

**THIRD AMENDMENT
TO
AMENDED AND RESTATED SOLID WASTE,
RECYCLABLE MATERIALS, AND ORGANIC MATERIALS
COLLECTION FRANCHISE AGREEMENT**

BETWEEN

NIPOMO COMMUNITY SERVICES DISTRICT

AND

SOUTH COUNTY SANITARY SERVICES, INC.

JANUARY 22, 2025

THIS THIRD AMENDMENT to the Amended and Restated Solid Waste, Recyclable Materials, and Organic Materials Collection Franchise Agreement (the “Third Amendment”) between the Nipomo Community Services District (“District”) and South County Sanitary Services, Inc. (“Contractor”) is made and entered into this 22d day of January, 2025.

WHEREAS, the District and Contractor entered into the Amended and Restated Solid Waste Collection Franchise Agreement on August 27, 2008, as amended by the First Amendment to Amended and Restated Solid Waste Collection Franchise Agreement on November 12, 2015, and the Second Amendment to Amended and Restated Solid Waste, Recyclable Materials, and Organic Materials Collection Franchise Agreement on November 1, 2022, (together the “Agreement”) pursuant to which the Contractor renders solid waste, recyclable materials and organic materials collection, processing and disposal services to residents and businesses in the District; and

WHEREAS, pursuant to the Agreement, the process by which solid waste rates charged by Contractor to residents and businesses has been subject to annual adjustment pursuant to the “City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates” which was established in 1994 (“1994 Rate Manual”); and

WHEREAS, the 1994 Rate Manual is outdated and the District and the Contractor mutually desire to replace it with a new methodology for processing annual adjustments to solid waste rates that will enhance rate stability, predictability, fairness, transparency, ease of administration, and cost-effectiveness; and

WHEREAS, the District partnered with the City of San Luis Obispo – acting as the lead agency on behalf of the District and eight other public agencies in San Luis Obispo County – and the Contractor, in developing the features and parameters of a new methodology; and

WHEREAS, the District Board of Directors heard a presentation regarding the features and parameters of a new methodology on November 13, 2024; and

WHEREAS, on November 13, 2024, the District Board of Directors directed staff and the Contractor to mail written notice to residents and businesses in the District regarding a) the features and parameters of the new methodology, b) the proposed adjustments to solid waste rates pursuant to the new methodology to be effective January 1, 2025, and c) the time and place of a public hearing regarding the proposed solid waste rates and the new methodology, and the District has provided such notice according to applicable law; and

WHEREAS, the City of San Luis Obispo, acting as lead agency, met in good faith with the Contractor to develop the terms and conditions of the new rate adjustment methodology, attached hereto as Appendix 1; and

WHEREAS, Appendix 1 includes the features and parameters of the new methodology that were previously presented to the District Board of Directors; and

WHEREAS, District and Contractor agree that Appendix 1 meets both parties' objectives for a new rate adjustment methodology that will enhance rate stability, predictability, fairness, transparency, ease of administration, and cost-effectiveness; and

WHEREAS, District and Contractor mutually desire to amend the Agreement to replace references to the 1994 Rate Manual with Appendix 1 to this Third Amendment.

NOW THEREFORE, it is mutually agreed as follows:

1. **Section 10.10, "Annual Financial Audit,"** shall be amended as follows:

The reference to "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Rates dated June 1994*" is deleted and hereby replaced by "*Appendix 1, Annual Solid Waste Rate Adjustment Methodology.*"

2. **The second paragraph of Section 11.1, "General,"** shall be amended as follows:

The reference to "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Rates dated June 1994*" is deleted and hereby replaced by "*Appendix 1, Annual Solid Waste Rate Adjustment Methodology.*"

3. **Section 11.4 "Requests for Rate Adjustments,"** shall be amended in its entirety to read as follows:

"Applications for Rate Review. Contractor shall submit to the District an application for rate review annually in accordance with the procedures described in Appendix 1, Annual Solid Waste Rate Adjustment Methodology."

4. **Section 11.5, "Special Interim Rate Review,"** shall be amended in its entirety to read as follows:

"Extraordinary Adjustments. Extraordinary adjustments may be made in accordance with the procedures set forth in Appendix 1, Annual Solid Waste Rate Adjustment Methodology."

5. **Section 11.6, "Allowable Profit,"** shall be amended in its entirety to read as follows:

"Allowable Profit. When performing the procedures described in the "Appendix 1, Annual Solid Waste Rate Adjustment Methodology," the allowable profit on expenses shall be as set forth therein."

6. **Section 11.7, "Reduction in Allowable Profit,"** shall be deleted in its entirety.

7. Appendix 1, Annual Solid Waste Rate Adjustment Methodology, attached hereto, is hereby incorporated into the Agreement. All applicable references to the "City" in Appendix A shall mean "District."
8. **District and Contractor agree and acknowledge that**, except as explicitly modified by this Amendment or by necessary implication, the Agreement remains in full force and effect. In the event of a conflict between the terms of the Agreement and this Third Amendment, the terms of this Third Amendment shall prevail, and the terms of Appendix 1 shall prevail in the event of a conflict relating to rate setting procedures among or between the foregoing documents.
9. Each party executing this Third Amendment represents and warrants that it is duly authorized to cause this Third Amendment to be executed and delivered.
10. This Third Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment the day and year first above written.

South County Sanitary Services, Inc.

Nipomo Community Services District

By: Mark Gingrich
Mark Gingrich (Feb 6, 2015 16:30 PST)

By: _____

Mark Gingrich, Division Vice President

Ed Eby, President

By: _____
 Secretary

ATTEST:

By: _____

Secretary

Raymond Dienzo, P.E.

APPROVED AS TO FORM:

By: _____

Craig A. Steele, General Counsel

7. Appendix 1, Annual Solid Waste Rate Adjustment Methodology, attached hereto, is hereby incorporated into the Agreement. All applicable references to the "City" in Appendix A shall mean "District."
8. **District and Contractor agree and acknowledge that**, except as explicitly modified by this Amendment or by necessary implication, the Agreement remains in full force and effect. In the event of a conflict between the terms of the Agreement and this Third Amendment, the terms of this Third Amendment shall prevail, and the terms of Appendix 1 shall prevail in the event of a conflict relating to rate setting procedures among or between the foregoing documents.
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South County Sanitary Services, Inc.

Nipomo Community Services District

By: _____
President

By: 
Ed Eby, President

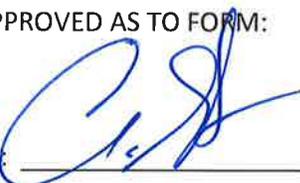
By: _____
Secretary

ATTEST:

By: 
Raymond Dienzo, P.E.

Secretary

APPROVED AS TO FORM:

By: 

Craig A. Steele, General Counsel

Appendix 1

Annual Solid Waste Rate Adjustment Methodology

Section 1 Objectives

This Exhibit details the process by which Maximum Service Rates are adjusted annually to provide fair and adequate compensation to Franchisee for collection of solid waste and other services provided to Customers and the District per the Agreement. The annual rate adjustment methodology described herein fulfills key objectives established by the District and Franchisee, including rate stability, predictability, fairness, transparency, ease of administration, and cost-effectiveness.

Section 2 Index-Based Rate Adjustments

Except in the case of a Cost-Based Rate Adjustment (see Section 3, below) Franchisee's Maximum Service Rates shall be adjusted via the Index-Based Rate Adjustment methodology described in this section. The Index-Based Rate Adjustment methodology shall be used to adjust Maximum Service Rates effective each January 1 of 2026, 2027, 2028, and 2029 and any subsequent year during which a Cost-Based Rate Adjustment is not allowed or not requested by the District or the Franchisee.

In years during which Maximum Services Rates are to be adjusted pursuant to this Index-Based Rate Adjustment methodology, Franchisee shall submit a report to the District on or before September 1 detailing its calculations of Index-Based Rate Adjustment. District shall have the right to review Franchisee's calculations of Index-Based Rate Adjustment for mathematical accuracy and adherence to the terms and conditions of this Exhibit. District shall prepare written findings regarding adjustments to the Franchisee's calculations of Index-Based Rate Adjustment that are required for mathematical accuracy and adherence to the terms and conditions of this Exhibit on or before October 30.

Index-Based Rate Adjustments shall be prepared and calculated in accordance with the steps described below. All Index-Based percentages shall be rounded to the nearest hundredth of a percent, and all cost calculations shall be rounded to the nearest dollar.

A. Calculation of CPI Adjustment to Franchisee's Collection Services and Post-Collection Services

Franchisee's prior year cost projections for Collection Services and Post-Collection Services shall be adjusted in accordance with the Consumer Price Index (CPI) for Garbage and Trash Collection, U.S. City average, Bureau of Labor Statistics Series I.D. CUUR0000SEHG02.

The CPI Adjustment shall be equal to the percentage change in the average 12-month CPI value ending June of the current year and compared to the average 12-month CPI value ending June of the prior year.

For example, the CPI used to set the 2026 rates shall be calculated as follows:

$$\frac{(\text{Average CPI from July 1, 2024 to June 30, 2025}) - (\text{Average CPI from July 1, 2023 to June 30, 2024})}{\text{Average CPI from July 1, 2023 to June 30, 2024}}$$

If the percentage change is below 2%, the applicable CPI Adjustment shall be 2%, with the difference in the amount below 2% being carried forward as a credit on the rates and applied to the subsequent year. If the percentage change is above 5%, the applicable CPI Adjustment shall be 5%, with the difference in the amount above 5% being carried forward and applied to the rates in subsequent years. Franchisee's prior year cost projections for Collection Services and Post-Collection Services shall be escalated by the resultant CPI Adjustment, rounded to the nearest dollar.

Franchisee's 2025 cost projection for Collection Services is \$1,497,742 and Franchisee's 2025 cost projection for Post-Collection Services is \$841,164. For 2026, by way of example, if the percentage

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change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 5%, then Franchisee's 2026 cost projection for Collection Services shall be \$1,572,629 and Franchisee's 2026 cost projection for Post-Collection Services shall be \$883,223. Likewise, if the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 2%, then Franchisee's 2026 cost projection for Collection Services shall be \$1,527,697 and Franchisee's 2026 cost projection for Post-Collection Services shall be \$857,988.

Example Calculation for application of amounts above cap on CPI increases applied to Collection Services component of CPI Adjustment (noting that cap on CPI increases also applies to Post-Collection Services):

Year 1

Collection Services: \$1,497,742

12-month average CPI index increase: 6.00%

$$\$1,497,742 \times (1+5.00\%^*) = \$1,572,629$$

**5% cap on CPI increases. 1% difference carried over to next year*

Year 2

Collection Services: \$1,572,629

12-month average CPI index increase: 6.00%

$$\$1,572,629 \times (1+5.0\%^*) = \$1,651,261$$

**5% cap on CPI increases. 1% difference carried over to next year*

Year 3

Collection Services: \$1,651,261

12-month average CPI index increase: 3.00%

$$\$1,651,261 \times (1+5.0\%^*) = \$1,733,824$$

**3.00% + 1.00% carried forward from Year 1 + 1.00% carried forward from Year 2*

The above is also demonstrated in Table 1, on the following page.

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Table 1 – Example of CPI Cap and Carryforward

	2025	2026	2027	2028
Collection Services	\$1,497,742	\$1,572,629	\$1,651,261	\$1,733,824
12-Month Average CPI	6.00%	6.00%	3.00%	
CPI Adjustment (5% Cap)	5.00%	5.00%	5.00%	

B. Calculation of Profit Allowance

The Index-Based Rate Adjustment methodology includes a component for Franchisee's fair and reasonable Profit Allowance. Profit Allowance is used for the purposes of calculating Index-Based Rate Adjustments and does not constitute a guarantee of profit to the Franchisee.

Franchisee's Profit Allowance for the purposes of Index-Based Rate Adjustments is calculated as a function of Franchisee's current year cost projection for Collection Services. For 2025, Franchisee's Profit Allowance is 9% of the cost projection for Collection Services and in 2026 and thereafter, Franchisee's Profit Allowance shall be 10% of the cost projection for Collection Services.

Franchisee's 2025 cost projection for Collection Services is \$1,497,742; therefore, Franchisee's Profit Allowance for 2025 is \$1,497,742 times 9%, rounded to the nearest dollar, equaling \$134,797. Using the first example from Section 2.A above, if Franchisee's 2026 cost projection is \$1,572,629 (corresponding to a 5% CPI Adjustment), Franchisee's 2026 Profit Allowance for the purposes of calculating Index-Based Rate Adjustment shall be \$157,263. Likewise, and using the second example from Section 2.A above, if Franchisee's 2026 cost projection is \$1,527,697 (corresponding to a 2% CPI Adjustment), Franchisee's 2026 Profit Allowance for the purposes of calculating Index-Based Rate Adjustment shall be \$152,770.

C. Calculation of Franchise Fee

Franchisee pays the District a Franchise Fee of 10% of Franchisee's gross revenues received from Customers in the District. For the purposes of Index-Based Rate Adjustments, the Franchise Fee is calculated as 10% of Franchisee's annual Total Cost Projection, per Section 2.E below, rounded to the nearest dollar. For 2025, Franchisee's annual Total Cost Projection is \$2,748,559, yielding Franchise Fee component of \$274,856. Actual Franchise Fee payments made by Franchisee to District shall be calculated as a function of Franchisee's gross revenues received from Customers in the District and may differ from the amount used in calculating adjustments to the Maximum Service Rates.

D. Calculation of Annual Revenue Reconciliation

Starting with the 2027 Index-Based Rate Adjustment, the difference between the Franchisee's annual Total Cost Projection and the Franchisee's actual annual total billings to Customers in the District shall be included in the annual Index-Based Rate Adjustment as an Annual Revenue Reconciliation.

For example, for the 2027 Index-Based Rate Adjustment, the difference between Franchisee's 2025 Total Cost Projection and Franchisee's total 2025 billings to Customers in the District shall be included in the 2027 annual Total Cost Projection. By way of example, if Franchisee's 2025 total billings to Customers in the District is a shortfall of 1% (-\$27,486) then \$27,486 will be added to Franchisee's Total Cost Projection for 2027. Conversely, if Franchisee's 2025 total billings to Customers in the District is a surplus of 1% (+\$27,486) then \$27,486 will be subtracted from Franchisee's Total Cost Projection for 2027.

Table 2, on the following page, provides an example of the case in which there is a 1% shortfall of

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billed revenues in 2025, which is added to the Total Cost Projection in 2027. The table shows a continuation of 1% shortfalls being added in 2028 and 2029 for example purposes only, and assumes the CPI adjustment to Collection Services, and Post-Collection Services at the 5% cap. Table 2a below, provides an example of the case in which there is a 1% surplus of billed revenues in 2025, which is added to the Total Cost Projection in 2027. The table shows a continuation of 1% surpluses being added in 2028 and 2029 for example purposes only, and assumes the CPI adjustment to Collection Services and Post-Collection Services at the 5% cap.

Table 2 – Example Revenue Reconciliation of -1% Annually

	2025	2026	2027	2028	2029
Collection Services	\$1,497,742	\$1,572,629	\$1,651,261	\$1,733,824	\$1,820,515
Profit Allowance	\$134,797	\$157,263	\$165,126	\$173,382	\$182,051
Post-Collection Services	\$841,164	\$883,223	\$927,384	\$973,753	\$1,022,441
Franchise Fee	\$274,856	\$290,346	\$307,917	\$323,333	\$339,533
Revenue Reconciliation Example	N/A	N/A	\$27,486	\$29,035	\$30,792
Total Cost Projection	\$2,748,559	\$2,903,461	\$3,079,173	\$3,233,326	\$3,395,332
Indexed Rate Adjustment		5.64%	6.05%	5.01%	5.01%

Table 2a – Example Revenue Reconciliation of +1% Annually

	2025	2026	2027	2028	2029
Collection Services	\$1,497,742	\$1,572,629	\$1,651,261	\$1,733,824	\$1,820,515
Profit Allowance	\$134,797	\$157,263	\$165,126	\$173,382	\$182,051
Post-Collection Services	\$841,164	\$883,223	\$927,384	\$973,753	\$1,022,441
Franchise Fee	\$274,856	\$290,346	\$301,809	\$316,880	\$332,758
Revenue Reconciliation Example	N/A	N/A	\$(27,486)	\$(29,035)	\$(30,181)
Total Cost Projection	\$2,748,559	\$2,903,461	\$3,018,094	\$3,168,805	\$3,327,584
Indexed Rate Adjustment		5.64%	3.95%	4.99%	5.01%

Significant, unexpected increases or decreases in revenue may be included or excluded from the Annual Revenue Reconciliation if deemed reasonable by the parties. As a one-time exercise, the Franchisee may request to review the entirety of its revenue earnings with the District as a check-in to evaluate alignment with its revenue forecast and conditions outlined in this exhibit. By no later than September 30, 2025, the Franchisee shall provide the District with documentation of actual to-date receipts or billings, accompanied by an analysis of all corresponding service trends. Upon receipt of these materials, the District and the Franchisee shall engage in a good-faith meet-and-

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confer process to discuss and determine an appropriate resolution, which may include a rate adjustment in January 2026 if necessary.

E. Calculation of Total Cost Projection

Franchisee’s annual Total Cost Projection shall be the sum of the resultant values from Section 2.A through 2.D above. For 2025, the Total Cost Projection is \$2,748,559. Table 3 below demonstrates the 2026 Total Cost Projection if the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 5%. Table 4, on the following page, demonstrates the 2026 Total Cost Projection in the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 2%.

Table 3 – 2026 Total Cost Projection at 5% CPI Value for 2026

	2025	2026
Collection Services	\$1,497,742	\$1,572,629
Profit Allowance	\$134,797	\$157,263
Post-Collection Services	\$841,164	\$883,223
Franchise Fee	\$274,856	\$290,346
Total Cost Projection	\$2,748,559	\$2,903,461

Table 4 – 2026 Total Cost Projection at 2% CPI Value for 2026

	2025	2026
Collection Services	\$1,497,742	\$1,527,697
Profit Allowance	\$134,797	\$152,770
Post-Collection Services	\$841,164	\$857,988
Franchise Fee	\$274,856	\$282,050
Total Cost Projection	\$2,748,559	\$2,820,505

F. Calculation of Annual Index-Based Rate Adjustments

The Index-Based Rate Adjustment shall be the calculated as function of the Franchisee’s forthcoming annual Total Cost Projection divided by the then current year Total Cost Projection, minus 100%, rounded to the nearest hundredth of a percent.

For example, taking the results shown in Table 3, the Index-Based Rate Adjustment for 2026 would be \$2,903,461, divided by \$2,748,559, minus 100%, yielding a 5.64% adjustment to the Maximum

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Service Rates effective January 1, 2026. Using the results of Table 4, above as an example, the Index-Based Rate Adjustment for 2026 would be \$2,820,505, divided by \$2,748,559, minus 100%, yielding a 2.62% adjustment to the Maximum Service Rates effective January 1, 2026.

This Index-Based Rate Adjustment calculation described herein shall repeat in 2027, 2028, and 2029, with the addition of the Annual Revenue Reconciliation amounts calculated pursuant to Section 2.D of this Exhibit. Rate adjustments shall be effective on January 1st of each year (unless otherwise agreed to in writing by the parties) and any delay in rate change approval not caused by Franchisee will result in additional adjustments so that all required revenues are billed within the rate year. Any delay in rate change approval that is caused by Franchisee shall not result in additional adjustments corresponding with the delay in approval.

Section 3 Cost-Based Rate Adjustments

Franchisee or District shall have the right to request a Cost-Based Rate Adjustment effective January 1, 2030. Franchisee's request for Cost-Based Rate Adjustment in 2030 shall be requested in writing on or before January 15, 2029 and District's request for Cost-Based Rate Adjustment in 2030 shall be requested in writing on or before January 31, 2029. To the extent possible any District request for Cost-Based Rate Adjustment shall be coordinated with the other agencies in San Luis Obispo County that follow the rate adjustment methodology described in this Exhibit, with all such agencies opting to request Cost-Based Rate Adjustment effective in the same rate year

Upon request by either party for Cost-Based Rate Adjustment, Franchisee shall prepare and submit financial records and calculations to the District in accordance with this Section by April 30, 2029. District shall have the right to review Franchisee's financial records related to the Cost-Based Rate Adjustment and calculations of Cost-Based Rate Adjustment for mathematical accuracy and adherence to the terms and conditions of this Section. District shall prepare written findings regarding adjustments to the Franchisee's calculations of Cost-Based Rate Adjustment that are required for mathematical accuracy and adherence to the terms and conditions of this Exhibit on or before June 30, 2029. District shall make every effort to seek Board of Directors authorization of Cost-Based Rate Adjustment prior to August 30, 2029. If neither party requests a Cost-Based Rate Adjustment in writing as specified above, then an Index-Based Rate Adjustment shall be applied for adjustments to Maximum Service Rates effective January 1, 2030 and subject to the terms and conditions of Section 2 of this Exhibit.

Franchisee or District shall have the right to request subsequent Cost-Based Rate Adjustments no more frequently than every five (5) years following the prior Cost-Based Rate Adjustment. For example, if a Cost-Based Rate Adjustment is requested as stipulated in above in January, 2029 (and effective January 1, 2030) then the next Cost-Based Rate Adjustment may not be requested by either party until January, 2034 (for effectiveness in 2035). The schedule from the following paragraph would also apply: Franchisee would prepare and submit financial records and calculations by April 30, 2034, District would prepare written findings regarding adjustments to Franchisee's calculations of Cost-Based Rate Adjustment that are required for mathematical accuracy and adherence to the terms and conditions of this Exhibit by June 30, 2034, and District would make every effort to seek Board of Directors authorization of Cost-Based Rate Adjustment prior to August 30, 2034.

Notwithstanding the above, nothing shall prevent the parties from mutually agreeing to conduct Cost-Based Rate Adjustments in other years (i.e., years other than 2030 and 2035), provided that both parties agree in writing to waive the five (5) year limitation on Cost-Based Rate Adjustments expressed herein. If neither party requests Cost-Based Rate Adjustments in subsequent years pursuant to the five (5) year schedule described above, then Index-Based Rate Adjustments shall be applied for adjustments to Maximum Service Rates in such years, subject to the terms and conditions of Section 2 of this Exhibit.

Franchisee shall provide all financial information and supporting documentation required by this review in a format acceptable to District (or District's designated consultant) in a timely manner. Franchisee shall not require District (or District's designated consultant) to review any such documents at Franchisee's worksite but shall instead allow for all required information and supporting documentation to be provided

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to District (or its designated consultant) via physical mail, e-mail, or any other delivery method approved by District.

Cost-Based Rate Adjustments shall be prepared and calculated in accordance with the steps described below.

A. **Projection of Collection Services and Post-Collection Service Costs**

Franchisee shall prepare financial records and calculations of Cost-Based Rate Adjustment using audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) for Franchisee's immediately preceding three (3) fiscal years. Such financial records and calculations shall include Franchisee's projected costs for Collection Services and Post-Collection Services as well as Franchisee's projected gross revenues at then-current Maximum Service Rates for the forthcoming year (e.g., 2030 at the earliest).

Franchisee shall promptly assemble, provide, and submit such information that is reasonably necessary to support the assumptions made by the Franchisee with regard to the assumptions underlying the forecast. Upon submission of such information, the District holds the ability to make appropriate changes for non-allowable costs, large unsupported variances in cost projections including but limited to corporate transactions and allocations, large variances in inter-company and related party transactions and allocations, unjustifiable variances in any cost category, non-conformance with agreed upon depreciation terms, non-conformance agreed upon profit allowances, and other customary and reasonable adjustments as detailed in the Agreement. Cost projections for Collection Services and Post-Collection Services prepared by Franchisee must be justifiable, supportable with financial information, and provide accountability for all expenditures. In preparing such cost projections, Franchisee shall assemble and submit its forecasts of:

- a. Revenues at current Maximum Service Rates for the then-current year, including delineation of revenues by sector (single-family residential vs. commercial and multi-family) and with details of the number of subscribers by type within each sector.
- b. Projected costs of Collection Services for the then-current year and the forthcoming year, with comparison to and explanation of any variances to actual costs for Collection Services in the prior three (3) fiscal years. Costs for Collection Services include labor, corporate overhead, depreciation (with rolling stock at 10-year depreciation lifespan), and general and administrative costs and shall be delineated as per the primary cost categories included in Franchisee's Audited Financial Statements. Franchisee must provide documentation of, and explanation for, material variances in any cost category. Projected costs for the forthcoming year shall be based on Franchisee's actual costs per Audited Financial Statements and escalated by the CPI Adjustment described in Section 2.A of this Exhibit, with the exception that Franchisee may adjust projections to account for other documentable changes in costs. Corporate overhead costs shall be limited to be less than 4% of Franchisee's Total Cost Projection for the forthcoming year and Franchisee must provide documentation and justification for any amounts of Corporate Overhead above 3% of Franchisee's Total Cost Projection for the forthcoming year. District retains the right to make appropriate adjustments to cost projections to cost categories for which Franchisee does not or cannot provide adequate documentation and explanation of material variances compared to prior years.
- c. Projected costs of Post-Collection Services for the then-current year and the forthcoming year, with comparison to and explanation of any variances to actual costs for Collection Services in the prior three (3) fiscal years. Costs for Post-Collection Services include landfill disposal, organics processing, recyclables processing and marketing, related-party transportation, and related-party rent and shall be delineated as per the primary cost categories included in Franchisee's Audited Financial

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Statements. Franchisee must provide documentation of, and explanation for, material variances in any cost category. Projected costs for the forthcoming year shall be based on Franchisee's actual costs per Audited Financial Statements and escalated by the CPI Adjustment described in Section 2.A of this Exhibit, with the exception that Franchisee may adjust projections to account for other documentable changes in costs. District retains the right to make appropriate adjustments to cost projections to cost categories for which Franchisee does not or cannot provide adequate documentation and explanation of material variances compared to prior years.

- d. Franchisee shall not include any non-allowable costs in its cost projections for Collection Services or Post-Collection Services. Non-allowable costs include but are not limited to:
 - i. Entertainment and non-work related travel expenses, unless authorized in advance by District.
 - ii. Advertising for services not within the scope of this Agreement or outside of the service area of Nipomo Community Services District.
 - iii. Fines or penalties of any nature.
 - iv. Liquidated damages assessed under this Agreement.
 - v. Federal or State income taxes.
 - vi. Profit sharing payments not related to an IRS approved pension program.
 - vii. Charitable or political donations.
 - viii. Attorneys' fees and other expenses incurred by Franchisee in any court proceeding in which District and Franchisee are adverse parties, unless Franchisee is the prevailing party in said proceedings.
 - ix. Attorneys' fees and other expenses incurred by Franchisee in any court proceeding in which Franchisee's own negligence, violation of law or regulation, or other wrongdoing, is in issue and occasions part of the attorneys' fees and expenses claimed, provided, however, such attorneys' fees will be allowed to the extent Franchisee can demonstrate they were reasonable and necessary and a cost of doing business, and were not the result of any intentional or willful misconduct by Franchisee or its employees; and attorneys' fees and expenses incurred by Franchisee in a court proceeding in which the legal theory or statute providing a basis of liability against Franchisee also provides for separate strict liability for District arising from the action of its citizens or ratepayers (such as in a CERCLA lawsuit).
 - x. Payments to related party entities for products or services (other than lease expense, calculated as provided below), in excess of the fair market value for those products or services. For purposes of this Agreement, related party expenses are those resulting from transactions between Franchisee and another company (companies) that has (have) common ownership or management control.
- e. Franchisee's audited financial statements, and any other documentation as deemed necessary by the District, will be reviewed to determine Franchisee's cost projections for each of the foregoing categories during the year involved. District will use the financial statements to determine that costs have actually been incurred and have been assigned to the appropriate category.
- f. District may adjust the actual costs in two ways: (1) to exclude any non-allowable costs, set out above, and (2) to exclude and/or reduce any costs that were actually

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incurred but which are not reasonable and necessary in keeping with industry standard best practices.

B. Calculation of Profit Allowance

Franchisee's Profit Allowance shall be 10% of the cost projection for Collection Services, rounded to the nearest dollar.

C. Calculation of Franchise Fee

Calculation of Franchise Fee shall be calculated in accordance with Section 2.C, above, for the applicable year as appropriate.

D. Calculation of Annual Revenue Reconciliation

Calculation of Annual Revenue Reconciliation shall be calculated in accordance with Section 2.D, above, for the applicable year as appropriate.

E. Calculation of Total Cost Projection

Calculation of Total Cost Projection shall be calculated in accordance with Section 2.E, above, for the applicable year as appropriate.

F. Calculation of Cost-Based Rate Adjustment

The Cost-Based Rate Adjustment shall be calculated as a function of the Franchisee's forthcoming annual Total Cost Projection divided by the then current year Total Cost Projection, minus 100%, rounded to the nearest hundredth of a percent. This is the same calculation described in Section 2.F, above. The resultant percentage shall be applied to the then-current Maximum Service Rates and be effective January 1 of the forthcoming year.

Rate adjustments shall be effective on January 1st of each year (unless otherwise agreed to in writing by the parties) and any delay in rate change approval not caused by Franchisee will result in additional adjustments so that all required revenues are billed within the rate year. Any delay in rate change approval that is caused by Franchisee shall not result in additional adjustments corresponding with the delay in approval.

Section 4 Annual Audited Financial Statements

Franchisee shall annually prepare Audited Financial Statements in accordance with Generally Accepted Accounting Principles (GAAP) for its operations in the San Luis Obispo County region. Franchisee shall provide District with copies of the annual Audited Financial Statements upon request and with any Cost-Based Rate Adjustment submittal.

Section 5 Extraordinary Adjustments

Except as provided herein, Franchisee may not request adjustments to Maximum Service Rates in years during which Index-Based Rate Adjustments are scheduled to be applied and must follow the timeline described in Section 3. Notwithstanding the above, Franchisee may request extraordinary adjustments to Maximum Service Rates due to changes in law affecting collection operations, including for compliance with the California Air Resource Board's (CARB's) Advanced Clean Fleet (ACF) electrification mandate. The District may, but is not obligated to, consider requests for extraordinary adjustment to Maximum Service Rates due to changes in law affecting Post-Collection Services. Requests for extraordinary changes in Maximum Service Rates are subject to good faith negotiations between District and Franchisee.

In the event of any Change in Scope or Change in Law (each as described below) that results in a material increase or decrease in Franchisee's costs or revenues, in the event of an Extraordinary Cost Increase (as defined below), or in the event of any Change in Fees (as described below), an appropriate adjustment will be made to the Maximum Service Rates in order to compensate, to the maximum extent

Appendix 1

Annual Solid Waste Rate Adjustment Methodology

possible, for such increase or decrease in costs, revenues or Fees, commencing from the Effective Date(s) such increase or decrease first occurs. Any adjustment to Maximum Service Rates due to a Change in Scope, a Change in Law or an Extraordinary Cost Increase shall be in the reasonable discretion of the District.

- A. "Change in Scope" shall mean any change in the services provided by the Franchisee under the Agreement whether proposed by the Franchisee or by the District.
- B. "Change in Law" shall mean the enactment, adoption, promulgation, issuance, modification or written change in any law, regulation, order or judgment of any governmental body that affects the Franchisee's performance of services under the Agreement including, without limitation, the issuance of final regulations under existing laws.
- C. "Change in Fees" shall mean any change in franchise fees, vehicle impact fees and other fees charged to the Franchisee by the District connection with the services provided by the Franchisee under the Agreement the cancellation of any existing fees, and the adoption of any new fees.
- D. "Extraordinary Cost Increase" shall mean a substantial increase in the Franchisee's operating or capital costs or expenses that is outside of the Franchisee's control but not due to a Change in Scope or Change in Law.
- E. "Effective Date" shall mean the date in which the Franchisee notifies the District of the reasons for the cost estimate associated with a Change in Law, Change in Fees, and/or Extraordinary Cost Increase or when the Franchisee begins incurring costs for the Change in Law, Change in Fees, or Extraordinary Cost Increase, whichever is later.

In the case of a Change in Scope, a Change in Law or an Extraordinary Cost Increase, the Franchisee shall provide the District with projected operational, cost and revenue data reflecting the entire financial effect of such Change. The District reserves the right to require that the Franchisee supply any additional operational, cost and revenue data, or any other information it may reasonably need, to ascertain the appropriate financial impact of the Change and any necessary adjustment to Maximum Service resulting from such Change.

Extraordinary adjustments to Maximum Service Rates for a qualifying Change in Scope or Change in Law, for a Change in Fees, or for an Extraordinary Cost Increase shall take effect as of the beginning of the next year and will include all impacts of the extraordinary adjustment from the Effective Date of the impact; provided, however, that, in the case of any Change in Fees charged by the District, the Extraordinary adjustment shall take effect as of the Effective Date of such Change in Fees. The underlying service, cost, revenue or Fee changes supporting any rate adjustment under this Section 5 will be added to the appropriate category under Sections 2 and 3 above for purposes of future cost projections.