

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 1<sup>st</sup> 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.

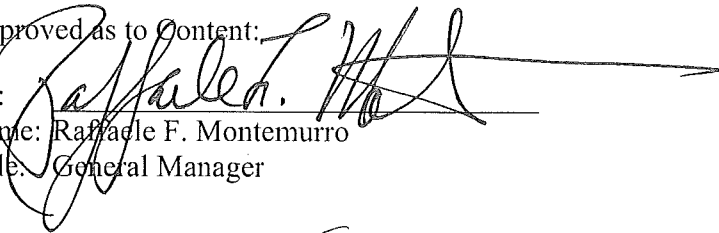
OCEANO COMMUNITY SERVICES  
DISTRICT

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:

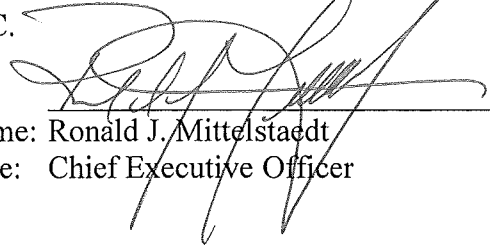
By:   
Name: Ryan Fothergill  
Title: District Counsel

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

**EXHIBIT A**  
**SERVICE RATE SCHEDULE**

[To be provided.]

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

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

## RECITALS

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

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

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

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

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

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

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

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

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

## EFFECTIVE DATE

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

## **PAYMENT FOR SERVICES RENDERED**

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

## **AMENDMENTS TO FIRST AMENDMENT**

### **Amendment to Article 1 (Definitions)**

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

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

## **AMENDMENTS TO FRANCHISE AGREEMENT**

### **Article 1. Definitions**

#### **Modified Definitions**

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

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

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

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

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



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

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

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

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

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

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

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

## New Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Occupant”** means the Person who occupies a Premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“State”** means the State of California.

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

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

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

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

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

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

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

## **Article 2. Representations and Warranties of the Contractor**

### **2.3 Compliance with Laws and Regulations**

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

### **2.4 Grant and Acceptance of Agreement**

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

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

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

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

## **Article 4. Scope of Agreement**

### **4.1 Scope of Agreement**

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

### **4.2 Limitations to Scope**

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



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

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

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

**4.5.2 New Diversion Programs**

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

**4.6 Ownership of Discarded Materials**

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

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

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

#### **4.7 District’s Right to Perform Service**

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

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

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

### **Article 5. Direct Services**

#### **5.1 General**

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

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

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

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

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

## 5.2 Discarded Materials Services

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

### “5.2 Discarded Materials Services

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

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

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

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

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

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

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

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

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

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

”

### 5.3 Recyclable Materials to be Collected

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

### 5.4 Refusal to Provide Collection Services

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

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

### 5.6.1 Schedules

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

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

### 5.6.2.B Specifications

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

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

### **5.6.3 Discarded Materials Containers**

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

**“5.6.3 Discarded Materials Containers**

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

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

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

#### **5.6.4 Litter Abatement**

R. Article 5, Section 6, Subsection 4 of the Agreement is hereby amended to read as follows:  
“Contractor shall use due care to prevent Discarded Materials from being spilled or scattered during the Collection or Transportation process. If any Discarded Materials are spilled during Collection, Contractor shall promptly clean up all spilled materials. Each Collection vehicle shall carry a broom, shovel and oil spill kit at all times for this purpose.”

#### **5.7 Disposal Requirements**

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

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

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

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

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

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

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

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

## 5.8 Cleaning Containers

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

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

### 5.9 Clean-Up Days

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

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

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

### 5.11 Material Processing

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

#### "5.11.1 Receipt of Recyclable Materials and Organic Materials

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

#### 5.11.2 Status of Approved Processing Facilities

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

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

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

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



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

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

**5.11.3 Alternative Processing Facility**

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

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

**5.11.4 Disposition of Unauthorized Waste**

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

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

**5.12 Disposal**

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

**Article 6.  
Other Services**

**6.10 Public Education**

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

“6.8 Public Education.

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

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

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

### 6.12 Customer Notices (NEW)

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

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

The Customer Notice shall, at a minimum:

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

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

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

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

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

### 6.13 Generator Waivers (NEW)

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

“6.13 Generator Waivers.

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

### 6.14 Procurement of Recovered Organic Waste Products (NEW)

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

“6.14 Procurement of Recovered Organic Waste Products.

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

## **Article 7. Payments to District**

### **7.3 AB 939/SB 1383 Reimbursement**

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

**“7.3 AB 939/SB 1383 Reimbursement**

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

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

### **9.1 Records**

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

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

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

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

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

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

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

## **9.2 Waste Generation / Characterization Studies**

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

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

## **9.3 Report Formats and Schedule**

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

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

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

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

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

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

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

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

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

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

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

## 9.4 Monthly Reports

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

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

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



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

## 9.7 Additional Reporting (NEW)

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

“9.7 Additional Reporting.

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

## Article 12. Default, Remedies, and Liquidated Damages

### 12.1.E Failure to Perform

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

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

### 12.3 Liquidated Damages

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

“

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

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

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

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

**Collection Reliability and Quality**

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

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

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

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

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

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

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

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

**Timeliness of Submissions to District**

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

Monthly Reports: For each infraction \$25 per day

Annual Reports: For each infraction \$50 per day

**SB 1383 Related Events of Non-Performance**

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

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

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

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

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

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

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

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

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

**13.6 Subcontracting**

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

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

## **Exhibit G. Record Keeping and Reporting**

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

# **EXHIBIT G RECORD KEEPING AND REPORTING**

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## **G.1 General**

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

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

## **G.2 Record Keeping**

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

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

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

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

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

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

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

## G.3 Reporting

### G.3.1 General

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

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

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

### **G.3.2 Monthly Reports**

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

#### **A. Tonnage Report**

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

#### **B. Collection and Subscription Report**

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

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

**C. Contamination Monitoring Report**

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

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

**D. Customer Service Report**

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

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



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

**E. Education Program Report**

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

**G.3.3 Annual Reports**

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

**A. Collection and Subscription Report**

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

**B. Processing Facility Report**

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

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

**C. Compliance Monitoring and Enforcement Report**

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

**C. Public Education and Outreach Report**

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

**G.3.4 Additional Reports**


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

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

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

**DISTRICT:**

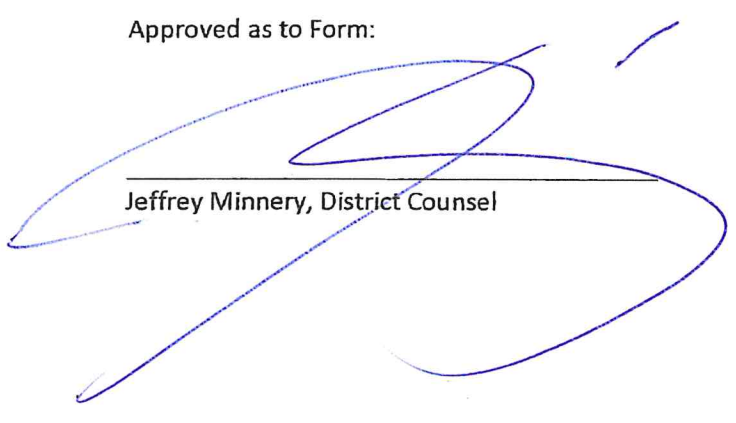
**CONTRACTOR:**

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

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

Date: 6/8/2022

Approved as to Form:

  
\_\_\_\_\_  
Jeffrey Minnery, District Counsel