within the meaning of CERCLA, such actions shall be the sole responsibility of Contractor and Contractor expressly agrees to be solely responsible for all such actions.

4.9 **Annexation and Detachment.** Contractor shall automatically extend and/or modify all services herein described to any area annexed to or detached from District, except that, in the case of annexations, District may permit a firm franchised by the County of San Luis Obispo before the annexation to continue serving the area for a period not to exceed five (5) years or as otherwise required by the County franchise agreement or as otherwise required by a duly authorized governmental agency with appropriate jurisdiction.

ARTICLE 5 DIRECT SERVICES

5.1 General.

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, as set forth in this Agreement. 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 District are provided reliable, courteous and high-quality Solid Waste and Recycling 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 this Agreement or not.

5.2 Solid Waste, Recycling and Greenwaste Services.

5.2.1 Contractor shall provide regular weekly Collection of Solid Waste for all places and Premises within District, or such other level of service as may be determined by District with the consent of Contractor and at rates established by this Agreement. Contractor shall provide more frequent Collection services at rates established by this Agreement for those Premises within District that generate larger volumes of Solid Waste.

5.2.2 Contractor shall Collect and remove all Recyclable Materials including Greenwaste placed in Containers (one Container for all commingled Recyclable Materials and a second Container for Greenwaste) 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 including Greenwaste, all at the rates established by this Agreement. Residential Recyclable Material and Greenwaste Collection shall be weekly on the same day of the week as Solid Waste Collection service, unless in yard service is provided. Commercially Generated Recyclable Materials Collection shall be on a schedule as determined by Contractor and the Waste Generator.

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 Family Dwelling Units shall have the option of placing their Containers near their dwelling, visible from the curb and 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.

5.3 Recyclable Materials To Be Collected. Materials to be collected are to include but not be limited to: newspaper, aluminum, tin and bi-metal cans, clear and colored glass containers, all plastic containers, corrugated cardboard, mixed paper (including white and colored ledger paper, chipboard, junk mail, magazines and phone books) and motor oil and filter (which shall be collected separate from the Recycling Container). In addition, Greenwaste will also be Collected in a separate Container.

5.4 Refusal to Provide Collection Services. Contractor may refuse to Collect Recyclable Materials or Greenwaste and shall not be obligated to continue to provide Container(s) to any participant in the Recycling or Greenwaste program who, after reasonable warning by Contractor, fails to properly sort and set out Recyclable Materials or Greenwaste, including excessive contamination. Contractor shall report monthly to District any warning notices issued.

5.5 Marketing and Sale of Recyclable Materials. Contractor shall be responsible for the marketing and sale of all Recyclable Materials including Greenwaste Collected pursuant to this Agreement. All revenues from the sales of these materials shall be retained by Contractor.

5.6 Operations.

5.6.1 Schedules. To preserve peace and quiet, no Solid Waste, Recyclable Materials including Greenwaste 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 Solid Waste, Recyclable Materials including Greenwaste shall be Collected, Monday through Friday on the same day. The one exception is 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. In the event Contractor misses the Collection of properly set out Solid Waste, Recyclables, or Greenwaste Contractor shall collect the missed pickups within one (1) business day of notification.

5.6.2 Vehicles.

(A) General. Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to perform the work required by this Agreement and in strict accordance with its terms. Contractor shall have available on Collection days sufficient back-up vehicles in order to respond to complaints, emergencies, or Contractor's equipment failure.

(B) Specifications. All vehicles used by Contractor in providing Solid Waste, Recyclable Materials, and Greenwaste 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, including all applicable air emissions requirements, and shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage 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.

(C) Condition

(1) Contractor shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

(2) Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly and represent a safety hazard shall be taken out of service until they are repaired and do operate properly and safely. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to District upon request.

(3) Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

(4) Contractor shall arrange all vehicles and other equipment in safe and secure location(s) in accordance with all applicable zoning regulations.

(D) Vehicle Identification. Each truck shall display in a prominent place Contractor's name and logo.

(E) Operation. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

5.6.3 Solid Waste, Recycling and Greenwaste 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**. In addition, each Single Family Dwelling Unit will receive from Contractor a 64 or 96-gallon Container for all commingled Recyclable Materials except Greenwaste and a 96-gallon Container for Greenwaste. If requested by customer, Contractor shall provide to the customer a 32-, 64-, or 96-gallon Recyclable Container and either a 32- or 96-gallon Greenwaste Container.

(B) Contractor shall supply each Multi-Family Unit and commercial or governmental agency with appropriately sized Containers for Solid Waste, commingled Recyclables and Greenwaste 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 free Collection of an unlimited quantity of Recyclable Material picked up twice per week. 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) For residential customers, all Solid Waste Containers shall be brown or grey, all Recyclable Materials Containers shall be blue and all Greenwaste Containers shall be green. For commercial customers, all Solid Waste Containers shall be grey, all Recyclable Materials Containers shall be blue and all Greenwaste Containers shall be green. Within the first six (6) months of this Agreement, Contractor shall replace any existing Container that is not the proper color with a Container that is the proper color that is either a new Container or a Container that is in the existing Contractor's inventory. Any new Containers for Recyclable Materials shall include an in molded graphic or sticker which provides instructions to the Waste Generator. 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.

(D) 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. 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.

(E) All Contractor supplied Containers for Solid Waste, Recyclables, and Greenwaste shall remain the property of Contractor. 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. Contractor shall use due care to prevent Solid Waste or Recyclable Materials from being spilled or scattered during the Collection or transportation process. If any Solid Waste or Recyclable 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.

5.6.5 Personnel.

(A) **General.** Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, and other personnel as may be necessary to provide services required by this Agreement in a safe, efficient and effective manner. If District adopts a living wage ordinance, Contractor agrees to voluntarily comply with the ordinance.

(B) **Identification.** Contractor shall ensure that while on duty each Collection worker wears a clean uniform that displays Contractor's company name and the worker's name or identification number.

(C) **Fees & Gratuities.** Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly any compensation or gratuity for any services performed under this Agreement except as provided in Article 8 (Contractor's Compensation and Rates).

(D) **Training.** All drivers shall be properly trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall provide adequate operations, health and safety training, and Hazardous Waste identification and handling training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

(E) **Customer Courtesy.** Contractor shall properly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly and in a respectful manner. Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures. If District has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will reassign the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

5.7 Disposal Requirements.

5.7.1 Contractor shall dispose of all Solid Waste and Recyclable Materials Collected under this Agreement at Contractor's own expense and in accordance with all Federal, State and local laws, rules, and regulations. Contractor shall be responsible for securing an appropriate location for disposal of all Solid Waste and processing of all Recyclable 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. District reserves the right to review and require approval for said disposal capacity commitments.

5.7.3 If Contractor receives notice from the landfill operator or Recyclables processor or otherwise finds, during the term of this Agreement, to be prevented from delivering Solid Waste to the designated site, Contractor shall immediately notify, in writing, the General Manager, stating the reason(s) Contractor is prevented, or expects to be prevented, from delivering Solid Waste at the designated facility. Contractor shall expeditiously identify and evaluate alternative sites. An alternative designated site or sites 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, or such other programs as may be established by District.

5.7.5 Contractor shall deliver all Solid Waste to any landfill 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 Commercial Bins. Contractor shall steam clean and refurbish all commercial bins 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 dumpster.

5.9 Clean-Up Days.

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 by single family dwelling units 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 proposed by Contractor and approved by the General Manager, or his/her designee, prior to September 1st of each year.

5.9.2 Contractor shall record by class and weight (in tons) the Solid Waste, white goods, etc., collected during the clean-up events. Contractor shall record the kinds and weights (in tons) of Solid Waste diverted during these clean-ups from the landfill through Recycling, reuse, transformation or other means of diversion.

5.10 Solid Waste and Recycling Service in Public Areas. Any increase in rates resulting from requested free service shall not be included when calculating the change in rate compared to the change in the CPI. During any calendar year, District can not request additional free service that would result in the aggregate value of all free service provided by Contractor to District in such calendar year to exceed Six Thousand Dollars (\$6,000).

5.11 Material Processing

5.11.1 Receipt of Recyclable Material Including Greenwaste. Contractor shall have in place or have made arrangements for a Materials Recovery Facility or Facilities to receive and accept all deliveries of Recyclable Materials and Greenwaste generated in District.

5.11.2 Status of Materials Recovery Facility.

(A) Any Materials Recovery Facility 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 Materials Recovery Facility must have all permits from Federal, State, regional, county and District agencies necessary for it to operate as a Material Recovery Facility and must be in full regulatory compliance with all such permits.

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

5.11.3 Alternative Processing Facility. If Contractor becomes unable to deliver District's Recyclable Materials to the Materials Recovery 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 Materials Recovery Facility, in which case Contractor shall pay for any increased transportation costs, any differences in the fees charged at such Materials Recovery Facility and the fees then in effect under this Agreement. If Contractor's inability to deliver District's Recyclable Materials to the Materials Recovery Facility 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 Material Recovery 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 a transfer station, Material Recovery Facility, or disposal site. 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 Solid Waste, Recyclable Material or other material is not collected by Contractor, Contractor shall leave a tag on the material stating the reasons for Contractor's refusal to collect the same. Adequate records of the tags shall be maintained by Contractor and shall be available to District for inspection upon reasonable notice during business hours. 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 delivered to the Materials Recovery Facility by Contractor are disposed of at a permitted disposal site in full regulatory compliance. Monthly residue shall not exceed ten percent (10%) of the monthly Recyclable Materials delivered to the Materials Recovery Facility. If District directs Contractor to deliver Recyclable Materials to a third party facility for processing, then such third party facility shall be responsible for disposal of residual and the processing requirements as described above and District shall use its best efforts to enforce such requirements against the third party processor.

**ARTICLE 6
OTHER SERVICES: BILLING, REPORTING,
RECORD-KEEPING AND PUBLIC EDUCATION**

6.1 Billing.

6.1.1 By resolution of the Board, District shall adopt the rates for the services provided by Contractor as specified in Exhibit A. Contractor shall bill and collect these rates. Contractor billing format and billing frequency shall be subject to approval of District, and District shall have the right to revise the billing format to itemize certain charges.

6.1.2 District may also direct Contractor to insert mailers relating to Contractor provided service with the billings at no additional cost to District. The mailers must fit in standard envelopes and not increase the required postage. District will provide not less than sixty (60) days notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of District materials.

6.1.3 Contractor shall maintain copies of said billings and receipts, each in chronological order, for a period of three (3) years after the date of service for inspection by District, or for such longer term as District directs. Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records cannot be altered, and can be preserved and retrieved for inspection and verification in a timely manner. Contractor shall, in addition, provide an adequate backup system for billing records, regardless of the form in which the records are maintained. Any such backup system shall be subject to the prior approval of District.

6.2 Responsible for Payment. Whoever is shown as responsible for the water meter shall also be responsible and liable for paying the Solid Waste collection and disposal fees for that property.

6.3 Collection of Bills from Delinquent Solid Waste Customers. Contractor may discontinue service as set forth in this Section. Customers who have not remitted required payments within sixty (60) days after the date of billing shall be notified on forms approved by District. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of notice of payment if payment is not made before that time. Upon payment of the delinquent fees as set forth in Exhibit A, Contractor shall resume collection on the next regularly scheduled collection day. Customers whose service is being withheld shall

nevertheless continue to be responsible for rates charged during the period in which service is withheld. Contractor shall be entitled to a reinstatement fee in an amount approved by District for reinstating service after such customers bills are brought current. Contractor may require that a resident or commercial business complete a credit/service agreement application prior to receiving service as a means of acknowledging the rules and guidelines for Solid Waste collection, and/or establishing credit. The fees levied for service by Contractor for Solid Waste collection shall constitute a civil debt and liability owing to District and/or Contractor from the person using or chargeable for such services and shall be collectible in any manner provided by law, including, without limitation, the reporting of delinquent payers to collection agencies or bureaus. District further agrees that if the charges for Solid Waste collection services are, on June 30 of each year, delinquent and unpaid for a period of ninety (90) days such charges shall become a lien on the real property for which the services were provided and the property owner shall be notified by District as provided for by District ordinances and resolutions.

6.4 Maintenance of Accounting Records. Contractor shall maintain accounting records in accordance with generally accepted standards and principles of accounting. In its accounting records, Contractor shall discreetly maintain and clearly identify all items of revenue pertaining to District's franchised operations. Revenue information for District shall be segregated from other geographical areas served by Contractor. Revenue information for District, in addition, shall be segregated from other business activities of Contractor. Separate detailed records shall be maintained by Contractor with respect to all transactions with Affiliates that affect the Revenue of Contractor in providing the franchise collection services.

6.5 Right to Audit Records. In addition to other reporting requirements in this Agreement, District may review, test and audit the books and records of Contractor or may engage a Certified Public Accountant for this purpose. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.5 (Financial Material Errors, Omissions or Irregularities).

6.6 Inspection by District. The designated representatives of District shall have the right to observe and review Contractor operations and enter Contractor's premises for the purpose of such observation and review at all reasonable hours with reasonable notice.

6.7 Office. Contractor shall maintain an office with telephone either in the City of Arroyo Grande, Grover Beach or Pismo Beach city limits where customers may apply for service, pay bills, and register complaints. At a minimum, Contractor shall staff this office from 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays observed by District. A representative of Contractor shall be available during office hours to communicate with the public in person and directly by telephone.

6.8 Customer Information. Contractor shall prepare and keep current a flier acceptable to District which summarizes Solid Waste regulations, all services provided by Contractor, Solid Waste collection and disposal rates, telephone numbers, special collection events, collection schedules, complaint procedures, and other pertinent information. Contractor shall have copies of this flier available at all times in Contractor's office; shall distribute copies to all new

customers; shall annually mail copies to all of its current customers; and shall mail updated copies to all customers as notification of changes in service or rates, prior to such changes.

6.9 Regulatory Reporting.

6.9.1 Contractor shall promptly provide District copies of each adverse report from, and each regulatory action from local, state or federal regulatory agencies. In addition, Contractor shall send copies to District of any reports that Contractor submits to regulatory agencies with respect to performance of this Agreement.

6.9.2 Contractor shall provide District promptly with copies of any notices and correspondence from other facilities, including disposal sites, utilized by Contractor in performance of this Agreement, concerning any breach of agreement with such facility or violation of regulations, including delivery of unauthorized wastes. Contractor shall direct such facilities to at all times simultaneously send copies of such notices and correspondence to District.

6.9.3 Contractor shall promptly provide District with copies of any reports and correspondence concerning the status of permits with respect to Contractor and such disposal sites and facilities referenced above.

6.10 Public Education.

6.10.1 Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. 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 Solid Waste and to cooperate fully with District in this regard.

6.10.2 Contractor shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs with its bills. Contractor shall also include in customer bills additional information, including information on Recycling programs, as directed by District. Contractor shall bear all labor costs with respect to inserting public education materials with the billings. District shall bear any additional postage expense resulting from District's inserts and shall bear other expenses related to the inserts to the extent said expenses are clearly in excess of Contractor's normal billing costs. All public education materials shall be approved in advance by District.

6.10.3 At the direction of District, Contractor shall participate in and promote AB 939 activities and other Solid Waste management techniques at community events and local activities. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of District's Solid Waste program.

6.11 Records Retention. Contractor shall maintain the above records, reports and data set forth in this Article for such time as District may direct. Contractor agrees to make all such

records, reports and data available for inspection by District or District's authorized representatives, upon reasonable notice by District.

ARTICLE 7 PAYMENTS TO DISTRICT

7.1 Franchise Fee.

7.1.1 Contractor shall pay to District a franchise fee in an amount set by District and collected by Contractor for services performed under this Agreement, payable monthly on or before the last business day of the following month. Contractor shall provide to District with each monthly franchise fee payment a statement of Gross Revenues Collected by Contractor during the previous month. The initial amount of the franchise fee shall be ten percent (10%) of Gross Revenues Collected.

7.1.2 Contractor shall pay a late charge of five percent (5%) per month on all franchise fees that are not paid within thirty (30) days of the date due. The parties agree that such late charges represent a fair estimate of District's added administrative expenses caused by such delinquent payments.

7.1.3 The franchise fee is a pass through expense for purposes of this Agreement, and as such, if District changes the franchise fee, Contractor's rates under this Agreement shall be adjusted accordingly, subject to all applicable laws and regulations. The franchise fee shall be included in the rates charged by Contractor and shall not be separately itemized on bills to Contractor's customers.

7.2 AB 939 Fee. If requested by District, Contractor shall pay an AB 939 fee, to be specified annually by District. In addition, if the San Luis Obispo County Integrated Waste Management Authority (the "IWMA") implements an AB 939 fee, Contractor shall pay that fee directly to the IWMA. All AB 939 fees paid to District or the IWMA shall be considered a pass through cost for purposes of rate setting, and as such if District or the IWMA changes these fees, Contractor's rates shall be adjusted accordingly subject to all applicable laws and regulations.

7.3 Business License Tax. Contractor shall pay any and all annual business license taxes as may be required by the State of California, any county located therein, or District, and shall obtain and pay for any and all other applicable licenses or permits required by state or federal law to operate a Solid Waste collection business.

7.4 Other Fees.

7.4.1 District shall receive a landfill savings payment that recognizes the capital improvement saving at the landfill by entering into this Agreement. Within fifteen (15) days of the Effective Date of this Agreement and on every annual anniversary of the effective date, Contractor shall pay District Six Thousand Seven Hundred Sixty-Nine Dollars (\$6,769). This payment shall not be included as a pass through cost for the purpose of rate setting and shall be adjusted annually by the same percent increase to the rates granted by District.

7.4.2 District shall reserve the right to set "Other" Fees, as it deems necessary. These expenses will be determined and a fee designed to reimburse District. Such fees shall be set annually by District resolution and may be considered a pass through cost for purposes of rate setting, and as such if District adopts or changes these fees, Contractor's rates shall be adjusted accordingly.

7.5 **Adjustment of Fees.** District may adjust the amount of fees annually. Such adjustment shall be reflected in the rates that Contractor is allowed to charge and collect from customers.

7.6 **Review of Fee Payments.** District, or its agent, reserves the right to annually perform an independent review of fee payments at its own expense, to verify that fees are being paid in accordance with Agreement.

ARTICLE 8 CONTRACTOR'S COMPENSATION AND RATES

8.1 General.

8.1.1 Contractor's compensation provided for in this Article shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, transfer and transport, processing, division, disposal, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed, Contractor will not be entitled to any further rate adjustments as a result of customer delinquencies and other bad debt issues.

8.1.2 Contractor does not look to District for payment of any sums under this Agreement in consideration of the right to charge and collect from customers for services rendered at rates fixed by District from time-to-time. District shall have the right to structure those rates as it deems appropriate so long as the revenues forecasted to be received by Contractor from charging such rates can reasonably be expected to generate sufficient revenues to provide for Contractor's compensation as calculated in accordance with the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates" dated June 1994.

8.2 **Collection Rates.** Service rates are those established by Resolution adopted by the Board. Contractor shall provide the services required by this Agreement and charge no more than the rates authorized by District Resolution.

8.3 Rate Review.

8.3.1 Commencing on January 1, 2011, Contractor shall submit to District an application for rate review annually, in accordance with the procedures described in the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates," dated June 1994, except as that may be modified in writing by the parties hereto from time to time. In addition to the procedures contained in the above referenced manual, Contractor shall submit any and all data requested by and in the format prescribed by

District. Upon a proper application submission by Contractor pursuant to this Section, District shall authorize a revision of rates as provided for in the above referenced manual. In the event Contractor shall fail to meet the schedule set forth in the above referenced manual, a revision of rates for the following year shall not be authorized until the 1st day of the first calendar month following a one hundred twenty (120)-day period from the date that the complete application is submitted and such revision shall contain no consideration for Contractor's failure to submit the application in accordance with the schedule set forth in the above-referenced manual.

If, at any time during the term of this Agreement, Contractor requests and is granted a rate increase by District that, when the new rate is compared to the rate at the Effective Date, exceeds the cumulative cost of living increase from the Effective Date, District shall have the option of terminating this Agreement. The cumulative cost of living increase from the Effective Date shall be calculated in accordance with the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates" dated June 1994. Such option shall be available for a period of nine (9) months following the granting of the rate increase.

8.3.2 When calculating the change in the rate, costs resulting from Article 7 (Payments to District), Section 4.5 (District Request to Direct Changes), Section 5.10 (Solid Waste and Recycling Service in Public Areas) and new regulatory costs will not be included. However, any increase resulting from an increase in the pass through costs associated with the processing and/or disposal of Solid Waste and Recyclable Material including Greenwaste are included in the rate change calculation.

8.4 Special Interim Rate Review. District or Contractor may request an extraordinary or consequential adjustment outside of the base year and interim year adjustment schedules, as set forth in the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates," dated June 1994. To be extraordinary and consequential, cost changes must be significant enough to require a greater than five percent (5%) decrease or increase in monthly rates for basic residential service.

8.5 Allowable Profit. When performing the procedures described in the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates," dated June 1994, the allowable profit on expenses shall be calculated using targeted operating ratio of ninety-two percent (92%), with a range of ninety percent (90%) to ninety-four percent (94%), applied to Contractor's reasonable and necessary allowable costs, as these costs are defined in the rate setting manual, incurred in the performance of its obligations under this Agreement.

8.6 Publication of Rates. Contractor shall provide written notice to subscribers of all rate changes, prior to implementation. If appropriate, this notice should include reasons and background for the rate change.

**ARTICLE 9
RECORDS, REPORTS AND INFORMATION, STUDIES
AND HEARING REQUIREMENTS**

9.1 Records.

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.

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

- Customer services and billing;
- Weight of Solid Waste, especially as related to reducing and diverting Solid Waste. Information is to be separated by kind of account;
- Special annual clean-up event results;
- Routes;
- Facilities, equipment and personnel used;
- Facilities and equipment operations, maintenance and repair;
- Processing and disposal of Solid Waste;
- Complaints; and
- Missed pick-ups.

9.1.3 Contractor shall maintain records of transfer, diversion and disposal of all Solid Waste collected in District for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Contractor discontinues providing Solid Waste services to District, Contractor shall provide all records of diversion and disposal of all Solid Waste 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:

- Plans, tasks, and milestones; and,

- 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. Contractor acknowledges that District must perform Solid Waste generation and disposal characterization studies periodically to comply with AB 939 requirements. Contractor agrees to participate and cooperate with District and its agents, at no cost to District, to accomplish studies and data collection, and prepare reports, as needed, to determine weights and volumes of Solid Waste and characterize Solid Waste generated, diverted, disposed, transformed, or otherwise handled or processed to satisfy AB 939 requirements.

9.3 Report Formats and Schedule.

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. 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.

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 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 be subject to approval by District.

9.3.4 Monthly reports shall be submitted within 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.

9.3.5 All reports shall be submitted to:

General Manager
Oceano Community Services District
1655 Front St.
Oceano, CA 93445

9.4 Monthly Reports. The information listed shall be the minimum reported for each service:

- Solid Waste and Recyclable Material, collected, transferred, diverted and disposed of, by sector (commercial, industrial, residential) of waste generator--collected by Contractor, in tons, by month.
- Complaint summary, for month and cumulative for report year, as above. Summarized by nature of complaints.
- Narrative summary of problems encountered and actions taken with recommendations for District, as appropriate.

9.5 Quarterly Report. Quarterly reports shall be quarterly summaries of the monthly information in addition to the following:

- Status report on applications for renewals of existing permits or any new permits which may be required to continue operations at the designated disposal site within existing permitted areas.
- Solid Waste and Recyclable Material, collected, diverted and disposed of, in tons, during the semi-annual residential clean-up weeks, if applicable.
- For each new program, provide activity related and narrative reports on goals, milestones and accomplishments. Describe problems encountered, actions taken and any recommendations to facilitate progress.
- Provide a summary assessment of the overall Solid Waste program from Contractor's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy and effectiveness relative to meeting all the goals and objectives of this Agreement. Provide recommendations and plans to improve. Highlight significant accomplishments, problems and proposed solutions.

9.6 Annual Financial Audit.

9.6.1 Contractor shall submit to District annual audited financial statements prepared at Contractor's expense by an independent Certified Public Accountant not later than one hundred eighty (180) days following the expiration of Contractor's fiscal year. Pursuant to the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates", dated June 1994, at the time a rate application request is submitted to District, the financial forms contained in the rate application must be reconciled to the audited financial statements to provide assurance that all of Contractor's activities are accounted for.

9.6.2 The annual report shall separate out information with respect to revenues and expenses in relation to performance of this Agreement, including detailed information

concerning overhead claimed by Contractor. Operations by Contractor concerning activities not related to performance of this Agreement shall be maintained in a separate portion of the annual financial statement.

9.6.3 District shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor that District shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement. District retains the right to have an independent third party or agent of District's choosing, such as a CPA, participate in the records inspection. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.5 (Financial Material Errors, Omissions or Irregularities).

9.6.4 Contractor shall provide to District a copy of Cold Canyon Landfill's request for an increase in tipping fees no later than five (5) days following submittal of said request to the County of San Luis Obispo. Additionally, Contractor shall notify District of the action taken by the Board of Supervisors regarding said request within five (5) days following said action, including letter to the Board of Supervisors and related executed resolution. District retains the right to have an independent third party or agent of District's choosing, such as a CPA, participate in the review. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.5 (Financial Material Errors, Omissions or Irregularities).

ARTICLE 10 INDEMNIFICATION, INSURANCE AND BOND

10.1 Indemnification.

10.1.1 General. To the fullest extent permitted by law, Contractor agrees to defend (with counsel selected by Contractor and reasonably acceptable to District), indemnify, protect and hold District and its Board members, officials, agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including, but not limited to, injury to Contractor's employees, agents or officers to the extent arising from or connected with or caused or claimed to be caused by the acts or omission of Contractor, and its agents, officers, directors, employees, contractors, or subcontractors, in performing services under this Agreement, and all expenses of investigating and defending against same; provided, however, that Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the negligent or willful acts or omissions of District, its agents, officers or employees.

10.1.2 CERCLA. Contractor agrees to defend (with counsel selected by Contractor and reasonably acceptable to District) and indemnify District, Board members, officers, employees and agents for all actions of Contractor associated with Contractor's role as the arranger of Solid Waste service, or as a "potentially responsible party" within the meaning of CERCLA in

performing Solid Waste service under any Federal, State or local laws, rules or regulations. Contractor shall further defend (with counsel selected by Contractor and reasonably acceptable to District) and indemnify District from any and all legal actions against District on the basis of the assertion that District is an arranger of Solid Waste services as a result of this Agreement.

10.1.3 Integrated Waste Management Act. Contractor agrees to defend (with counsel selected by Contractor and reasonably acceptable to District) and indemnify District, Board members, officers, employees and agents for any fines or penalties imposed by the California Integrated Waste Management Board or its agents in the event that Contractor's delays in providing information or reports required pursuant to this Agreement prevent District from submitting reports or attaining goals in a timely manner as required by the Integrated Waste Management Act.

10.1.4 Survival. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement. The foregoing indemnities shall not apply with respect to (A) any Hazardous Waste or hazardous substance generated by District and delivered by District to Contractor; or (B) the disposal or release of hazardous substances or Hazardous Waste, which disposal or release has resulted from the negligent or willful acts or omissions of District.

10.2 Insurance.

10.2.1 During the term of this Agreement, Contractor shall carry insurance in accordance with this Article and such other insurance as required by law. Lack of insurance or inadequate insurance do not negate Contractor's obligations under this Agreement. Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery, except where caused by the negligent or willful acts or omissions of District. Contractor hereby grants to District, on behalf of any insurer providing insurance to either Contractor or District with respect to the services (occupancy of premises) of Contractor under this Agreement, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against District by virtue of the payment of any loss under such insurance.

10.2.2 Insurance shall be secured and approved by the District Counsel prior to commencement of work according to this Agreement.

10.2.3 Maintenance of proper insurance coverage is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by District as a material breach of Agreement.

10.2.4 Minimum Scope of Insurance. Insurance coverage shall be at least as broad as:

(A) Insurance Services Office Commercial Liability coverage (occurrence form CG 0001).

(B) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

(C) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.

(D) Pollution Legal Liability provided by Cold Canyon Landfill with District named as an additional insured.

10.2.5 Minimum Limits of Insurance. Contractor shall maintain limits no less than:

(A) Commercial or Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. Commercial Liability policy shall contain no pollution exclusion of any description unless Contractor provides for pollution insurance coverage in an amount equal to or greater than Commercial Liability policy or coverage is included under the Automobile Liability Policy.

(B) Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury and property damage and accidental spills and discharges while transporting and/or processing materials.

(C) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and employers liability with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury or disease.

(D) Pollution Liabilities: One Hundred Thousand Dollars (\$100,000). Cold Canyon Landfill policy with District named as an additional insured.

10.2.6 Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(A) District, Board members, its officers, officials, employees and agents are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to District, its officers, officials, employees or agents.

(B) For any claims related to the services provided under this Agreement, Contractor's insurance coverage shall be primary insurance as respects District, Board members, its officers, officials, employees and agents. Any insurance or self-insurance maintained by

District, its officers, officials, employees or agents shall be excess of Contractor's insurance and shall not contribute with it.

(C) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

(D) Contractor agrees to provide District with thirty (30) days prior written notice by certified mail, return receipt required, before any insurance policy required by this Section shall be suspended, voided, canceled, or reduced in coverage or in limits.

(E) Coverage shall not extend to any indemnity coverage for the negligent or willful acts or omissions of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

10.2.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI. Insurers selected by Contractor shall be licensed to issue the specific line of required insurance in the State of California.

10.2.8 Verification of Coverage. Contractor shall furnish District with copies of required insurance certificates or endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

10.2.9 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish copies of required insurance policies and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

10.2.10 Occurrence Based Coverage. All policies, except the Pollution Legal Liability policy, secured by Contractor shall be occurrence and not claims based unless District so consents in writing.

10.3 Performance Bond. Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond or bonds, letter of credit or other similar instrument reasonably acceptable to and approved in writing by District in the amount of Eighty Thousand Dollars (\$80,000). The bond, letter of credit or other similar instrument shall be issued for a period of not less than one (1) year, and Contractor shall provide a new bond, letter of credit or similar instrument, and evidence reasonably satisfactory to District of its renewability, no less than thirty (30) calendar days prior to the expiration of the bond, letter of credit or other similar instrument then in effect. District shall be notified in writing of any cancellation by the issuer of the bond at least thirty (30) days prior to such cancellation.

ARTICLE 11
DISTRICT'S RIGHT TO PERFORM SERVICE

11.1 Emergency Collection. Should Contractor, for any reason whatsoever, except the occurrence or existence of any Force Majeure events or conditions, refuse or be unable to collect, transport and dispose of any or all the Solid Waste which it is obligated under this Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours and if, as a result thereof, Solid Waste should accumulate in District to such an extent, in such a manner, or for such a time that District's General Manager in the exercise of his sole discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event District shall have the right, upon twenty-four (24) hour prior written notice to Contractor, during the period of such emergency, to contract on a temporary basis with third parties to collect and transport any and all Solid Waste which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement until the events or conditions of Force Majeure have ended.

11.2 Contractor to Cooperate. Contractor agrees that in such event it will fully cooperate with District and its third-party contractor to effect such a transfer of operations in as smooth and efficient a fashion as is practicable.

11.3 Contractor to Pay Increased Costs. All reasonable costs, fees, rates and other expenses incurred by District and/or its third-party contractor that exceed those in effect or being incurred or which would have been incurred had no such emergency arisen shall be the responsibility of Contractor and shall be paid to District within ninety (90) days of Contractor's receipt of written notice to so pay or may be paid to District out of Performance Bond funds.

ARTICLE 12
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

12.1 Events of Default. All provisions of this Agreement to be performed by Contractor are considered material. Each of the following shall constitute an event of default.

12.1.1 Fraud or Deceit. If Contractor practices, or attempts to practice, any fraud or deceit upon District or any customers Contractor provides services for under this Agreement.

12.1.2 Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling to pay its debts when due, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding. Contractor is also in default if there is an assignment for the benefit of its creditors.

12.1.3 Failure to Maintain Coverage. If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, indemnification coverage or any insurance coverage or bond required under this Agreement.

12.1.4 Violations of Regulation. If Contractor facilities fall out of full regulatory compliance or if Contractor violates any orders or filings of any regulatory body having

jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

12.1.5 Failure to Perform. If Contractor ceases to provide Solid Waste, Recycling or Greenwaste services as required under this Agreement for a period of two (2) days or more, for any reason within the control of Contractor.

12.1.6 Failure to Pay/Report. If Contractor fails to make any timely payments, including liquidated damages and penalties, required under this Agreement and/or fails to provide District with required information, reports, and/or records in a timely manner as provided for in this Agreement.

12.1.7 Acts or Omissions. Any other act or omission by Contractor which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

12.1.8 False or Misleading Statements. Any representation or disclosure made to District by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

12.1.9 Attachment. Seizure of attachment of, or levy on, the operating equipment of Contractor, including without limits its equipment, maintenance or office facilities, or any part thereof.

12.1.10 Suspension or Termination of Service. Any termination or suspension of the transaction of business by Contractor, including without limit, due to labor unrest including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action, lasting more than two business days, unless caused by a Force Majeure event or condition.

Upon default by Contractor, the General Manager or his/her designee shall provide written notice to Contractor of the violation. The General Manager or his/her designee shall include in the notice, a demand that Contractor correct the violation. Contractor shall thereafter have thirty (30) days to cure the violation, or if the violation cannot be cured within such timeframe, Contractor shall have commenced to cure said violation in a manner that is acceptable to District, in its reasonable discretion. For purposes of this Agreement and any notice required thereunder, the term "days" means calendar days.

12.2 Right to Terminate Upon Default.

12.2.1 Upon a default by Contractor, and Contractor's failure to cure, District shall have the right to terminate this Agreement upon one (1) day notice if the public health or safety is threatened, or otherwise twenty (20) days notice, following a hearing by the Board. This right of termination is in addition to any other rights of District upon a failure of Contractor to perform its obligations under this Agreement.

12.2.2 District's right to terminate this Agreement and to take possession of Contractor's equipment and facilities are not exclusive, and District's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that District may have.

12.2.3 By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by District to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and District shall be entitled to injunctive relief.

12.2.4 Should Contractor at any time, contend that District has breached any material provision of this Agreement, Contractor shall immediately notify District in writing of Contractor's contention. District shall have a reasonable time to cure any such alleged breach, which in all events shall not be less than ninety (90) days or any such longer period as reasonably needed to cure said breach. If District fails to cure the breach within such time, Contractor may terminate this Agreement.

12.3 Liquidated Damages.

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.

12.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties acknowledge that consistent, reliable Solid Waste, Recycling and Greenwaste 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 this 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 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, District shall contact Contractor within two (2) days of any failing reported directly to District. In addition, Contractor agrees to meet with the General Manager within two (2) days of a requested meeting to discuss Contractor's performance.

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 Solid Waste, Recyclables or Greenwaste, which as been properly set out for Collection, from an established customer account on the scheduled Collection day and not collected within 24 hours after notice of missed pick-up: \$150.00

For each failure to Collect Solid Waste, Recyclables or Greenwaste, 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 ten (10) annually of discourteous behavior: ... \$250.00

For each failure over ten (10) annually to clean up Solid Waste, Recyclables or Greenwaste spilled from Containers: \$150.00

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

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

Timeliness of Report Submissions to District

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

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 written 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 his/her 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 thirty (30) days after they are assessed. If they are not paid within the thirty (30) day period, District may proceed against the security required by this Agreement or order the termination of this Agreement, or both.

12.4 Force Majeure

12.4.1 The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing for reasons outside the reasonable control of the party claiming excuse from performance hereunder, including but not limited to: riots, wars, sabotage, civil disturbances, acts of terrorism, insurrection, explosion, natural disasters such as floods, earthquakes, landslides and fires, strikes, lockouts and other labor disturbances, excessive snow, acts of God, unavailability of third party disposal or processing facilities designated by District, or other similar or dissimilar events which are beyond the

reasonable control of and not the fault of the party claiming excuse from performance hereunder (“Force Majeure”).

12.4.2 The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Article.

12.4.3 The interruption or discontinuance of Contractor’s services caused by one or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Article for a period of thirty (30) days or more, District shall have the right to review the circumstances under which the excuse from performance was granted. After such review, if District determines the excuse from service is no longer valid, District shall notify Contractor in writing to resume service within two (2) days from the receipt of such notification. If Contractor fails to resume service within the two (2) days, District shall have the right to terminate this Agreement by giving ten (10) days notice, in which case the provisions of Article 11 (District’s Right to Perform Services) and this Article 12 shall apply.

12.5 Financial Material Errors, Omissions or Irregularities

District may review, test and audit the books and records of Contractor for the purpose of determining whether Contractor is complying with the terms of this Agreement. In the event that material errors or omissions or irregularities are identified, then the cost associated with the audit, test or review shall be paid by Contractor to District. In the case of financial errors, materiality shall be deemed to be two percent (2%) or greater of the gross revenues of Contractor from activities performed under this agreement. Recovery of any overpayment will be negotiated on a case by case basis, either immediately or through the next rate setting evaluation.

ARTICLE 13 OTHER AGREEMENTS OF THE PARTIES

13.1 Relationship of Parties. The parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by District and not as an officer or employee of District nor as a partner of or joint venture with District. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of District. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Recycling services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to District employees by virtue of their employment with District.

13.2 Compliance with law. In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws of the United States,

the State of California, District, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

13.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

13.4 Jurisdiction; Attorneys Fees. Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. Venue of any such lawsuits shall be in San Luis Obispo County. The prevailing party in any litigation arising out of this Agreement shall be entitled to recover reasonable attorneys fees and costs.

13.5 Assignment.

13.5.1 Except as may be provided for in Article 11 (District's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. Contractor shall consent to any assignment to a joint powers authority, or any similar public entity assignee of District. In addition, Contractor may assign this Agreement without consent to another corporate Affiliate of Contractor or Waste Connections, Inc., provided such entity has assets that are equal or greater in value to those of Contractor.

13.5.2 For purposes of this Article, when used in reference to Contractor, "assignment" shall include, but not be limited to: (A) a sale, exchange or other transfer of at least fifty-one percent (51%) all of Contractor's assets dedicated to service under this Agreement to a third party; (B) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (C) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of Contractor; (D) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

13.5.3 Contractor acknowledges that this Agreement involves rendering a vital service to District's residents and businesses, and that District has selected Contractor to perform the services specified herein based on: (A) Contractor's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best waste

management practices, and (B) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to District under this Agreement. District has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

13.5.4 If Contractor requests District's consideration of and consent to an assignment, District may deny or approve such request at its complete discretion. District is concerned about the possibility that assignment could result in significant rate increases, as well as a change in the quality of service. Accordingly, the following standards have been set to ensure that assignment will result in continued quality service. In addition, District reserves the right to solicit competitive bids for these services if the assignment results in a request by the assignee for rate increases that are higher than the inflationary index and do not reflect value changes in service standards. At a minimum, no request by Contractor for consent to an assignment need be considered by District unless and until Contractor has met the following requirements:

(A) Contractor shall undertake to pay District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

(B) Contractor shall furnish District with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

(C) Contractor shall furnish District with satisfactory proof: (1) that the proposed assignee has at least five (5) years of Recyclable Material management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (2) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided District with a complete list of such citations and censures; (3) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (4) that the proposed assignee conducts its Solid Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the Collection, transportation, processing, marketing and disposal of Solid Waste including Hazardous Wastes; (5) that the proposed assignee, and any its officers, directors or employees have not been convicted of: (a) fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to Recyclables or Solid Waste services of any kind (including collection, hauling, transfer, processing, composting or disposal), including this Agreement or any amendment thereto; (b) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency in that officer or director's of Contractor's employee's official capacity; (c) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony; or (d) unlawful disposal of hazardous or designated waste the occurrence of which Contractor knows or should

have known; and (6) of any other information required by District to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely safe and effective manner.

13.6 Subcontracting. Except as approved in writing by District, Contractor shall not enter into an agreement to have another Person perform Contractor's duties of this Agreement. Contractor shall undertake to pay District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed subcontractor, and to review and finalize any documentation required as a condition for approving any such subcontracting agreement.

13.7 Binding on Assigns. The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns of the parties.

13.8 Transition to Next Contractor. If the transition of services to another Contractor occurs through expiration of term, default and termination, or otherwise, Contractor will cooperate with District and subsequent Contractor(s) to assist in an orderly transition which will include Contractor providing route lists and billing information. Contractor will not be obliged to sell Collection vehicles or Containers to the next Contractor. Depending on Contractor's circumstances at the point of transition, Contractor at its option may enter into negotiations with the next Contractor to sell (in part or all) Collection vehicles and/or containers.

13.9 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

13.10 Waiver. The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

13.11 Contractor's Investigation. Contractor has relied on its own investigations, and not on any representations of District or its agents of the conditions and circumstances surrounding this Agreement and the work to be performed by it.

13.12 Notice. All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to District:

Oceano Community Services District
1655 Front St.
Oceano, CA 93445
Attention: General Manager

If to Contractor:

South County Sanitary Service
866 Grand Ave.
Grover Beach, CA 93433
Attention: District Manager

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Article. The notice, if mailed, is deemed served three (3) days after the mailing.

13.13 Representatives of the Parties.

13.13.1 References in this Agreement to the “**District**” means the Board and all actions to be taken by District shall be taken by the Board except as provided below. The Board may delegate, in writing, authority to the General Manager or his/her designee, the District Counsel, and/or to other District employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

13.13.2 Contractor shall, by the Effective Date, designate in writing a responsible employee who shall serve as the representative of Contractor in all matters related to this Agreement and shall inform District in writing of such designation and of any limitations upon his or her authority to bind Contractor. District may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to District.

13.14 District Free to Negotiate with Third Parties. District may investigate all options for the Collection, processing and marketing of Recyclable Materials after the expiration of the Term. Without limiting generality of the foregoing, District may solicit proposals from Contractor and from third parties for the provision of Solid Waste and Recycling services, and any combination thereof, and may negotiate and execute Agreements for such services that will take effect upon the expiration or earlier termination under Section 12.1 (Events of Default) of this Agreement.

13.15 Compliance with District Code. During the term of this Agreement, Contractor shall comply with all District ordinances, resolutions and other governing actions and all provisions of San Luis Obispo County codes, ordinances and regulations.

13.16 Privacy. Contractor shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any person, governmental unit, private agency, or contractor, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by AB 939.

ARTICLE 14 MISCELLANEOUS AGREEMENTS

14.1 Entire Agreement. This Agreement, including the exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

14.2 Headings. The headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

14.3 References to Laws and Other Agreements. All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes the Prior Agreement and any subsequent amendments.

14.4 Interpretation. This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

14.5 Agreement. This Agreement may not be modified or amended in any respect except by a writing signed by the parties.


14.6 Severability. If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein.

14.7 Exhibits. Each of exhibits is attached hereto and incorporated herein and made a part hereof by this reference.

[Remainder of Page Left Intentionally Blank; Signature Page Immediately Follows]

IN WITNESS WHEREOF, District and Contractor have executed this Agreement as of the day and year first above written.

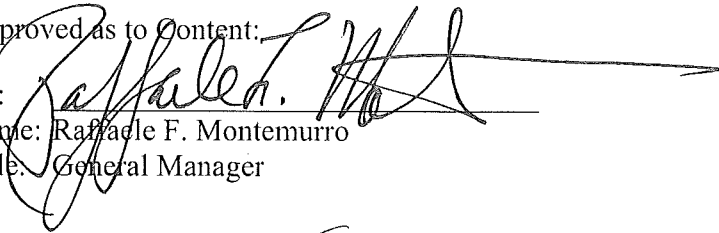
OCEANO COMMUNITY SERVICES
DISTRICT

By: 
Name: Pamela Dean
Title: Vice-President, Board of Directors

SOUTH COUNTY SANITARY SERVICE,
INC.

By: _____
Name: Ronald J. Mittelstaedt
Title: Chief Executive Officer

Approved as to Content:

By: 
Name: Raffaele F. Montemurro
Title: General Manager

Approved as to Form:

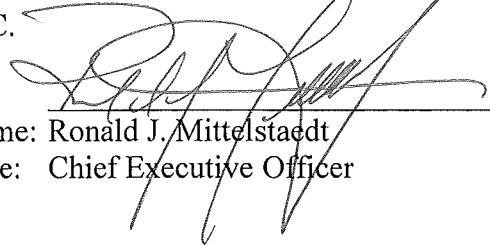
By: 
Name: Ryan Fothergill
Title: District Counsel

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Title: General Manager

Approved as to Form:

By: _____
Name: Ryan Fothergill
Title: District Counsel

EXHIBIT A
SERVICE RATE SCHEDULE

[To be provided.]