

**SECOND AMENDMENT  
TO**

**SOLID WASTE, RECYCLING,  
AND ORGANIC MATERIALS  
FRANCHISE AGREEMENT**

**BETWEEN  
THE CAYUCOS SANITARY DISTRICT**

**AND  
MISSION COUNTRY DISPOSAL, INC.**

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This Second Amendment to the Solid Waste and Recycling Franchise Agreement ("Second Amendment") is made and entered into between the Cayucos Sanitary District, a political subdivision of the State of California (hereafter "District") and Mission Country Disposal, Inc., a California corporation (hereafter "Franchisee"), 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 Solid Waste and Recycling Franchise Agreement on August 11, 2006, ("Agreement" capitalized terms used but not defined herein shall have the meanings given to them in the Agreement); and,

**WHEREAS:** Section 4.5 of the Agreement provides the District with the right to direct the Franchisee 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 Franchisee, 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.

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

## SECTION 1. EFFECTIVE DATE

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

## SECTION 2. PURPOSE AND INTENT

The purpose and intent of this Second Amendment is to provide for the implementation of SB 1383 and the parties acknowledge that it has been drafted in cooperation with the San Luis Obispo Integrated Waste Management Authority (IWMA), which has been delegated certain responsibilities in accordance with the provisions and requirements of SB 1383 and which has made an effort to harmonize the services and contract language related to SB 1383 in solid waste franchise agreements, to the greatest degree possible, on a countywide basis

## SECTION 3. CONFLICTING PROVISIONS

Notwithstanding anything to the contrary in the Agreement or the First Amendment, the following controls, and to the extent any provision in the Agreement or the First Amendment is in conflict with this

Second Amendment, the provision in this Amendment shall supersede any conflicting language and shall prevail.

## SECTION 4. AMENDMENTS TO FIRST AMENDMENT

The First Amendment is hereby amended to read as follows:

### **Amendment to Article 1 Definitions**

A. Amendment to 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:

"(ii) **"Facility Operation Date"** means the date on which, following its start-up, testing, and commissioning, the Facility Processes Commercial quantities of Food Waste and Green Waste."

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

## SECTION 5 AMENDMENTS TO AGREEMENT

The Agreement is hereby amended to read as follows:

### **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 Solid Waste, Recyclable Materials, and Organic Materials, and any other material at the place of generation within and from the District.

**"Container"** means Bins, Carts, Compactors, and franchise Roll-Offs.

**"District"** means the Cayucos Sanitary District, a political subdivision of the State of California, formed pursuant to Health & Safety Code Section § 6400, et seq., and all the territory lying within the boundaries of the District as presently existing or as such boundaries may be modified during the term, acting through the District Board of Directors or the District Manager. The District may designate responsibilities to one or more third parties, in writing, between the District 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 District Code, any Premises, other than a Single Family Dwelling Unit, with five (5) or more Dwelling Units 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 individual service and are billed separately shall not be considered Multi-Family.

**"Premises"** means any land or building in the District where Solid Waste, Recyclable Materials, and/or Organic 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 or Organic Materials, 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 (separately collected). 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. Franchisee shall not add or remove materials to or from this list without written approval from the District 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 Materials Recovery Facility; Approved Organic Materials Processing Facility; and/or Approved Disposal Facility.

**"Approved Disposal Facility"** means the Cold Canyon Landfill as the primary, and Chicago Grade Landfill, or the Santa Maria Landfill, as alternatives, which have been selected by the Franchisee and approved by the District. Franchisee 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 Engel & Gray Inc. Regional Compost Facility, located at 745 West Betteravia Road, Santa Maria, California, which have been selected by the Franchisee and approved by the District.

**“Approved Processing Facility(ies)”** means any one of or any combination of the: Approved Materials Recovery Processing Facility; Approved Disposal Facility; Approved Organic Materials Processing Facility; Approved Transfer Facility; or Approved Reusable Materials Processing Facility.

**“Approved Materials Recovery Facility”** means the Materials Recovery Facility at Cold Canyon Processing Facility, which has been selected by the Franchisee 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 Franchisee 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.

**“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 Drop Box Compactors serviced by franchise roll-off Collection vehicles.

**“Complaint”** shall mean each written or orally communicated statement made by any Person, whether to District or Franchisee, alleging: (1) non-performance, or deficiencies in Franchisee’s performance, of its duties under this Agreement; (2) a violation by Franchisee of this Agreement; or, (3) an SB 1383 Non-Compliance Complaint as 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 Franchisee 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 Franchisee’s notice to Customer(s) as described in Section 5.4.

**“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 Franchisee, excluding Excluded Waste.

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

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

**“District 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.

**“Excluded Waste”** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Franchisee 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 Franchisee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Franchisee 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.

**"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 Franchisee for failure to meet specific quantifiable standards of performance as described in Section 12.3.

**"Low Population Area(s)"** means any regions of the District that have been granted, after the Effective Date of this Agreement, a valid low population waiver, granted by CalRecycle, in accordance with the criteria and process specified in 14 CCR Section 18984.12(a).

**"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 Franchisee, 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 franchise 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-Hauler” or “Self-Haul”** 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 Franchisee for the performance of an act that is necessary for the Franchisee’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Franchisee 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 Franchisee 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, pruning’s, 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 Franchisee-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. Franchisee shall not add or remove materials to or from this list without written approval from the District Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.”

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

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

- D. Article 2, Section 3 of the Agreement is hereby amended to read as follows:  
"Franchisee shall comply with all existing and future District, County, State, and Federal laws, including, but not limited to, all Applicable Law."

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

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

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

Franchisee 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.

Franchisee 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 Article 4.2 (Limitations to Scope), the Agreement granted to Franchisee shall be exclusive for Solid Waste, Recyclable Materials, and Organic Materials, except where otherwise specified or precluded by law. It is specifically understood that the exclusive franchise granted in this Agreement does not include Solid Waste collected in roll-off (dumpster type) boxes. Franchisee shall have a non-exclusive franchise with respect to Solid Waste, Recyclable Materials, and/or Organic Materials collected in Roll-Offs."

### **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 Franchisee shall be exclusive (unless limited otherwise in this Agreement) except as to the following categories of Recyclable Materials listed in this Article. 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:

- A. Recyclable Materials or Organic 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;
- B. Recyclable Materials or Organic Materials donated to a charitable, environmental, or other non-profit organization; provided, however, that all such Recyclable Materials or Organic Materials are substantially separated from non-Recyclable and non-Compostable Solid Waste by the Waste Generator;
- C. Recyclable Materials or Organic 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 or Organic Materials Processing center;
- D. Other Governmental Agencies within the District which can contract for separate Solid Waste, Recycling, and Organic Materials services; and,
- E. Franchisee acknowledges and agrees that District may permit other Persons beside Franchisee to Collect any or all types of the Recyclable Materials listed in this Article 4.2, without seeking or obtaining approval of Franchisee under this Agreement.
- F. 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 handling, Recyclable 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, Franchisee 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 Franchisee as a result of changes in law.
- G. Franchisee 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."

#### **4.5.2 New Diversion Programs**

- H. Article 4, Section 5, Subsection 2 of the Agreement is hereby amended to read as follows:  
"Franchisee 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, 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. 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.

- g. Approved Processing Facility to be utilized.”

#### **4.6 Ownership of Discarded Materials**

- I. Article 4, Section 6 of the Agreement is hereby retitled and amended to read as follows:  
“All Discarded Materials Collected, removed, and Transported by Franchisee from the Premises where produced, generated, and/or accumulated pursuant to this Agreement shall be the property and responsibility of Franchisee.

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 Franchisee by operation of this Agreement. Franchisee is hereby granted the right to retain, recycle, Process, reuse, and otherwise use such Discarded Materials Organic 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, Franchisee shall have the right to retain any benefit resulting from its right to retain, recycle, Process or reuse the Solid Waste, Recyclable Materials and/or Organic Materials that it Collects. Solid Waste, Recyclable Materials, or Organic Materials or any part thereof, which are delivered to a Facility shall become the property of the owner or operator of the Facility(ies) once deposited there by Franchisee. The District may obtain ownership or possession of Solid Waste, Recyclable Materials, or Organic 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 Franchisee.”

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

- J. Article 4, Section 7 of the Agreement is hereby amended to read as follows:  
“In the event Franchisee fails to Collect, remove, and 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, except in cases of a Customer Notice as described in Section 5.4, District may Collect said materials and Franchisee shall be liable for all related expenses incurred by District. Such expenses include but are not limited to disposal, administrative, and legal costs. Franchisee shall reimburse District for such expenses as required.

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

#### **5.1 General**

- K. Article 5, Section 1 of the Agreement is hereby amended to read as follows:  
“The work to be done by Franchisee 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 Franchisee of the duty to furnish all others, as may be required, whether enumerated or not.

The work to be done by Franchisee 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 Franchisee 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.”

## 5.2 Discarded Materials Services

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

- A. “No later than the Effective Date, Franchisee shall provide regular weekly Collection of Discarded Materials for all places and Premises within District, or such other level of service as may be determined by District with the consent of Franchisee and at rates established by this Agreement. Franchisee shall provide more frequent Collection services at rates established by this Agreement for those Premises within the District that generate larger volumes of Discarded Materials.
- B. **General.** Franchisee 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. Franchisee shall Transport all Discarded Materials to the Approved Facility(ies) as specified in Sections 5.7 and 5.11. Residential Recyclable Materials 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 6.7. Commercially Generated Recyclable Materials and Organic Materials Collection shall be on a schedule as determined by Franchisee and the Waste Generator.
- C. **Organic Materials.** No later than the Effective Date, Franchisee shall implement an Organic Materials Collection program that allows Generators to intentionally 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 6.8. Franchisee shall provide Organic Materials Collection service, as described in this Section and Transport the Organic Materials to the Approved Organic Materials Processing Facility.
- D. **Low Population Exemption.** Low Population Areas are exempt from certain services, in accordance with the most recent applicable low population waiver the Low Population Area has received approval for by CalRecycle, if any.”

## 5.4 Refusal to Provide Collection Services

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

“Franchisee may refuse to Collect Recyclable Materials or Organic Materials and shall not be obligated to continue to provide Container(s) to any participant in the Recycling or Organic Materials program who, after reasonable warning by Franchisee, fails to properly sort and set out Recyclable Materials or Organic Waste, including excessive contamination. Franchisee shall report monthly to District any warning notices issued as described in Exhibit G.”

### 5.4.1 Customer Notices.

- A. **General.** If the Franchisee 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, Franchisee shall attach a Customer Notice, subject to District approval, securely to the item or Container specifying the identified non-compliance issues.



The Customer Notice shall contain Franchisee's name, telephone number, and information described below.

The Customer Notice shall, at a minimum:

1. Inform the Customer of the reason for the for the Customer Notice; and
  2. Include the date and time the issue was observed.
1. In addition, upon the identification of Prohibited Container Contaminants in a Customer's Container, the Franchisee 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;
  2. Inform the Customer of the contaminated materials on this occasion with information that the Franchisee may assess contamination Processing fees and/or may not Collect the Container in the future; and,
  3. Include photographic evidence of the violation(s).
- B. **Upon identification of Prohibited Container Contaminants.** Franchisee shall Collect the contaminated Recyclable Materials and/or Organic Materials Containers and either Transport the material to the appropriate Approved Facility for Processing; or, Franchisee 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 not Collected, Franchisee shall contact the Customer on the scheduled Collection day 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. **Franchisee Return for Collection.** Upon request from Customer, Franchisee shall Collect Containers that received Customer Notices specifying non-Collection within one (1) Working Day of Customer's request. Franchisee shall bill Customer for the extra Collection service event ("extra pick-up") at the applicable District-approved Rates only if Franchisee 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 Franchisee observes twenty percent (20%) or more Prohibited Container Contaminants and has issued a Customer Notice specifying a Collection, the Franchisee may impose a contamination rate approved by the District for that Customer's Service Level, if and only if Franchisee 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, Franchisee may issue a fee of ten (10) dollars. After the second observance of Prohibited Container Contaminants in the same calendar year, Franchisee may issue a fee of twenty (20) dollars. After the third observance of Prohibited Container Contaminants in the same calendar year, Franchisee may issue a fee of thirty (30) dollars. In the fourth and any subsequent observances of Prohibited Container Contaminants in the same calendar year, Franchisee 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.** Franchisee agrees that contamination fees shall not exceed one percent (1%) of Franchisee's Gross Receipts in any calendar quarter. In the event that contamination fees exceed one percent (1%) of Franchisee'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 Franchisee. Upon program suspension or at the request of the District at any time during the Term of the Agreement, District and Franchisee 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 Franchisee 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 Franchisee'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."

### 5.6.1 Schedules

- N. Article 5, Section 6, Subsection 1 of the Agreement is hereby amended to read as follows:  
"To preserve peace and quiet, no Solid Waste, Recyclable Materials, or Organic Materials shall be Collected from or within two-hundred (200) feet of Residential Premises between 5:00 P.M. and 7:00 A.M. on any day. Minor exceptions may be granted upon written approval from the District. Residential Solid Waste Recyclable Materials, and Organic Materials shall be Collected, Monday through Friday on the same day, unless a Holiday pushes to a Saturday or Sunday collection. Commercial Discarded Materials shall be Collected, Monday through Sunday on the same day. The one exception is the Franchisee 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 a Holiday, Collection shall take place on the following regularly scheduled Collection day. In the event the Franchisee misses the Collection of set out Solid Waste, Recyclable Materials, or Organic Waste, the Franchisee shall Collect the missed pickups within one (1) Business Day of notification."

### 5.6.2.B Specifications

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

**“B. Specifications.** All vehicles used by Franchisee 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.”

### **5.6.3 Discarded Materials Containers**

P. 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.** Franchisee shall supply each Single-Family Dwelling Unit with a 32-, 64- or 96-gallon Container for Solid Waste at the current fees approved by the District. In addition, each Single-Family Dwelling Unit will receive from Franchisee a 64 or 96-gallon Container for all commingled Recyclable Materials and a 64 or 96 gallon Container for Organic Materials.

Franchisee shall supply each Multi-Family and Commercial or governmental agency with appropriately sized Containers for Discarded Materials. Franchisee agrees to provide additional Containers, as requested, by all Persons at the rate as shown on Exhibit A.

**B.** On and after the Effective Date, Franchisee-provided Containers shall comply with the Container standards set forth in this Section. All Containers shall display identifying and contact information approved by the District Manager, including telephone number, capacity, and identifying inventory or serial number (carts only).

**C.** Franchisee shall use the Franchisee-provided Collection Containers that are currently located at Customers’ Premises. If Customer is currently utilizing Collection Containers that are were not provided by the Franchisee, Franchisee shall provide containers from current inventory.

**D.** No later than December 31, 2035, Franchisee 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. At least thirty (30) days in advance of Franchisee Container purchases or repainting of metal Containers, Franchisee shall present proposed container purchases to the District for review and approval.

**E.** District and Franchisee acknowledge that from time to time, a customer may damage or destroy a Container. District and Franchisee 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 Franchisee shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Franchisee is not required to replace functional Containers, including Containers purchased prior to January 1, 2022, 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. The fee schedule to replace lost Containers is shown on Exhibit A.

**F. Color Requirements.** 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, Franchisee 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.

- G. Labels.** Franchisee shall ensure a label on the body or lid of each new 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. Kitchen Pails.** The Franchisee shall provide kitchen pails designed to contain Food Scraps prior to placement in the Customer's Organic Materials Cart. Franchisee will be responsible for distribution of kitchen pails to Single-Family and Multi-Family Customers upon request, from Franchisee's office beginning the Effective Date. District or its designee may restock Franchisee inventories at local offices for distribution to new residents or residents who need a replacement.

#### **5.6.4 Litter Abatement**

- Q.** Article 5, Section 6, Subsection 4 of the Agreement is hereby amended to read as follows:  
"Franchisee shall use due care to prevent Solid Waste, Recyclable Materials and/or Organic Materials from being spilled or scattered during the Collection or Transportation Process. If any Solid Waste, Recyclable Materials, and/or Organic Materials are spilled during Collection, Franchisee 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**

- R.** Article 5, Section 7 of the Agreement is hereby amended to read as follows:  
"
  - A.** Franchisee shall Dispose of all Solid Waste Collected under this Agreement at Franchisee's own expense and in accordance with all Federal, State, and local laws, rules, and regulations. Franchisee shall be solely responsible for securing an Approved Facility(ies) Disposal of all Solid Waste Collected by Franchisee pursuant to this Agreement.
  - B.** Franchisee shall secure, within ninety (90) days of the Effective Date of this Agreement, sufficient Disposal Facility capacity commitment including landfill Disposal site capacity to adequately serve the reasonable anticipated Solid Waste Disposal needs of Franchisee's customers. District reserves the right to review said Disposal capacity commitments.
  - C.** If Franchisee receives notice from an Approved Facility operator, or otherwise finds, during the term of the Agreement, to be prevented from delivering Solid Waste to the Approved Disposal Facility, Franchisee shall immediately notify, in writing, the District Manager stating the reason(s) Franchisee is prevented, or expects to be prevented, from delivering Solid Waste at the Approved Facility. Franchisee shall expeditiously identify and evaluate alternative sites. An alternative Disposal Facility or Facilities shall be arranged for and secured by Franchisee.
  - D.** 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, and other Applicable Laws, or such other programs as may be established by District.

- E. Franchisee shall deliver all Solid Waste to any landfill which Collects the San Luis Obispo County ("County") AB 939 Tipping Fee Surcharge and Waste Management Program Fund Fee, pursuant to County Resolution No. 90-383. If the Franchisee delivers Solid Waste to a landfill which does not Collect the County Tipping Fee Surcharge and Waste Management Program Fund Fee, the Franchisee 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.
- F. 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 the Franchisee 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 Franchisee shall pay a penalty of ten (10) percent on the outstanding balance, and Franchisee 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 Franchisee's failure to pay.
- G. As of the date of this Agreement 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 the Franchisee 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.
- H. Franchisee hereby agrees to Dispose of all or a portion of the Solid Waste collected pursuant to this Agreement in such manner as may be reasonably designated by District. In the event that District designates a different manner of, or location for, Processing or Disposal of Solid Waste or Recyclable Materials, or Organic Materials than anticipated in this Agreement, District shall defend, indemnify and save harmless Franchisee, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of, or connected with the manner, or location for Processing or disposing of the Solid Waste, as designated by the District.
- I. In the event Franchisee's costs decrease or increase as a result of District designating a different manner of, or location for, Processing or Disposal of than anticipated in this Agreement, either Franchisee or District may request an adjustment in Collection rates which adjustment shall be effective at the time the designated manner of Disposal begins. District will not unreasonably deny any such adjustment. In the event Franchisee receives any additional compensation for the value, if any, of the Solid Waste Recyclable Materials Disposed in such a manner, such compensation shall be considered in connection with future rate adjustments.
- J. Franchisee shall keep all existing permits and approvals necessary for use of the Approved Facility(ies) in full regulatory compliance. Upon request, Franchisee shall provide copies of facility permits and/or notices of violations (obtained from its Processing Facility Subcontractor if necessary) to and District Manager."

### **5.10 Free Solid Waste, Recyclable Materials, and Organic Materials Service**

- S. Article 5, Section 10 of the Agreement is hereby retitled and amended to read as follows:

**"5.10 Free Solid Waste and Recyclable Materials**

The Franchisee will provide free Collection of up to thirty (30) Solid Waste Bins and up to thirty (30) Recyclable Material Bins located in public areas."

### **5.11 Material Processing**

T. 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 Franchisee shall have in place or have made arrangements for an Approved Materials Recovery Facility and Approved Organic Materials Facility to receive and accept all deliveries of Recyclable Materials and Organic Materials generated in the District.

#### **5.11.2 Status of Approved Processing Facility**

Any Approved Processing Facility used by Franchisee must be designed and constructed in accordance with all State and local laws and other Applicable Laws (e.g., CEQA, California Code of Regulations, etc.). Any Approved Processing Facility must have all permits from Federal, State, regional, County and city agencies necessary for it to operate as a Processing Facility and must be in full regulatory compliance with all such permits and Applicable Law.

The selected Approved Processing Facilities 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, Franchisee for the term of this Agreement. Franchisee shall immediately notify District of any notice of breach or default received from Approved Processing Facility.

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

The Approved Materials Recovery 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.

#### **5.11.3 Alternative Processing Facility**

If Franchisee becomes unable to deliver the District's Recyclable Materials and/or Organic Materials to the Approved Processing Facility(ies) due to causes within its control and which could have been avoided by the exercise of due care, the Franchisee shall arrange for it to be accepted at another Processing Facility, in which case Franchisee shall pay for any increased Transportation costs, any differences in the fees charged at such Processing Facility and the fees then in effect under this Agreement.

If Franchisee's inability to deliver the District's Recyclable Materials and/or Organic Materials to the Approved Processing Facility(ies) is not due to causes within its control or which could have been avoided by the exercise of due care, then Franchisee shall propose alternative Processing Facilities including all related costs and District shall have the right to approve the alternative to be used. In the event Franchisee's costs increase as a result of the Franchisee's delivery of Recyclable Materials and/or Organic Materials to the alternative Processing Facility, when such delivery is not due to causes within its control or which could have been avoided by the exercise of due care, either Franchisee or District may request an adjustment in Collection rates which adjustment shall be effective at the time Franchisee's delivery of Recyclable Materials and/or Organic Materials to the alternative Processing Facility begins. District will not unreasonably deny any such adjustment. In the event Franchisee receives any additional compensation for the value, if any, of the Recyclable Materials and/or Organic Materials Processed in such a manner, such compensation shall be

considered in connection with future rate adjustments. Franchisee shall provide notice by email to the District within forty-eight (48) hours of the use of an alternative Processing Facility.

Franchisee shall, directly or through similar obligations in its subcontract(s) with facility operators, keep all existing permits and approvals necessary for use of the Approved Processing Facility in full regulatory compliance. Upon request, Franchisee shall provide copies of facility permits and/or notices of violations (obtained from its Processing Facility if necessary) to District Manager.

#### **5.11.4 Disposition of Unauthorized Waste**

It is understood that the Franchisee 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 Processing Facility or Disposal site. In addition, Franchisee shall not be required to Collect Containers that are not set out or filled in accordance with, or do not meet Franchisee's Collection requirements. Regardless of the reason, when any Discarded Materials or other material is not Collected by Franchisee, Franchisee shall leave a tag on the material stating the reasons for Franchisee's refusal to Collect the same. Adequate records of the tags shall be maintained by Franchisee and shall be available to the District for inspection upon reasonable notice during business hours. If Franchisee 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 the District, including on, in, under or about District property, including streets, easements, rights of way and District waste Containers, Franchisee shall immediately notify the District of the same. If Franchisee discovers Hazardous Waste, or other material that may not be legally accepted, among materials that it has inadvertently accepted, Franchisee 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**

Franchisee shall ensure that the Residual from the Recyclable Materials or Organic Materials delivered to the Approved Processing Facility(ies) by the Franchisee are Disposed of at the Approved Disposal Facility in full regulatory compliance."

### **Article 6. Other Services**

#### **6.6 Public Education Programming (NEW)**

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

##### **6.6 Public Education Programming**

- A. **Program Objectives.** Franchisee 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, AB 876, AB 901, SB 1383, and other current or future Federal, State or local regulations, as amended. Accordingly, Franchisee 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.



- B. **Franchisee Cooperation and Support for District Educational Efforts.** Franchisee acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. Franchisee shall cooperate and coordinate with the District Manager on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. The Franchisee 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.** All public education materials shall be approved in advance by the District. Franchisee shall obtain approval from the District on all Franchisee-provided public education materials outside of the District's education plan, including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. All education and outreach materials detailed in this Section shall be provided in at the very least English and Spanish, as to comply with SB 1383 and other Applicable Law. District shall have the right to request that Franchisee include District identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.
- At the direction of the District, Franchisee shall participate in and promote activities of AB 939, AB 341, AB 1826, 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. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of the District's Solid Waste program.
- D. **Bill Inserts.** Franchisee shall maintain its own program of providing information relevant to billing and Discarded Materials services, issues and needs with its bills. Franchisee shall also include in Customer bills additional information, including information on Recycling programs, as directed by the District. Franchisee shall bear all labor costs with respect to inserting public education materials with the billings. Franchisee agrees to insert and distribute brochures, newsletters, or other information developed by the District, as inserts in Franchisee'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 Franchisee, and final approval by the District. Annually, Franchisee shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Franchisee agrees to distribute brochures, newsletters, or other information developed by the District, as attachments to Customer invoices at no additional charge to the District. Franchisee 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, Franchisee shall comply with such request during its next billing cycle for the targeted Customer group. Franchisee shall perform this service with no additional requirement for compensation.
- E. **Annual Notice of Requirements.** Not less than once per year during each calendar year, Franchisee 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 Franchisee to all Residential and Commercial mailing addresses including individual

Multi-Family Dwelling Units. Franchisee shall also make this notice available in an electronic format through the Franchisee's website."

## 6.7 Generator Waivers (NEW)

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

### **"6.7 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 Franchisee's provision of service for those Customers; provided, the Generator shall continue to subscribe with Franchisee 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 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. **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 Franchisee, the Franchisee shall refer the Generator to the District. Upon request of the District, the Franchisee 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 Franchisee and Franchisee shall update the Customer's information and Service Level in accordance with Exhibit G.
- D. **District Exemptions.**



- a. **Low Population.** As of the Effective Date, no census tracts of the District qualify as Low-Population Areas. Some Collection service requirements are waived for the Low-Population Areas. 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 for any Low-Population Areas, any resulting Collection service changes shall be addressed as a change in scope in accordance with Section 4.5"

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

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

W. 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, Franchisee shall pay an AB 939/SB 1383 reimbursement fee each month, to be specified annually by the District, and in addition if the San Luis Obispo Integrated Waste Management Authority "IWMA" currently implements an AB 939, SB 1383 reimbursement, or Solid Waste Management fee, Franchisee shall pay that fee directly to the IWMA. Said fee shall be an allowable cost in Franchisee's rate application. All AB 939 fees, SB 1383 fees, or Solid Waste Management fees paid to the 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 Franchisee'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 fee."

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

### **9.1 Records**

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

**"9.1.1 General**

Franchisee shall maintain records in accordance with Exhibit G.1, and records required to conduct its operations, to support requests it may make to District, to respond to requests of the District, and to help District fulfill its 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.

### **9.2 Reports**

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

**"9.2.1 Report Formats and Schedule**

Records shall be maintained in forms and by methods in accordance with Exhibit G.2 that facilitate flexible use of data contained in them to structure reports, as needed.

**9.2.2 Monthly Reports**

Monthly Reports shall, at a minimum include all data and information specified in Exhibit G.3.2.

**9.2.3 Annual Report.** Annual reports shall be formatted and submitted as outlined in Exhibit G.

**9.2.4 Additional Reports**

The District reserves the right to require Franchisee to provide additional reports or documents as District reasonably determines to be required for the administration of this Agreement or compliance with Applicable Law.

**9.2.4.1 AB 901 Reporting.** At the District's option, the District may require that Franchisee 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 Franchisee 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."

**9.4 Waste Generation / Characterization Studies**

- Z. Article 9, Section 4 of the Agreement is hereby amended to read as follows:  
"Franchisee acknowledges that the District may cause to be performed a Solid Waste, Recyclable Materials, and Organic Materials generation and Disposal characterization studies periodically to comply with AB 939 requirements. Franchisee 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."

**Article 11.  
District's Right to Perform Service**

**11.1 General**

- AA. Article 11, Section 1 of the Agreement is hereby amended to read as follows:  
"In the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to Collect, Transport, Process or market any or all Discarded Materials which it is required by this Agreement to Collect, Process and market, at the time and in the manner provided in this Agreement, for a period of more than seven (7) calendar days, and if, as a result thereof, Discarded Materials should accumulate in the District to such an extent, in such a manner, or for such a time that the District Manager or their designee should find that such accumulation endangers or menaces the public health, safety or welfare, then District shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Franchisee during the period of such emergency as determined by the District Manager or their designee, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Franchisee; and/or (2) to take possession of any or all of Franchisee's land, equipment and other property to Collect, Transport, Process, market and/or Dispose any Discarded Materials generated within the District which Franchisee would otherwise be obligated to Collect, Transport, Process or market pursuant to this Agreement. In the event the District takes possession of the Franchisee's equipment and other property, the District shall be entitled to have another Franchisee operate such equipment and property under District direction. Additionally, in the event the District takes possession of the Franchisee's equipment and other property, the District does not guarantee repair of existing problems with equipment and facilities.

Notice of Franchisee's failure, refusal, or neglect to Collect, Transport, Process, market and/or Dispose Discarded Materials may be given orally by telephone to Franchisee at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Franchisee within twenty-four (24) hours of the oral notification.

Franchisee further agrees that in such event:

1. It will take direction from District to affect the Transfer of possession of property and equipment to District for District's use.
2. It will, if District so requests, keep in good repair and condition all of such property and equipment, provide all motor vehicles with fuel, oil, and other service, and provide such other service as may be necessary to maintain said property in operational condition.
3. District may immediately engage all or any personnel necessary or useful for the Collection, Transportation, Processing marketing and/or disposing of Discarded Materials including, if District so desires, employees previously or then employed by Franchisee, Franchisee further agrees, if District so requests, to furnish District the services of any or all management or office personnel employed by Franchisee whose services are necessary or useful for Discarded Materials Collection, Transportation, Processing and marketing operations and for the billing and collection of fees for these services.

District agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Article 12.4 (Excuse From Performance), District shall pay to Franchisee the reasonable rental value of the equipment and facilities, possession of which is taken by District, for the period of District's possession, if any, which extends beyond the period of time for which Franchisee has rendered bills in advance of service.

Except as otherwise expressly provided in the previous paragraph, District's exercise of its rights under this Article 11 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of District to Franchisee; and (3) does not exempt Franchisee from the indemnity provisions of Article 10, Indemnification, Insurance and Bond, which are meant to extend to circumstances arising under this Article, provided that Franchisee is not required to indemnify District against claims and damages arising from the sole negligence of District officers, employees and agents in the operation of Collection vehicles during the time District has taken possession of such vehicles."

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

### **12.3 Liquidated Damages**

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

"

- A. General.** District finds, and Franchisee 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 Franchisee of its obligations under this Agreement.

**B. 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 Franchisee'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 Franchisee 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 Franchisee within two (2) days of any failing reported directly to the District. In addition Franchisee agrees to meet with the District Manager within two (2) days of a requested meeting to discuss the Franchisee's performance.

Franchisee 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 has 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 Franchisee from Containers: \$150.00

For each occurrence over five (5) annually of Collecting Discarded 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 \$100 per day  
Annual Reports: For each infraction \$500 per day

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

District wishes to establish standards of performance under the Agreement in each of the six (6) "Performance Areas" listed below. The District Contract Administrator may monitor Franchisee'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 Franchisee has failed to meet the performance standard established for any "Specific Performance Measure", the District may assess Liquidated Damages pursuant to this Article 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 6.7 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 Franchisee'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	\$180 / occurrence

	SB 1383 Related Event of Non-Performance	Liquidated Damage
	and outreach activity as required and, in the timeframe, specified by this Agreement.	
5	<b>Failure to Allow Access to Records.</b> For each failure to provide access to records in compliance with and in the timeframe specified in this Agreement.	\$120 / day
6	<b>Failure to Issue Customer Notices.</b> For each failure of Franchisee Collection personnel to issue Customer Notices and maintain documentation of issuance as required by Section 5.4 of this Agreement.	\$100/Franchisee 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 Franchisee 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 Franchisee notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Franchisee may review (and make copies at its own expense) all information in the possession of District relating to incident(s)/non-performance. Franchisee 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 District Manager or his/her designee. Franchisee may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The District Manager or designee will provide Franchisee 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 District Manager or designee shall be final.

- C. Amount.** The District Manager or his/her designee may assess Liquidated Damages for each calendar day or event, as appropriate, that Franchisee is determined to be liable in accordance with this Agreement.
- D. Timing of Payment.** Franchisee 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 fund required by this Agreement or order the termination of this Agreement, or both.”

## **Article 13.**

### **Default, Remedies, and Liquidated Damages**

#### **13.6 Subcontracting**

CC. Article 13, Section 6 of the Agreement is hereby amended to read as follows:

“Except as approved in writing by District, Franchisee shall not enter into an agreement to have another Person perform Franchisee’s duties of this Agreement. Franchisee must obtain written agreements with Processing Subcontractors, including the Approved Organic Materials Processing Facility. Franchisee 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.”

### **13.14 District Free to Negotiate with Third Parties**

DD. Article 13, Section 14 of the Agreement is hereby amended to read as follows:

“District may investigate all options for the Collection, Processing and marketing of Organic Materials and Recyclable Materials after the expiration of the Term. Without limiting generality of the foregoing, District may solicit proposals from Franchisee and from third parties for the provision of Discarded Materials 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 Article 12.1 (Events of Default) of this Agreement.”

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

EE. Exhibit G, Record Keeping and Reporting, is hereby included in the Agreement:

# **EXHIBIT G RECORD KEEPING AND REPORTING**

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## **“G.1 General**

Franchisee shall maintain such accounting, statistical, and other records related to its performance under this Agreement as shall be necessary to develop the reports required by this Agreement or District Code. Franchisee agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Laws and regulations and to meet the reporting and Discarded Materials Collection, Processing, and Disposal program management needs of the District. At the written direction or approval of District, the records and reports to be maintained and provided by Franchisee in accordance with this Exhibit and other Articles 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 Franchisee’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 Franchisee’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.** Franchisee 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).

The following records shall be maintained for the District in form and detail satisfactory to the 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.

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.

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 Franchisee 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 Franchisee in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

Franchisee shall maintain adequate records, and corresponding documentation, of information required by this Exhibit, such that the Franchisee is able to produce accurate monthly and annual reports, and is able to provide records to verify such reports. Franchisee 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, Franchisee shall provide access to Franchisee's requested records in a timely manner, not to exceed ten (10) Business Days from the time of District's request to Franchisee.

Financial records shall separate all records related to the services performed under this Agreement from any and all other types of businesses and operations conducted by the Franchisee.

- 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. Franchisee's records shall be stored in one central location, physical or electronic, that can be readily accessed by Franchisee. District reserves the right to require the Franchisee to maintain the records required herein through the use of a District-selected web-based software platform, at Franchisee's expense. Unless otherwise required in this Exhibit, Franchisee 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. Franchisee 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. The protection and backup systems shall be subject to approval by the District. To the extent that Franchisee utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Franchisee 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.** Franchisee 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. Franchisee 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. Franchisee shall maintain records of Transfer, Diversion and Disposal of all Discarded Materials Collected in the District for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Franchisee discontinues providing Discarded Materials services to District, Franchisee shall provide all records of Diversion and Disposal of all Discarded Materials Collected within the 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.

### **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, as amended.

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.

The District may at no cost to itself request that Franchisee provide such additional information in the reports set forth below as the District deems necessary or appropriate to meet its needs, including provision of AB 939 report information.

- B. **Failure to Report.** Failure of Franchisee 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. Franchisee'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 District Manager, in accordance with Article 12 of this Agreement.
- C. **Report Format.** Franchisee 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 Franchisee 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 Franchisee's expense. Franchisee 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 the District.
- 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 District 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 Franchisee to maintain records and submit the reports required herein through use of a District-selected web-based software platform, at the Franchisee's expense.

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

Monthly reports shall be submitted by Franchisee to District within ten (10) calendar days after the end of the report month 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. Franchisee shall report the information included in the following subsections.

**A. Tonnage Report**

1. Franchisee shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Franchisee, 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 Franchisee (including, but not limited to: Bulky Items, used oil, mixed C&D, dirt, rock, metals, cardboard, wood waste, reusable items, salvageable materials, etc.);
  - b. Customer/sector type (Single-Family, Multi-family, Commercial franchise Roll-off, 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:
  - a. A summary of the total gallons of Cart service, cubic yards of Bin service, and pulls; and cubic yards or Tons of franchise Drop Box 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 franchise Roll-Off Service Level listed separately for Single-Family, Multi-Family, and Commercial and separately for each type of Discarded Material; the number and type of waivers (i.e., de minimis or physical space constraint) active for Customers for each type of Discarded Material; and the number of Bulky Items Collections performed.

**C. Contamination Monitoring Report**

The Franchisee shall submit the following information regarding Franchisee conducted contamination monitoring and issuance of Prohibited Container Contaminant notices, conducted pursuant to Section 5.4 of this Agreement:

1. Description of the Franchisee'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 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**

1. Franchisee shall maintain a record of all SB 1383 non-compliance Complaints as defined in 14 CCR Section 18995.3 and responses and submit the following information:
  - a. Total number of SB 1383 non-compliance Complaints received and total number of SB 1383 non-compliance Complaints investigated
  - b. Copies of documentation recorded for each SB 1383 non-compliance Complaint received, which shall at a minimum include the following information:
    - i. The SB 1383 non-compliance Complaint as received;
    - ii. The name and contact information of the complainant, if the SB 1383 non-compliance Complaint is not submitted anonymously;
    - iii. The identity of the alleged violator, if known;
    - iv. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant;
    - v. Any relevant photographic or documentary evidence submitted to support the allegations in the SB 1383 non-compliance Complaint; and,
    - vi. The identity of any witnesses, if known.
  - c. Copies of all SB 1383 non-compliance Complaint reports submitted by Franchisee to the District.
  - d. Copies of all investigation reports submitted to the District which shall include at a minimum:
    - i. The SB 1383 non-compliance Complaint as received;
    - ii. The date the Franchisee investigated the SB 1383 non-compliance Complaint;

- iii. Documentation of the findings of the investigation;
- iv. Any photographic or other evidence collected during the investigation; and,
- v. Franchisee's recommendation to the District on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Franchisee's investigation.

**E. Education Program Report**

The monthly status of activities identified in the annual public education plan described in Section 6.6 of this Agreement.

**G.3.3 Annual Reports**

In addition to the monthly reporting requirements in this Exhibit, the Franchisee shall submit to the District an Annual Report within forty-five (45) days after the end of the reporting year, 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, a list of all hauler routes serviced, and a record of the addresses served on each hauler route.
- 3. A summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Franchisee for service, listed separately by Service Level and Container type (Cart, Bin, and franchise Roll-Off service), separately by Single-Family, Multi-Family, and Commercial Customers, and separately for each type of Discarded Material.
- 4. A detailed list of Single-Family, Multi-Family, and Commercial Customer information, including Solid Waste Container Waste, Recyclable Materials, and Organic Materials Service Levels, Customer type, and Customer service addresses reflecting Customer Service Levels as of December 1 (for the year in which the report is submitted)

**B. Processing Facility Report**

- 1. Approved Organic Materials Processing Facility: Franchisee 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.
- 2. Temporary Equipment or Operations Failure: If the Franchisee is granted a Processing facility temporary equipment or operational failure waiver, in accordance with Section 5.11 of the Agreement, the Franchisee 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 Franchisee 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.
3. Quarantined Organic Waste: A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a Landfill.

**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 their designee.
- 2. The total number of Customer Notices and Contamination Processing Fees issued, if any, categorized by type of Generator.
- 3. The number of violations that were resolved, categorized by type of Generator.
- 45. Copies of all Customer Notices issued and educational materials issued to non-compliant Generators.

**D. 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 Franchisee 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 6.6 of the Agreement for the upcoming then-current calendar year. For example, Franchisee submittal of a 2021 annual

report in February 2022 shall include Franchisee 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 Franchisee 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 District Manager, which shall not exceed ten (10) days.
- C. **Facility Capacity Planning Information.** To the extent such information is available to Franchisee, District may require Franchisee 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. Franchisee 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 Franchisee and, at District's option, may be required to submit reports on a more regular basis (such as monthly, quarterly, or annually). If Franchisee uses a Subcontractor to perform some or all of the Facility-related services required by this Agreement, Franchisee 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 District Manager."

## **SECTION 5. OTHER TERMS AND CONDITIONS**

Except as otherwise amended herein, all other terms and conditions of the Agreement and the First Amendment, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement effective as of the date first set forth above.

Cayucos Sanitary District / Mission Country Disposal, Inc.  
Second Amendment to Solid Waste and Recycling Franchise Agreement

**CAYUCOS SANITARY DISTRICT**

**MISSION COUNTRY DISPOSAL**

By: Robert B. Enns  
Robert Enns,  
President, Board of Directors

By: Susan L. VanDelinder  
Susan VanDelinder, Division Vice President

Date: 16 June 2022

Date: 6-27-2022

ATTEST:

Rick Koon  
Rick Koon, District Manager

APPROVED AS TO FORM:

Tim Carmel  
Timothy J. Carmel, District Counsel



**CAYUCOS SANITARY DISTRICT**

**MISSION COUNTRY DISPOSAL**

By: Robert B. Enns  
Robert Enns,  
President, Board of Directors

By: \_\_\_\_\_  
Susan VanDelinder, Division Vice President

Date: 16 June 2022

Date: \_\_\_\_\_

ATTEST:

Rick Koon  
Rick Koon, District Manager

APPROVED AS TO FORM:

Tim Carmel  
Timothy J. Carmel, District Counsel