

**NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDED AND RESTATED SOLID WASTE  
COLLECTION  
FRANCHISE AGREEMENT**

This Amended and Restated Solid Waste Collection Franchise Agreement (this "Agreement") is entered into on the 27 day of August, 2008, by and between the Nipomo Community Services District, a community services district organized and operated pursuant to §61000 et seq. of the Government Code ("District"), and Waste Connections, Inc., a Delaware Corporation, and South County Sanitary Services, Inc., a California corporation (collectively "Contractor") for Contractor to provide Garbage, Recycling and Greenwaste services within the District boundary is entered into with the following Recitals:

**RECITALS**

A. The District and Contractor are parties to that certain Solid Waste Franchise Agreement (the "Prior Agreement") dated May 19, 1998; and

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

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

D. The District declares its intention of maintaining reasonable rates and high quality service for Garbage Service and the collection, processing, and marketing of Recyclable and Greenwaste Materials; and

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

F. By this Agreement, the parties wish to set forth the terms and conditions of Contractor's provision of Solid Waste Collection and disposal.

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

## **SECTION 1. DEFINITIONS.**

For purposes of this Agreement, the defined terms, phrases, words, abbreviations, and their derivations shall have the following meaning given in this Section.

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

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

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

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

**1.5 "California Integrated Waste Management Act of 1989"** means Public Resources Code, §40000 et. seq., as amended from time to time and all regulations adopted under that legislation.

**1.6 "CERCLA"** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended from time to time.

**1.7 "Collect" or "Collection"** means to take physical possession, transport, and remove Garbage Greenwaste and Recyclable Materials within and from the District and hauling it to a facility for processing, transfer or disposal.

**1.8 "Commercially Generated Recyclable Materials"** means Recyclable Materials generated at commercial, governmental and/or industrial property and separated by the Waste Generator for Collection.

**1.9 "Container"** means any waste wheeler can or bin, equipped with wheels or casters that is provided by Contractor, and used for Collection and storing of Garbage, Greenwaste or Recyclable Materials before removal.

**1.10 "Contractor"** means Waste Connections, Inc., a Delaware Corporation and its officers, directors, employees, agents, companies, including its affiliate South County Sanitary Services, Inc. a California corporation and subcontractors where applicable. ,

**1.11 "Developed Properties"** means real property within the District that is developed with a building or structure, that is capable of generating solid waste. Developed properties include, but are not limited to, occupied residential property, multi-family property, public facilities and commercial property.

**1.12 "District"** means the Nipomo Community Services District, a community services district organized and operated pursuant to §61000 et seq. of the Government Code, acting through the District Board of Directors or the District Manager, and all territory lying within the boundaries of the District as presently existing or as such boundaries may be modified during the term of this Agreement.

**1.13 "District Manager"** means the District Manager of the Nipomo District.

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

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

**1.16 "Fiscal Year"** means the period commencing July 1 and concluding June 30.

**1.17 "Garbage"** means solid waste comprised of rubbish, trash and refuse.

**1.18 "Greenwaste"** means all grass clippings, leaves, branches and tree trunks and other yard waste generated at the Premises..

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

**1.20 "Hazardous Waste"** means any discarded material or mixture of materials, which is toxic, corrosive, flammable, radioactive or which, because of its quantity, concentration, physical, chemical or infectious characteristics may do harm to either humans, animals or the environment, or as defined in Section 2, Chapter 6.5 §25117 of the Health and Safety Code and Public Resources Code §40141.

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

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

**1.24 "Owner"** means the person(s) holding legal title to the real property constituting the Premises to which solid waste collection service is to be provided under this Agreement.

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

**1.26 "Putrescible waste"** means organic material with a decomposition capacity to emit noticeable quantities of odor and gaseous byproducts. Material in this category includes, but is not limited to, kitchen waste, dead animals and food waste.

**1.27 "Premises"** means any developed property within the District.

**1.28 "Recyclable Materials"** means by-products or discards set aside, handled, packaged or offered for Collection from residential, commercial, governmental or industrial customers, including, but not limited to, aluminum, newspaper, clear and colored glass, tin and bi-metal, all plastic containers, cardboard, chipboard, magazines,

mixed paper (including magazines, phone books and junk mail) and motor oil and filters (separately collected).

**1.29 "Recycling"** means the process of separating, Collecting, treating and/or reconstituting Recyclable Materials which would otherwise be discarded without receiving compensation or returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transfer, transportation or disposal of Recyclable Materials not intended for, or capable of, reuse is not Recycling.

**1.30 "Related Party Entity"** means any Affiliate that has financial transactions with Contractor.

**1.31 "Residential Recyclable Materials"** means Recyclable Materials generated at Single Family Dwelling Units and separated by the Waste Generator for Collection, and placed at the curb.

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

**1.33 "Solid Waste"** means all putrescible and non-putrescible refuse, Garbage, rubbish, Greenwaste and Recyclable Materials, and as otherwise defined in Public Resources Code §40191.

**1.34 "Term"** means the term of this Agreement, as provided for in Section 3 (Term of Agreement).

**1.35 "Transfer Station"** includes those facilities used to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport and those facilities used for transformations.

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

## **SECTION 2. GRANT OF FRANCHISE.**

**2.1 Grant.** Pursuant to District Code §7.20.010, and subject to the terms and conditions of this Agreement, the District Board of Directors hereby grants to Contractor the right, privilege, and franchise to collect Solid Waste from Developed Properties within the Franchise Area.

**2.2 Scope of Franchise.** Except as otherwise provided in this Agreement, the Franchise granted herein shall be exclusive for Garbage, Greenwaste and Recyclable

Materials, except where otherwise precluded by law. This Agreement does not include construction and demolition debris; however, the District reserves the right to add construction and demolition debris, at its sole discretion, at some point in the future. In addition this Agreement does not include either animal waste or remains from slaughterhouse or butcher shops or by-products of sewage treatment, including sludge, sludge ash, grit and screening; however the District reserves the right to add grit and screening at its sole discretion, at some point in the future.

**2.3 Limitations to Scope.** The Agreement for the Collection, processing and marketing of Recyclable Materials granted to Contractor shall be exclusive except as to the categories of Recyclable Materials listed below. 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 separated from Solid Waste by the Waste Generator and for which Waste Generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Waste Generator for such Recycling or related services; provided that such separation and Recycling or disposal are actually performed by the Waste Generator, and not by a subcontractor or other third party;
- B. Recyclable Materials donated to a charitable, environmental or other non-profit organization; provided, however, that all such Recyclable Materials are substantially separated from non-Recyclable Solid Waste by the Waste Generator
- C. Recyclable Materials which are separated at any Premise and which are transported by the owner or occupant of such Premises (or by his/her full-time employee) to a recycling center;
- D. Other Governmental Agencies within the District which can contract for separate solid waste and recycling services.

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

**2.4 Franchise Area.** The Franchise Area subject to this Agreement shall consist of that territory within the District boundaries. The Contractor shall automatically extend all services herein described to any area annexed to or detached from the District, except that, in the case of annexations, the District may permit a solid waste provider franchised by the County of San Luis Obispo before the annexation to continue serving the area for a period not to exceed five (5) years or as otherwise required by the County franchise agreement or as otherwise required by a duly authorized governmental agency with appropriate jurisdiction.

**2.5 Administration of Agreement.** The District Manager or his/her designee shall administer this Agreement and shall supervise Contractor compliance with the Agreement terms and conditions.

**2.6 Serve Without Interruption.** Contractor shall perform all duties and services throughout the term of this Agreement without interruption.

**2.7 Conditions to Effectiveness of Agreement.** This Agreement is subject the satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by District:

- A. Contractor's representation at the District hearing approving this Agreement that there is no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- B. The District's approval of this Agreement prior to the effective date.
- C. Before the effective date of the Agreement, the Contractor shall provide proof of insurance in the form, coverages, and amounts specified in Section 13 (Insurance) and the performance bond set forth in Section 15 (Performance Bond).

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

### **SECTION 3. FRANCHISE TERM.**

**3.1 Effective Date.** The effective date of this Agreement shall be September 1, 2008 (the "Effective Date").

**3.2 Term of Agreement.** The term of this Agreement shall commence on the Effective Date and unless earlier terminated as provided herein and subject to subparagraph 3.3 below, this Agreement shall automatically terminate on August 31, 2023.

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

#### **SECTION 4. RELATIONSHIP OF PARTIES.**

**4.1 Independent Contractor.** Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of District. Contractor shall have no authority to bind District in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against District, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by District.

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

#### **SECTION 5. SERVICES TO BE PROVIDED.**

##### **5.1 General.**

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



B. The services to be provided by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the District are provided reliable, courteous and high-quality solid waste services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Section, whether such aspects are enumerated elsewhere in the Agreement or not.

## **5.2 Solid Waste Collection.**

A. **General.** Except as otherwise provided in this Agreement and/or District Code, Contractor shall provide regular weekly collection of Solid Waste (Garbage, Recycling and Greenwaste) for all residential, multi-family, commercial premises and other Developed Properties within the Franchise Area at rates established by this Agreement

B. **Food Services.** All Solid Waste created, produced or accumulated at or about any restaurant, retail or wholesale market, food processing facility, hotel, motel or other business establishment where food is sold, prepared or served, shall be collected from the premises at least twice each week or more frequently if determined necessary by the District.

C. **Operations.** To preserve peace and quiet, no Garbage, Recyclable Materials or Greenwaste shall be collected from or within two-hundred (200) feet of residential Premises between 5:00 P.M. and 6:00 A.M. on any day. Residential Garbage, Recyclable Materials including Greenwaste shall be collected, Monday through Friday on the same day. The one exception is the Contractor may elect to collect motor oil and filters with a separate vehicle using an on-call program. When the regularly scheduled collection day falls on Christmas, collection shall take place on the following regularly scheduled collection day.

D. **Collection Schedule.** Contractor shall establish a collection schedule in accordance with District Code. When a regular collection day occurs on a holiday, Contractor shall either provide collection on the holiday or one calendar day before or after the holiday. Contractor shall notify residential and commercial customers of their respective holiday collection schedules. In the event the Contractor misses the collection of properly set out Garbage, Recyclables, or Greenwaste the Contractor shall collect the missed pickups within one (1) business day of notification.

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

F. **Special Needs.** Handicapped residents who reside in a Family Dwelling Units shall have the option of placing their Containers near their dwelling, visible from the curb and the Contractor will collect their Containers at this location and return the Containers to the same location. To be eligible for this Collection option, residents must present proof of their physical incapacity to the Contractor.

### **5.3 Garbage, Recycling and Greenwaste Containers.**

A. **Single Family Dwelling Unit.** Contractor shall supply each Single Family Dwelling Unit with a 32, 64 or 96-gallon container for Garbage at rates established by this Agreement. Each Single Family Dwelling Unit will receive from Contractor a 64 or 96-gallon container for all commingled Recyclable Materials. Each Single Family Dwelling Unit will receive from Contractor a 96-gallon container for Greenwaste. If requested by customer, Contractor shall provide to the customer a 32 gallon Recyclable container and/or a 96 gallon Greenwaste container.

B. **Multi-Family, Commercial Business, Governmental Agencies.** Contractor shall supply each multi-family complex, commercial business or governmental agency with appropriately sized containers or bins for Garbage, Recyclables and Greenwaste if needed. All multi-family complexes, commercial businesses or governmental agencies shall be entitled to the free collection of an unlimited quantity of Recyclables picked up twice per week in Contractor provided bins. Contractor agrees not to limit the specific type of Recyclable Material (such as cardboard only) that can be placed in a Container unless approved by the District on a customer by customer basis.

C. **Container Colors.** For residential customers, all garbage containers shall be brown or grey, all Recyclable Materials containers shall be blue and all greenwaste Containers shall be green. For commercial customers, all garbage Containers shall be grey, all Recyclable Materials Containers shall be blue and all greenwaste Containers shall be green. Within the first six (6) months of this Agreement, Contractor shall replace any existing Container that is not the proper color with a Container that is the proper color that is either a new Container or a Container that is in the existing Contractor's inventory. Any new Containers for Recyclable Materials shall include an in molded graphic or sticker which provides instructions to the Waste Generator. The final color and signage, including the in molded graphic or sticker on the Containers shall be approved by the District Manager or his/her designee.

D. **Replacement of Containers.** Contractor acknowledges that from time to time, containers may be damaged, destroyed or damaged by graffiti. Contractor also acknowledges that from time to time containers may be stolen from the curb or damaged due to normal use. Containers that are stolen or otherwise damaged due to normal use shall be replaced by Contractor at no additional charge. Containers damaged by graffiti shall be replaced by Contractor at no additional charge.

All Contractor supplied Containers for Garbage, Recyclables, and Greenwaste shall remain the property of Contractor. Containers damaged due to lack of reasonable care by the customer may be replaced by Contractor, the fee for which shall be established in Exhibit A. Contractor may recover Containers used by customers for other than their intended purpose.

#### **5.4. Non-Collection of Solid Waste.**

A. In the event Contractor does not collect any item or container of Solid Waste, Contractor shall attach a tag securely to the item or container not collected specifying the reasons for non-collection. The tag shall contain Contractor's name and telephone number.

B. In the event Contractor fails, without good cause, to collect, remove, and dispose of Solid Waste on a customer's regularly scheduled collection day or within twenty-four (24) hours of a request from District or a customer to do so, District may collect said materials and Contractor shall be liable for all related expenses incurred by District, including disposal, administrative, and legal costs.

**5.5 Refusal to Provide Collection Services.** Contractor may refuse to collect Recyclable Materials or Greenwaste and shall not be obligated to continue to provide Container(s) to any participant in the Recycling or Greenwaste program who, after reasonable warning by Contractor, fails to properly sort and set out Recyclable Materials or Greenwaste, including excessive contamination. Contractor shall leave a tag on the material stating a reason for Contractor refusal to collect the same. Adequate records from the tag shall be maintained by Contractor and reported monthly to the District.

**5.6 Marketing and Sale of Recyclable Materials.** Contractor shall be responsible for the marketing and sale of all Recyclable Materials and Greenwaste collected pursuant to this Agreement. Revenues from the sales of these materials shall be retained by Contractor.

**5.7 Litter Abatement.** Contractor shall use due care to prevent Solid Waste Materials from being spilled or scattered during the collection or transportation process. If any Solid Waste Materials are spilled during collection, Contractor shall promptly clean up all spilled materials. Each collection vehicle shall carry a broom, shovel and oil spill kit at all times for this purpose.

**5.8 Cleaning Commercial Bins.** Contractor shall steam clean and refurbish all commercial bins at Contractor's own expense every 6 months upon request. Customers desiring more frequent cleaning may arrange additional cleaning with Contractor at a rate approved by District, including pick-up, cleaning, and replacement of dumpster.

## **5.9 Clean-Up Days.**

A. At least twice per year throughout the term of this Agreement, Contractor shall provide, in addition to regularly scheduled service, two clean-up events pursuant to guidelines established by the Contractor and approved by the District, for Solid Waste placed at the curb by single family dwelling units and at pre-arranged locations for multi-family residential properties in addition to each customer's normal collection service. The dates for each event shall be proposed by Contractor and approved by the District Manager or his/her designee prior to September 1st of each year.

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

**5.10 Solid Waste Services in Public Areas.** The Contractor will provide, at no cost, collection of Garbage Containers and Recyclable Material Containers from District facilities and side walk containers. The loss revenue from providing this service shall be deducted from the District projected revenue during the rate making process described in Section 11 (Rate Review). In addition any increase in rates resulting from requested free service shall not be included when calculating the change in rate compared to the change in the CPI. During any calendar year, the revenue loss from this service is limited to five thousand dollars (\$5,000).

## **5.11 Abatement of Bulky Waste.**

A. **Removal of Bulky Waste from Public Right-of-Ways.** Contractor and District recognize that from time to time Persons discard bulky waste, such as couches, easy chairs, beds, mattresses, refrigerators, etc. within public right-of-ways, streets, alleys and District property within the Franchise Area. Contractor agrees that it will, at the direction of the District General Manager, at no cost, collect, transport and dispose of such bulky waste.

B. **Limitation.** The loss revenue from providing this service shall be deducted from the District projected revenue during the rate making process described in Section 11 (Rate Review). In addition any increase in rates resulting from this service shall not be included when calculating the change in rate compared to the change in the CPI.

## **SECTION 6. ADDITIONAL SERVICES**

**6.1 General.** District may request Contractor to perform additional services (including new diversion programs, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new collection methods, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes that District may request. Contractor shall present,

within thirty (30) days of a request to do so by District, a proposal to provide additional or expanded diversion services (New Diversion Programs). Contractor shall be entitled to proceed with an adjustment in its compensation in accordance with Section 11 (Special Interim Rate Review) for providing such additional or modified services.

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

- A. Collection methodology to be employed (equipment, manpower, etc.)
- B. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- C. Labor requirements (number of employees by classification).
- D. Type of Containers to be utilized.
- E. Provision for program publicity/education/marketing.
- F. Materials Recovery Facility to be utilized for diversion and/or recovery of materials.
- G. A projection of the financial results of the program's operations for the remaining Term of the Agreement in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

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

## **SECTION 7. RESPONSIBILITY FOR COLLECTED WASTE**

### **7.1. Ownership of Solid Waste .**

A. All Solid Waste collected, removed, and transported by Contractor from the Premises where produced, generated, and/or accumulated pursuant to this Agreement shall be the property and responsibility of Contractor.

B. Once Recyclable Materials are placed in Containers and properly presented for collection, ownership and the right to possession shall transfer directly from the Waste Generator to Contractor by operation of this Agreement and/or District Code. Contractor is hereby granted the right to retain, recycle, process, reuse, and otherwise use such Recyclable Materials or any part thereof, in any lawful fashion or for any lawful purpose consistent with the hierarchy and goals of AB 939. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, recycle, process or reuse the Recyclable Materials that it collects. Recyclable Materials or any part thereof, which are delivered to a Facility (processing Facility, transformation Facility, transfer station, or Material Recovery Facility) shall

become the property of the owner or operator of the Facility(ies) once deposited there by Contractor.

## **7.2 Disposal Requirements**

A. Contractor shall dispose of all Garbage collected under this Agreement at Contractor's own expense and in accordance with all Federal, State and local laws, rules, and regulations. Contractor, at Contractor's own expense, shall be responsible for securing an appropriate location for the disposal and processing of all Recyclable and Greenwaste Materials collected by Contractor pursuant to this Agreement.

B. Contractor shall secure within ninety (90) days of the effective date of this Agreement, sufficient disposal site capacity commitment including landfill disposal site capacity to adequately serve the reasonable anticipated Garbage disposal needs of Contractor's customers. District reserves the right to review and require approval for said disposal capacity commitments.

C. If Contractor receives notice from the landfill operator or Recyclables or Greenwaste processor or otherwise finds, during the term of the Agreement, to be prevented from delivering Solid Waste to the designated site, Contractor shall immediately notify, in writing, the District Manager, stating the reason(s) Contractor is prevented, or expects to be prevented, from delivering Solid Waste at the designated facility. Contractor shall expeditiously identify and evaluate alternative sites. An alternative designated site or sites shall be arranged for and secured by Contractor.

D. The parties understand and agree that District participates in waste diversion and resource recovery programs pursuant to regional and/or local implementation of AB 939, and may participate in such other programs as may be established by District.

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

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 Contractor delivers waste to an alternate facility. In the event that payment is not received by County within thirty (30) days after the date specified, then Contractor shall pay a penalty of ten percent (10%) on the outstanding balance, and Contractor shall also pay to County interest on the outstanding balance at a rate of ten percent (10%) per

annum, or the maximum legal rate of interest, whichever is greater, from the date of Contractor's failure to pay.

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

### **7.3 Material Processing**

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

B. **Status of Materials Recovery Facility.** Any Materials Recovery Facility used by Contractor must be designed and constructed in accordance with all applicable state and local laws (e.g., CEQA, California Code of Regulations, etc). The Materials Recovery Facility must have all permits from Federal, State, Regional, County and District agencies necessary for it to operate as a Material Recovery Facility and must be in full regulatory compliance with all such permits.

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

C. **Alternative Processing Facility.** If Contractor becomes unable to deliver the District's Recyclable Materials to the Materials Recovery Facility due to causes within its control and which could have been avoided by the exercise of due care, the Contractor shall arrange for it to be accepted at another Materials Recovery Facility, in which case Contractor shall pay for any increased transportation costs, any differences in the fees charged at such Materials Recovery Facility and the fees then in effect under this Agreement. If Contractor's inability to deliver the District's Recyclable Materials to the Materials Recovery Facility is not due to causes within its control or which could have been avoided by the exercise of due care, then Contractor shall propose alternative Material Recovery Facilities including all related costs and District shall have the right to approve the alternative to be used.

**7.4 Recyclable Materials.** Contractor shall ensure that the residual from the Recyclable Materials delivered to the Materials Recovery Facility by the Contractor are disposed of at a permitted disposal site in full regulatory compliance. Monthly residue shall not exceed ten percent (10%) of the monthly Recyclable Materials delivered to the Materials Recovery Facility. If the District directs Contractor to deliver Recyclable

Materials to a third party facility for processing, then such third party facility shall be responsible for disposal of residual and the processing requirements as described above and the District shall use its best efforts to enforce such requirements against the third party processor.

#### **7.5 Collection and Disposal of Hazardous Waste.**

A. It is understood that the Contractor is not required hereunder to collect, transport or dispose of Hazardous Waste.

B. If Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully placed in a container or released in reportable quantities within the Franchise Area, including on, in, under or about District property, including streets, easements, rights of way and District waste containers, Contractor shall immediately notify the District of the same.

C. It shall be the responsibility of Contractor, at its own expense, to lawfully dispose of any Hazardous Waste which Contractor collects from a Waste Generator, provided however that Contractor shall be entitled to return any such waste to the Waste Generator who generated this Waste, if the Waste Generator can be identified or at its own expense pursue all legal rights and remedies it may have against the Waste Generator(s) of such Hazardous Waste. Contractor expressly agrees that in no event shall the ownership of any Solid Waste, Hazardous Waste or any other waste be construed to be the property of the District, either explicitly or implicitly.

### **SECTION 8. PERFORMANCE STANDARDS**

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

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

#### **8.3 Personnel.**

A.. **General.** Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, and other personnel as may be necessary to provide services required by this Agreement in a safe, efficient and effective manner. If the District



adopts a living wage ordinance, the Contractor agrees to voluntarily comply with the ordinance.

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

C. **Fees & Gratuities.** Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly any compensation or gratuity for any services performed under this Agreement except as provided in Section 11 (Contractor's Compensation and Rates).

D. **Training.** All drivers shall be properly trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

Contractor shall provide adequate operations, health and safety training, and Hazardous Waste identification and handling training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

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

#### **8.4 Vehicles.**

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

B. **Specifications.** All vehicles used by Contractor in providing Garbage, Recyclable Materials, and greenwaste Collection services under this Agreement shall comply with all federal, state, and local requirements for such vehicles as they now exist or may be amended in the future, including all applicable air emissions requirements, and shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission

regulations and other applicable noise control regulations. The Contractor will, in good faith, consider incorporating natural gas trucks into its Collection fleet, to the extent practicable.

**C. Condition**

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

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

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

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

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

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

**SECTION 9. CUSTOMER RELATIONS AND EDUCATION**

**9.1. Subscriber Information.** At the time a customer subscribes to service and annually thereafter for all residential and commercial customers, the following information, at a minimum, shall be distributed: a list of Solid Waste Materials eligible for collection, complaint procedures, rates, recycling opportunities, company contact information including billing address, office hours, location, and telephone numbers, holiday collection schedule, and Clean-Up Week information. Information regarding no-cost dumpster cleanings shall be included for commercial customers. Copies shall be

provided to each customer at time of subscription, and upon customer's request and annually.

The Contractor shall prepare and update as necessary a flier with this information in a form and content mutually acceptable to the Contractor and the District Manager. Contractor shall print all necessary copies of the flier and Contractor's employees and agents shall inform customers that said flier is available upon request.

**9.2 Customer Complaints.** Throughout the term of this Agreement, Contractor shall maintain a complete record of all written and verbal complaints received pertaining to the performance of services subject to this Agreement, which shall be provided to District within 24 hours of request. Said record shall contain, at a minimum, the following information:

- Names, addresses, and telephone numbers of complaining parties;
- Customer names, service addresses, and telephone numbers, if different than above;
- Descriptions of problems/complaints and related dates and times, if applicable;
- Dates received; and
- Dates and descriptions of Contractor's responses and actions taken.

Complaints received from customers or District shall be acted upon immediately, and Contractor shall make every reasonable effort to resolve said complaints within seventy-two (72) hours of notification.

**9.3 Surveys.** Contractor shall fully participate with the District in preparing, processing, mailing and tabulating customer satisfaction surveys to residential and commercial customers. The surveys will be conducted within 90 days of a request by District, but not more than once a year.

**9.4 Education and Public Information.** Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, Contractor agrees to take direction from District to exploit opportunities to expand public and customer knowledge concerning needs and methods to reduce, reuse and recycle solid waste and to cooperate fully with District in this regard.

Contractor shall maintain its own program of providing information relevant to billing and solid waste services, issues and needs with its bills. Contractor shall also include in customer bills additional information, including information on Recycling programs, as directed by the District. Contractor shall bear all labor costs with respect to

inserting public education materials with the billings. District shall bear any additional postage expense resulting from the District's inserts and shall bear other expenses related to the inserts to the extent said expenses are clearly in excess of the Contractor's normal billing costs. All public education materials shall be approved in advance by the District.

At the direction of the District, Contractor shall participate in and promote AB 939 activities and other solid waste management techniques at community events and local activities at no additional cost. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of the District's Solid Waste program.

#### **SECTION 10. RECORDS, REPORTS AND INFORMATION, STUDIES AND HEARING REQUIRMENTS.**

**10.1 Records.** In addition to any record keeping or other reporting requirements pursuant to any Federal, State or local government (including the San Luis Obispo County Integrated Waste Management Authority), rules, regulations, other terms of this Franchise Agreement or other provisions of the District Code, Contractor shall maintain records required to conduct its operations, to support requests it may make to District, and to respond to requests of the District. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data and records shall be protected and an adequate backup system shall be provided for such data and records. The protection and backup systems shall be subject to approval by the District.

A. 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 (commercial or residential);
- 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.

B. Contractor shall maintain records of transfer, diversion and disposal of all solid waste collected within the District for the period of this Agreement and all extensions to this Agreement or successor Agreements.

C. 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.

**10.2. Waste Generation/Characterization Studies.** Contractor acknowledges that the District must periodically perform and/or participate in solid waste generation and disposal characterization studies to comply with AB 939 requirements. Contractor agrees to participate and cooperate with the District and the San Luis Obispo County Integrated Waste Management Authority and their agents, at no cost to the District, to perform studies and data collection, and prepare reports, as needed, to determine weights and volumes of solid waste and characterize solid waste generated, diverted, disposed, transformed, or otherwise handled or processed to satisfy AB 939 requirements.

**10.3 Report Formats and Schedule.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

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

The District may at no cost to itself request that Contractor 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.

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be subject to approval by the District.

All reports shall be submitted to:

District Manager  
Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444

**10.4 Monthly Reports.** Monthly reports shall be submitted within ten (10) calendar days after the end of the report month. The monthly report shall include (The information listed shall be the minimum reported for each service):

- Solid Waste and Recyclable Material, collected, transferred,

diverted and disposed of, by sector (commercial, industrial, residential) of waste generator--collected by Contractor, in tons, by month;

- Complaint summary, for month and cumulative for report year, - Summarized by nature of complaints; and
- Narrative summary of problems encountered and actions taken with recommendations for the District, as appropriate.

**10.5 Quarterly Report.** Quarterly reports shall be submitted within fifteen (15) calendar days after the end of the quarter. Quarters end on November 30, February 28, May 31, and August 31. Quarterly reports shall be quarterly summaries of the monthly reports and the following:

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

The District may require Contractor, at no additional charge, to provide the Board of Directors with an oral presentation of the Quarterly Reports.

**10.6 Delinquent Accounts.** Delinquent accounts shall be processed for collection pursuant to District Code.

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

**10.8 Right to Audit Records.** In addition to other reporting requirements in this Agreement, the District may review, test and audit the books and records of the Contractor or may engage a Certified Public Accountant for this purpose. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 17.5.

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

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

A. The annual report shall separate out information with respect to revenues and expenses in relation to performance of this Agreement, including detailed information concerning overhead claimed by Contractor. Operations by Contractor concerning activities not related to performance of this Agreement shall be maintained in a separate portion of the annual financial statement.

B. District shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor that District shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement. The District retains the right to have an independent third party or agent of the District's choosing, such as a CPA, participate in the records inspection. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 17.5 (Financial Material Errors, Omissions or Irregularities).

**10.11 Regulatory Reporting.**

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

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

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

**10.12 Tipping Fees.** The Contractor shall provide to the District a copy of Cold Canyon Landfill's request for an increase in tipping fees no later than five (5) days following submittal of said request to the County of San Luis Obispo. Additionally, the Contractor shall notify the District of the date and times the Board of Supervisors will consider the request for an increase in tipping fees. The District retains the right to have an independent third party or agent of the District's choosing, such as a CPA, participate in the review. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 17.5 (Financial Material Errors, Omissions or Irregularities).

## **SECTION 11. RATES AND CHARGES.**

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

Contractor does not look to the District for payment of any sums under this Agreement in consideration of the right to charge and collect from customers for services rendered at rates fixed by the District from time-to-time. Subject to the provisions of Section 6 of Article XIII D of the California Constitution and other applicable law, the District will structure those rates as it deems appropriate, consistent with the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates" dated June 1994.

**11.2 Service Rates.** Service rates are those established by Resolution or Ordinance adopted by District Board of Directors, pursuant to applicable law. Contractor shall provide the services required by this Agreement and charge no more than the rates authorized by District Resolution or Ordinance.

**11.3 Notice and Procedures.** Contractor and District acknowledge that the rate increases are subject to the requirements of Section 6, Article XIII D of the California



Constitution, and as such, Contractor shall be required to provide any and all services and pay for all costs necessary in District's compliance with the requirements of Section 6 of Article XIII D of the California Constitution, including, but not limited to, the preparation of studies and preparation and mailing of notices, unless otherwise agreed to in writing by the District.

**11.4 Requests for Rate Adjustments.** Contractor shall submit to the District an application for rate review annually, in accordance with the procedures described in the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates," dated June 1994, except as that may be modified by the District from time to time. In addition to the procedures contained in the above referenced manual, Contractor shall submit any and all data requested by and in the format prescribed by the District, including but not limited to, (1) the annual audited financial statement and (2) a separate statement from a Certified Public Accountant that includes an analysis of the allowable profits and a narrative of the calculation. In the event Contractor shall fail to meet the schedule set forth in the above referenced manual, a revision of rates for the following year shall not be authorized until the 1st day of the first calendar month following a 120 day period from the date that the complete application is submitted and such revision shall contain no consideration for Contractor's failure to submit the application in accordance with the schedule set forth in the above-referenced manual.

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

**11.6 Allowable Profit.** When performing the procedures described in the "City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates," dated June 1994, the allowable profit on expenses shall be calculated using targeted operating ratio of ninety- three percent (93%), with a range of ninety percent (90%) to ninety-four percent (94%), applied to Contractor's reasonable and necessary allowable costs, as these costs are defined in the rate setting manual, incurred in the performance of its obligations under this Agreement.

**11.7 Reduction in Allowable Profits.** In addition to any other requirements contained in this Agreement, Contractor shall provide District with evidence that the District is paying one percent (1%) less than what other agencies are paying for similar services.

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

## **SECTION 12. CUSTOMER BILLING.**

**12.1 Billing.** By Resolution or Ordinance of the District, the District shall establish rates for the services provided by the Contractor. Contractor shall bill and collect these rates. Contractor billing format and billing frequency shall be subject to approval of the District and District shall have the right to revise the billing format to itemize certain charges.

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

**12.2 Billing Statements.** All residential and commercial billing statements shall clearly list the customer's level of service, the monthly rate, a telephone number to call with questions. Because abbreviations used on the billing statement need to be easily understood by the average customer, Contractor shall submit a list of abbreviations for prior approval to the District Manager. The Contractor shall issue to the District Manager, on the same schedule as the customers, a sample residential bill and a sample commercial bill for the most popular level of service offered by the Contractor to those customers.

## **SECTION 13. INSURANCE.**

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

Insurance shall be secured and approved by District Legal Counsel prior to commencement of services according to this Agreement.

Maintenance of proper insurance coverage is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage

and/or renewal may be treated by the District as a material breach of Agreement. Contractor shall forward this Section 13 to Contractor's insurance agent for compliance.

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

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

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

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

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

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

A. Commercial or Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

Commercial Liability policy shall contain no pollution exclusion of any description unless Contractor provides for pollution insurance coverage in an amount equal to or greater than Commercial Liability policy or coverage is included under the Automobile Liability Policy.

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

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

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

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

A. The District, its Board of Directors, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities

performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its Board of Directors, officers, officials, employees, agents or volunteers.

B. For any claims related to the services provided under this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the District, its Board of Directors members, officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the District, its Board of Directors, officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

C. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its Board of Directors, officers, officials, employees, agents or volunteers.

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

E. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the District.

F. Pollution, if on a Claims Made form:

1. The Retro Date must be shown, and must be before the date of the contract or the beginning contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a Retro Date prior to the contract effective date, the Contractor must purchase extended reporting coverage for a minimum of two (2) years after completion of contract.

G. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

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

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

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

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

**13.9 Self Insurance.** Upon direction of the District, Contractor shall reduce or eliminate self-insured retentions with respect to the District or procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. If any third person makes a claim involving South County Sanitary Services, Inc. or any subcontractors exceeding the amount of any deductibles or self-insured reserves, Contractor shall promptly notify the insurer and District thereof.

#### **SECTION 14. INDEMNIFICATION.**

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

**14.2 CERCLA.** Contractor agrees to defend (with counsel selected by Contractor and reasonably acceptable to the District) indemnify, protect and hold the District and its Board of Directors, officials, agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or other expenses which arise from or are connected with or are caused or claimed to be caused by the (1) actions of the Contractor associated with the Contractor's role as the arranger of

solid waste service, or as a "potentially responsible party" within the meaning of CERCLA in performing solid waste service under any Federal, California or local laws, rules or regulations, or (2) assertion that the District is an arranger of solid waste services as a result of this Agreement.

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

**14.4 Survival.** Contractor's duty to indemnify, defend and hold harmless under this Section shall survive the expiration or earlier termination of this Agreement.

**14.5 Insurance.** Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Agreement does not relieve Contractor from any liabilities, duties or obligations referenced in this Section. The obligations of this Section shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

## **SECTION 15. PERFORMANCE SURETY.**

Contractor shall provide to District within ten (10) days after execution of this Agreement, a cash or surety bond in an amount equal to two hundred (200%) percent of the yearly average of monthly gross revenue or \$200,000, whichever is greater, provided by a Surety Company with a Best rating of "A" or better and licensed to do business in the State of California, conditioned upon the full and faithful performance of all covenants and conditions of this Agreement and any extensions or amendments thereto. Said surety bond must be approved by District prior to performance of any work under this Agreement. A certificate of deposit or an irrevocable letter of credit for the required amount from a bank acceptable to District may be provided in lieu of said surety bond.

Subject to the notice and hearing procedures set forth herein, if District determines that Contractor has substantially failed to keep and perform any covenant or condition of this Agreement and any extensions or amendments thereto, District may require Surety to perform or may resort to any certificate of deposit or irrevocable letter of credit received in lieu of a bond. In that event, District shall notify the Surety of Contractor's failure to keep and perform a covenant or condition, as well as the amount of time necessary for performance as determined by District. If the Surety fails to perform, District may perform and assess the Surety on its bond for all costs associated with such performance. The costs of performance may include all labor, equipment, insurance, and any and all other reasonably necessary resources as determined by District to perform the work required under this Agreement.

District shall annually review the adequacy of the amount of the surety bond and increase or decrease the bond in an amount equal in its sole discretion. District shall notify Contractor in writing of any changes in the required bond amount not later than thirty (30) days after the completion of said review. Contractor shall renew said surety bond as necessary and file it with District at least thirty (30) days prior to the expiration of the bond; provided, however, that Contractor shall not be required to increase or decrease the amount of the bond prior to six (6) months after any such bond adjustment required pursuant to this paragraph.

The bond, letter of credit or other similar instrument shall be issued for a period of not less than one (1) year, and the Contractor shall provide a new bond, letter of credit or similar instrument, and evidence reasonably satisfactory to the District of its renewability, no less than thirty (30) calendar days prior to the expiration of the bond, letter of credit or other similar instrument then in effect. The District shall be notified in writing of any cancellation by the issuer of the bond at least thirty (30) days prior to such cancellation.

#### **SECTION 16. DISTRICT'S RIGHT TO TERMINATE.**

The District in its sole discretion, and without declaring the Contractor in default, may terminate this Agreement, without further obligation to Contractor as follows:

A. In the event of a change of law which would render the collection and disposal services to be implemented under this Agreement illegal, the District reserves the right to terminate this Agreement upon the giving of a six (6) month prior written notice of District's election to so terminate this Agreement.

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

#### **SECTION 17. DEFAULT, REMEDIES AND LIQUIDATED DAMAGES.**

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

A. **Fraud or Deceit.** If Contractor practices, or attempts to practice, any fraud or deceit upon District.

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

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

D. **Violations of Regulation.** If Contractor facilities fall out of full regulatory compliance or if Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred.

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

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

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

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

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



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

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

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

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

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

### **17.3 Liquidated Damages**

A. **General.** District finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by District as a result of a breach by Contractor of its obligations under this Agreement.

B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties acknowledge that consistent, reliable Garbage, Recycling and Greenwaste service is of utmost importance to District and that District has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, comply with complaint resolution criteria, or

fails to submit required documents in a timely manner, District and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that District will suffer. Therefore, without prejudice to District's right to treat such non-performance as an event of default under this Section 17, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to District that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Recognizing the importance of resolving any failure to meet the service performance standard, the District shall contact Contractor within two (2) days of any failing reported directly to the District. In addition Contractor agrees to meet with the District Manager within 2 days of a requested meeting to discuss the Contractor's performance.

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

#### **Collection Reliability and Quality**

For each failure over five (5) annually to commence service to a new customer account within seven (7) days after order	<b>\$150.00</b>
For each failure over twenty-four (24) annually to Collect Garbage, Recyclables or Greenwaste, which as been properly set out for Collection, from an established customer account on the scheduled Collection day and not collected within 24 hours after notice of missed pick-up	<b>\$150.00</b>
For each failure to Collect Garbage, Recyclables or Greenwaste, which have been properly set out for Collection, from the same customer on two (2) consecutive scheduled pickup days	<b>\$150.00</b>
For each occurrence over five (5) annually of damage to private property:	<b>\$250.00</b>
For each occurrence over ten (10) annually of discourteous behavior	<b>\$250.00</b>
For each occurrence over five (5) annually of Collecting Garbage, Recyclables or Greenwaste, during unauthorized hours	<b>\$250.00</b>
For each failure to respond to a customer complaint within twenty-four (24) working hours	<b>\$250.00</b>

#### **C. Timeliness of Submissions to District**

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

Monthly Reports:	For each infraction	\$25 per day
Annual Reports:	For each infraction	\$50 per day

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

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

D. **Timing of Payment.** Contractor shall pay any liquidated damages assessed by District within thirty (30) days after they are assessed. If they are not paid within the thirty (30) day period, District may proceed against the security required by this Agreement or order the termination of this Agreement, or both.

**17.4 Force Majeure.** The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "acts of God", war, civil insurrection, riots, acts of any government (including judicial action), unavailability of third party disposal or processing facilities designated by the District, and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder ("Force Majeure").

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

The interruption or discontinuance of Contractor's services caused by one or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) days or more, District shall have the right to review the circumstances under which the excuse from performance was granted. After such review, if the District determines the excuse from service is no longer valid, the District shall notify the Contractor in writing

to resume service within two (2) days from the receipt of such notification. If the Contractor fails to resume service within the two (2) days, the District shall have the right to terminate this Agreement by giving ten (10) days notice, in which case the provisions relative to taking possession of Contractor's land, equipment and other property and engaging Contractor's personnel in Section 18, District's Right to Perform Services, and this Section 17 shall apply.

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

## **SECTION 18. DISTRICT'S RIGHT TO PERFORM SERVICES.**

**18.1 General.** In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to collect, transport, process or market any or all Garbage or Recyclable Materials which it is required by this Agreement to collect, transport, process, market, and/or dispose 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, Garbage or Recyclable Materials should accumulate in the District to such an extent, in such a manner, or for such a time that the District Manager or his/her 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 Contractor during the period of such emergency as determined by the District Manager or his/her designee, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take temporary possession of any or all of Contractor's equipment and other property to collect, transport, process, market and/or dispose any Garbage or Recyclable Materials generated within the District which Contractor would otherwise be obligated to collect, transport, process, market and/or dispose pursuant to this Agreement. In the event the District takes possession of the Contractor's equipment and other property, the District shall be required to pay a reasonable rental fee for such equipment, but the District does not guarantee repair of existing problems with equipment and facilities.

If Contractor is then providing billing services and District performs the services, Contractor will promptly forward to District all rates Contractor has collected in advance, or otherwise, to District for the period in duration equal to District's performance of the services. If Contractor does not promptly forward those rates, District may draw on the performance bond or other approved security for those amounts.

Notice of Contractor's failure, refusal or neglect to collect, transport, process, market and/or dispose Garbage or Recyclable Materials may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

A. It will take direction from District to affect the transfer of possession of property and equipment to District for District's use.

B. 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.

C. District may immediately engage all or any personnel necessary or useful for the Collection, transportation, processing marketing and/or disposing of Garbage or Recyclable Materials, including, if District so desires, employees previously or then employed by Contractor, Contractor further agrees, if District so requests, to furnish District the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Garbage or Recyclable Materials Collection, Transportation, processing, marketing and/or dispose operations and for the billing and collection of fees for these services.

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

District shall pay to Contractor 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 Contractor has rendered bills in advance of service.

Except as otherwise expressly provided in the previous paragraph, District's exercise of its rights under this Section 18.1 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 Contractor; and (3) does not exempt Contractor from the indemnity provisions of Section 14, Indemnification, Insurance and Bond, which are meant to extend to circumstances arising under this Section, provided that Contractor is not required to indemnify District against claims and damages arising from the negligence of District officers, employees and agents in the operation of Collection vehicles or performance of services during the time District has taken possession of such equipment.

**18.2 Temporary Possession of Contractor's Property.** If the District suffers an interruption or discontinuance of service as described in Section 18.1 (including interruptions and discontinuance due to events described in Section 17.4), District may

take temporary possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of such services. The same notice requirements of Section 18.1 are applicable.

**18.3 District's Right to Relinquish Possession.** It is further mutually agreed that District may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

**18.4 Duration of District's Possession.** District's right pursuant to this Section to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when District determines that such services can be resumed by Contractor, or when District no longer reasonably requires such facilities or equipment. In any case, District has no obligation to maintain possession of Contractor's property and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

## **SECTION 19. FRANCHISE FEES.**

**19.1** In consideration of the granting of this Franchise, and for the privilege of providing Solid Waste service along and within the rights-of way of the District, Contractor shall pay to District a Franchise Fee equal to 7.3 percent of Contractor's annual gross receipts attributable to services provided under this Agreement.

**19.2** Contractor shall submit to District General Manager a monthly detailed revenue statement and Contractor shall pay its franchise fee to District, submitted to District General Manager on a monthly basis. Payment of the monthly portion of the franchise fee shall be rendered to District within thirty (30) days after the end of each calendar month, or prorated portion thereof, in which the Contractor derives receipts for the services provided under the terms of this Agreement.

**19.3** In the event that payment is not received by District within thirty (30) days after the date specified in this Section, then Contractor shall pay a penalty of ten percent (10%) on the outstanding balance, and Contractor shall also pay to District interest on the outstanding balance at a rate of ten percent (10%) per annum, or the maximum legal rate of interest, whichever is greater, from the date of Contractor's failure to pay.

**19.4** In the event of an underpayment of franchise fees by Contractor, within thirty (30) days of being notified of such underpayment, Contractor shall tender the amount of the underpayment to District, together with any penalties and/or interest owed District for the period of the underpayment.

**19.5** Payments of franchise fees made by Contractor to District shall be considered in addition to and exclusive of any and all authorized taxes, business license

fees, permit fees, other fees, other levies or assessments presently in effect, or subsequently adopted.

**19.6** No acceptance of any payment shall be construed as a release, accord or satisfaction of any claim that District might have for further or additional sums payable under the terms of this Agreement.

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

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

## **SECTION 20. ASSIGNMENT**

**20.1 General.** Except as may be provided for in Section 18, (District's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. The Contractor shall consent to any assignment to a joint powers authority, or any similar public entity assignee of the District. In addition, Contractor may assign this Agreement without consent to another corporate affiliate of Waste Connections, Inc., provided such entity has assets at least as significant as Contractor.

**20.2 Assignment Defined.** For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be limited to (1) a sale, exchange or other transfer of at least fifty-one percent (51%) all of Contractor's assets dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of Contractor; (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

**20.3 Reliance on Contractor.** Contractor acknowledges that this Agreement involves rendering a vital service to District's residents and businesses, and that District

has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to District under this Agreement. District has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

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

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

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

C. Contractor shall furnish District with satisfactory proof: 1) that the proposed assignee has at least five (5) years of Recyclable Material management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; 2) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided District with a complete list of such citations and censures; 3) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; 4) that the proposed assignee conducts its Solid Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the Collection, transportation, processing, marketing and disposal of Solid Waste including Hazardous Wastes; 5) that the proposed assignee, and any its officers, directors or employees have not been convicted of a) fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to Recyclables or Solid Waste services of any kind (including collection, hauling, transfer, processing, composting or disposal), including this Agreement or any amendment thereto or b)



bribery or attempting to bribe a public officer or employee of a local, state, or federal agency in that officer or director's of Contractor's employee's official capacity; or c) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony; or d) unlawful disposal of hazardous or designated waste the occurrence of which the Contractor knows or should have known; and, 6) of any other information required by District to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely safe and effective manner.

## **SECTION 21. MISCELLANEOUS.**

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

**21.2 Jurisdiction.** Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. Venue of any such lawsuits shall be in San Luis Obispo County.

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

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

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

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

**21.7 Waiver and Estoppel.** District's failure to enforce any provision of District Code, or of this Agreement, for a breach or violation by Contractor of said District Code or Agreement, shall not constitute an acquiescence, waiver, estoppel or bar on District pursuing and seeking enforcement in the event that one or more of the same

provisions of District Code or this Agreement are subsequently breached or violated by Contractor.

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

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

If to District:  
Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444  
Attn. District Manager

If to Contractor:  
South County Sanitary Services, Inc.

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

**21.10 District Free to Negotiate with Third Parties.** District may investigate all options for the Collection, processing and marketing of Recyclable Materials after the expiration of the Term. Without limiting generality of the foregoing, District may solicit proposals from Contractor and from third parties for the provision of Garbage, Recycling and Greenwaste services, and any combination thereof, and may negotiate and execute Agreements for such services that will take effect upon the expiration or earlier termination under Section 17.1 (Events of Default) of this Agreement.

**21.11 Compliance with District Code.** Contractor shall comply with all provisions of the District Code and with any and all amendments to the District Code during the term of this Agreement.

**21.12 Privacy.** Contractor shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any person, governmental unit, private agency, or contractor, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to

preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by AB 939.

**21.13. Entire Agreement.** This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

**21.14 Section Headings.** The section headings set forth in this Agreement are for ease of reference only, and shall not be construed to modify, limit, or restrict the provisions contained in one, or all, of the sections of this Agreement.

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

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

**21.17. Amendments.** This Agreement may not be modified or amended in any respect except by a writing signed by Contractor and approved by the District Board of Directors.

**21.18. Severability.** If any term, provision, or any portion of a provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such term, provision or portion of a provision shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect the remaining portion of the provision or any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable term, provisions, or any portion of a provision had not been contained herein.

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

**21.20. Non-Discrimination.** Contractor shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

**21.21. Unauthorized Aliens.** Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any

liability or sanctions be imposed against District for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse District for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by District. Contractor shall comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

**21.22. Non-Liability of District Officers, Directors and Employees.** No officer, Director or employee of District will be personally liable to Contractor, in the event of any default or breach by the District.

**21.23. Joint and Severable Liability.** Both Waste Connections, Inc. and South County Sanitary Services, Inc. shall be joint and severally liable for Contractor's performance under this Agreement and for damages resulting from Contractor's breach of this Agreement.

**21.24. Time is of the Essence.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

**21.25. Execution of Counterparts.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**21.26. Precedence.** In the event of a conflict between the Exhibits and this Agreement, the provisions of this Agreement shall control.

**21.27. Recitals.** Recitals A through F are incorporated herein by reference as though set forth at length.

**21.28. Authority to Execute.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity (ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Contractor is obligated, which breach would have a material effect hereon.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

Nipomo Community Services District

Contractor: Waste Connection, Inc.

By Michael Winn  
Michael Winn, President,  
Board of Directors

By: Ron Mittelstaedt  
Title: CEO

Contractor: South County Sanitary Services, Inc.

By: Ron Mittelstaedt  
Title: \_\_\_\_\_

Attest:

Donna Johnson  
Donna Johnson, Secretary  
Nipomo Community Services District

Approved as to Form:

Jon S. Seitz  
Jon S. Seitz, District Legal Counsel

\_\_\_\_\_, Attorney for Contractor