

FRANCHISE AGREEMENT  
BETWEEN  
THE GRANADA COMMUNITY SERVICES DISTRICT  
AND  
RECOLOGY OF THE COAST  
FOR  
SOLID WASTE AND RECYCLING SERVICES

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**AGREEMENT  
FOR  
SOLID WASTE AND RECYCLING SERVICES**

This AGREEMENT is hereby made by and between the Granada Community Services District, a public agency ("District") and Recology of the Coast, a California corporation ("Contractor");

**WITNESSETH:**

**Whereas**, The California Integrated Waste Management Act of 1989 ("Act"; Public Resources Code Section 40000, et seq.) authorizes and requires local public agencies to make adequate provision for Solid Waste (words, phrases and terms, the first letters of which are capitalized herein are defined in Exhibit "A" hereof) services consistent with the policies, standards, and requirements of the Act and regulations adopted pursuant thereto, in furtherance of the public health, safety, and welfare; and

**Whereas**, pursuant to Section 40059(a) of the Act, District has determined that a franchise agreement shall be awarded to a qualified contractor for the Collection of Solid Waste, Recyclable Material and Yard Waste, and related services in pursuance of the diversion goals and other requirements of the Act; and

**Whereas**, District intends to maintain reasonable rates consistent with quality service for the Collection of Solid Waste, Recyclable Material and Yard Waste, and related services; and

**Whereas**, Contractor hereby agrees to provide for the Collection and Disposal of all Solid Waste within District's Service Area, and acknowledges that District does not, and shall not, hereby instruct Contractor how to Collect, process and dispose of Solid Waste, Recyclable Material and Yard Waste; and

**Whereas**, District and Contractor hereby define their respective roles, and agree that, by entering into this Agreement, District shall not become, and is not, a "generator" or "arranger" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), and that Contractor, not District, hereunder is "arranging for" the Collection, transportation and Disposal of Solid Waste; and

**Whereas**, District has selected Contractor based on Contractor's representations of its knowledge and experience, and its plans for the implementation of specific programs to meet District's diversion goals under the Act;

**NOW, THEREFORE**, the parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

**1.01 Definitions Incorporated.** Unless the context otherwise requires, words, terms, and phrases commencing with capitalized letters in this Agreement shall have the meanings respectively ascribed thereto in Exhibit A.

## **ARTICLE 2 GRANT AND ACCEPTANCE OF FRANCHISE**

**2.01 Grant and Acceptance of Franchise.** District hereby grants to Contractor the exclusive right and privilege to Collect, transport, and Dispose of Solid Waste, and to Collect, transport, process, and market Recyclable Material and residential Yard Waste, accumulating in District's Service Area. Contractor hereby accepts the foregoing right and privilege, subject to the terms, covenants and conditions of this Agreement.

**2.02 Effective Date.** The effective date of this Agreement is January 1, 2015. The franchise agreement between Contractor and District which expires as of December 31, 2014 is and shall be superseded upon the Effective Date hereof.

**2.03 Term.** The initial term of this Agreement ("Term") shall commence upon the Effective Date and shall expire as of midnight December 31, 2017; provided, that if Contractor has notified District in writing on or before November 1, 2017 of its desire to extend the Term, the parties shall confer and determine whether by mutual agreement this Franchise Agreement shall remain in effect for an additional five years, subject to the same terms and conditions. If the parties so agree, this Agreement shall be amended to extend the Term commencing January 1, 2018 and expiring December 31, 2022. If District rejects Contractor's proposal to extend the Term, District shall purchase from Contractor all Containers owned by Contractor or its Affiliate that are then in possession of Single Family Dwelling Service Recipients within District's Service Area. The purchase price for such containers shall equal the unamortized [depreciated] value of the acquisition cost as of December 31, 2017 of those containers purchased by Contractor or its Affiliate for use in providing Solid Waste or Recyclable Material Collection services to said Residential Service Recipients, calculated as set forth in Section 2.8 of Exhibit "E". Said sum shall be payable on or before December 31, 2017. This provision shall survive the expiration or earlier termination of this Agreement.

**2.04 Scope.** This franchise is exclusive except with regard to the following materials or circumstances:

**A.** Solid Waste, Recyclable Material or Yard Waste removed by the Owner or occupant of any Premises acting in the capacity of Waste Generator and transported personally by that Generator or by his or her employee(s) from the Premises for disposal;

**B.** Construction and/or Demolition Debris removed from any Premises by a contractor who or which provides construction and/or demolition services on the Premises, which removal is incidental to the primary construction and demolition service, is provided for no additional or separate fee, and is performed by the contractor using the contractor's own employees and vehicles;

**C.** Recyclable Material and/or Yard Waste Source Separated at any Premises by the Waste Generator and donated to youth, civic, educational or charitable organizations;

**D.** Yard Waste removed from Premises by a gardener, landscaper, arborist, or other Service Provider who or which prunes, trims, cuts, or removes shrubs, bushes, trees and other plants on the Premises, which removal is incidental to the primary service, is provided for no additional or separate fee and is performed by the service provider using the service provider's own employees and vehicles;

**E.** Animal waste and remains from slaughterhouses, restaurants, or butcher shops for use as tallow;

**F.** By-products of sewage treatment, including sludge, sludge ash, grit and screenings; and,

**G.** Hazardous Waste and Designated Waste, irrespective of the source thereof.

**2.05 Interpretation.** This Agreement shall be interpreted consistent with, and the parties' performance hereunder shall be governed by, the laws of the State of California except to the extent of preemption by federal law. In the event interpretation or enactment of future laws or regulations may limit District's or Contractor's authority to provide for the services described herein, or comply with the terms and conditions herein, Contractor acknowledges and agrees that District shall not be liable for any lost profits or other consequential losses or damages incurred by Contractor resulting therefrom, and Contractor shall solely be responsible for mitigating the financial effect of such interpretation or enactment to the extent reasonably practicable.

## **2.06 Additional Services and Modifications to Service.**

**2.06.1 General.** District may direct Contractor to perform additional services or modify the manner by which Contractor performs existing services for the remaining term of this Agreement or a portion thereof. Such additional services or modifications may include, without limitation, the establishment of pilot programs and innovative services that entail new Collection methods, targeted routing, different markets or uses for Recyclable Material or Yard Waste, different kinds of services and/or new requirements for Waste Generators. Contractor shall be entitled to an adjustment to maximum rates in accordance with Article 6 for providing such additional or modified services.

**2.06.2 New Diversion Programs.** District may direct that Contractor propose, or Contractor, of its own volition may propose, new diversion programs. Any such proposal shall, include, as a minimum, a description of the following:

- A. Collection and processing methodology;
- B. Equipment to be used, including the number and types of vehicles, capacity of each, and the age and condition of each;
- C. Number of employees required, including the job description of each;
- D. Number and types of Containers required;
- E. Public education, publicity, and marketing projects to be undertaken for the program;
- F. The estimated tonnage to be diverted and the means by which such tonnage shall be measured; and
- G. A five-year projection of the financial aspects of the proposed program in a balance sheet and operating statement format, including documentation of key assumptions underlying the projections and describing the resultant financial effect upon existing services.

**2.06.3 Future Projects/Programs.** The parties acknowledge that future projects or programs which may be undertaken or proposed by Contractor (including, without limitation, a project or program for a Material Recovery Facility, Transfer Station, or a Yard Waste Processing Facility), may be economically dependent in whole or in part upon Contractor's revenues under this Agreement. Therefore, the parties agree that before Contractor initiates any such project or program they shall meet and negotiate in good faith any amendments or supplements hereto for such purpose; provided, that nothing herein contained shall be deemed an agreement by either party to enter into such amendment or supplement.

**2.06.4 Alternative Providers.** Contractor acknowledges and agrees that District may permit other Persons to provide additional Solid Waste services not within Contractor's exclusive franchise. Accordingly, if Contractor and District cannot agree on the terms and conditions for providing such services within one hundred twenty (120) days from the date of District's request for a proposal therefor, Contractor agrees that District may obtain such services from an alternative service provider.

**2.07 Ownership of Solid Waste.** Solid Waste, Recyclable Material, and Yard Waste placed in Containers for Collection shall be deemed owned by Contractor and Contractor shall have the right to possession thereof. Contractor's right of ownership includes the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, Recyclable Material and Yard Waste, or any part thereof, in any lawful fashion or for



any lawful purpose. Notwithstanding the foregoing, Contractor's ownership and possession of Solid Waste, Recyclable Material and Yard Waste is subject to Contractor's and District's objectives to meet the diversion requirements of the Act and Contractor's obligation to process said Waste and Materials at a licensed facility or to Dispose thereof at a licensed Disposal Site.

### **ARTICLE 3 FRANCHISE FEE**

#### **3.01 Franchise Fee.**

**3.01.1 Amount.** In consideration of the exclusive franchise granted hereunder and subject to the provisions of Section 3.02, Contractor shall pay to District two percent (2%) of Gross Revenues per month. The Franchise Fee is a Pass-Through Cost.

**3.01.2 Time and Method of Payment.** From and after the Effective Date, Contractor shall remit to District the monthly installments of the Franchise Fee within thirty (30) days of the close of each month during the Term. If the Franchise Fee is not paid on or before the expiration of each such thirty (30) day period Contractor shall pay to District, as liquidated damages, an amount equal to two percent (2%) of the amount due and owing for each thirty (30) day period during which said amount remains unpaid. The parties agree that damages incurred by District for late payment of the Franchise Fee, or any portion thereof, is impracticable of calculation and, therefore, the foregoing amount so calculated is, and shall be deemed, liquidated damages.

Contractor shall retain copies of all Billings and Collection records upon which Gross Revenues are based for five (5) years following the date of billing for inspection and verification by District or its designee(s) at any reasonable time upon request. Said records may be retained in secure electronic form with a secure electronic back up.

### **ARTICLE 4 COLLECTION, RECYCLING, AND DISPOSAL SERVICES**

**4.01 General.** Contractor shall furnish all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required hereunder. Said services shall be accomplished in a thorough and professional manner to the end that residents and businesses within the Service Area are provided reliable, courteous, and high-quality service. The enumeration of, and specification of requirements for, particular aspects of service shall not relieve Contractor of the duty to perform all other aspects of service in the manner described in this Agreement.

#### **4.02 Solid Waste Collection.**

**4.02.1 Residential.** Prior to January 15, 2015, Contractor shall offer Single Family Dwelling Service Recipients a choice of twenty, thirty-two or sixty-four gallon cart Container

size usage for Solid Waste Collection. If such a Service Recipient does not specify a Container size prior to that date, a Container having the size closest to his/her present service shall be provided by Contractor. Contractor shall Collect Solid Waste from Single Family Dwelling Residential Service Recipients at Curbside, or from an alternative location approved by Contractor, on the regularly scheduled day for Collection as posted on Contractor's website. Single Family Dwelling Collection service shall be provided weekly.

Contractor shall offer Single Family Dwelling Residential Service Recipients for which all members of the Service Recipient's household are Disabled, the option of placing their Containers at a location other than Curbside, but visible from Curbside, as a Disability accommodation. For such purpose, the definition of "Disability" set forth in Exhibit A shall apply. Contractor shall inform all Single Family Dwelling Service Recipients of such option, the first notification of which shall be given within thirty (30) days of the Effective Date and annually thereafter. New Service Recipients shall be notified of the option upon requesting service.

**4.02.2 Commercial, Industrial, Institutional and Multi-Family Dwelling Units Collection.** Contractor shall Collect Solid Waste from Commercial, Industrial, Institutional and Multi-Family Dwelling Service Recipients utilizing Contractor-provided Containers and service recipient-provided compactors of a size and shape acceptable to Contractor not less than once per week unless in individual cases the compactor is used less frequently, as determined by Contractor. The location of Containers for Commercial, Industrial, Institutional, and Multi-Family Dwelling Service Recipients shall be determined with due regard to aesthetics, sanitary conditions, collection vehicle clearance, and avoidance of interference with pedestrian and vehicular traffic safety (including, but not limited to, line of sight). District, at District's option, may require relocation of such Containers based upon said criteria.

**4.02.3 Collection From District's Premises.** Contractor shall Collect all Solid Waste from District's Premises described in Exhibit "B", Mondays through Fridays. Collections from bins and debris boxes shall be scheduled at a time mutually agreed upon by Contractor and District. Contractor shall also Collect Recyclable Material and Yard Waste from District's Premises, likewise described in Exhibit B, at such frequency as District shall specify; provided that such Collections shall not be more frequently than weekly.

The foregoing services shall be provided at no charge to District. For purposes of this Section 4.02.3, "District's Premises" shall mean property owned or leased by District or otherwise occupied, or possessed by District, or the occupancy of which is otherwise controlled or regulated by District.

**4.02.4 Debris Box Service.** District hereby grants Contractor the exclusive right to provide debris box Containers for Solid Waste Collection to, and retrieve debris box Containers from, the location specified by the Service Recipient. Debris box Containers shall be made available to Service Recipients at their option for the following minimum periods: (i) Thursdays through the following Monday, (ii) Fridays through the following

Tuesday, or (iii) Mondays through the following Friday. The rate for use thereof shall not exceed the maximum rate therefor specified in Exhibit "D".

Debris box Containers shall be maintained free of graffiti and in good repair and shall clearly identify Contractor as the owner thereof. Contractor shall give special consideration to aesthetics and to avoiding traffic hazards and obstructions in the placement of debris boxes. Such Container location disputed by the Service Recipient, Contractor or District shall be resolved by District's decision.

District agrees to certify Contractor's exclusivity for debris box service and if District acquires actual knowledge of another person's or entity's attempt to provide debris box service within District's service area, District shall notify the County Sheriff's Department and provide further notice to the appropriate regulatory Department of the County of San Mateo that Contractor is the exclusive provider for debris box service within District's service area.

**4.02.5 Curbside Bulky Goods Collections.** Contractor shall Collect Bulky Goods on a request basis from each Residential Service Recipient on a regularly-scheduled day for Collection. Such service shall be provided at Curbside at no charge to Residential Service Recipients up to four (4) times each year at the Residential Services Recipient's request. The Service Recipient shall pay any environmental or other special Disposal fee that is payable by Contractor for Disposal of certain items, including, without limitation, refrigerators, freezers, and tires.

No single object Collected shall exceed 200 pounds in weight and each Collection may be limited to a total of three (3) Bulky Goods items such as furniture, household appliances, large plastic toys, rugs, carpet padding, and the like. Contractor shall endeavor to Recycle at least 50% of the aggregate amount of Bulky Goods Collected by Contractor per year.

**4.02.6 Special In-District Bulky Goods Drop-Off Days and Drop-Off Center.** Contractor shall provide four (4) Bulky Goods "drop-off" days per year for Residential Service Recipients only at a location selected by District within District's Service Area at no cost to the Service Recipient. Bulky Goods deposited for this service may include reusable or Recyclable Materials, Computer Parts, television and computer monitors, e-waste, tires, styrofoam plastic packaging, fluorescent tubes and white goods. Residential Service Recipients may dispose of Yard Waste at a drop-off location using conventionally-sized pick-up trucks; provided, that the Service Recipient shall be responsible for removing Yard Waste or other debris from areas in the vicinity of the designated disposal location. Commercial, Industrial and Institutional Service Recipients within District's Service Area may also deposit Bulky Goods at Contractor's Recycling Facility an unlimited number of times per year, likewise at no cost. Bulky Goods deposited for this service may include reusable or Recyclable Materials, but no Solid Waste items that are required to be disposed of in a Disposal Site. The service shall be provided at no charge to the Service Recipient; provided, that the Service Recipient shall pay any environmental or other special Disposal

fee that is payable by Contractor for Disposal of certain items including, without limitation, refrigerators, freezers, and tires.

In addition to the above-described free deposits and subject to payment of any environmental or other special Disposal fee that is payable by Contractor, Contractor shall accept at Contractor's Recycling Facility Recyclable and certain non-Recyclable Bulky Goods, including the following items: tires, car batteries, styrofoam plastic packaging, used motor oil and latex paint (limited to 5 gallons per household per month).

Contractor shall make the aforesaid location for Residential Service Recipient Drop-offs available continuously throughout the year and said Recycling Facility shall be made available Mondays through Saturdays each week, excluding holidays. Contractor shall process and market Recyclable Materials received pursuant to this Section. Notwithstanding any other provision of this Agreement, Contractor's obligations in this Agreement relating to Contractor's Recycling Facility shall terminate if and when Contractor ceases to operate a facility in the City of Pacifica, California and no alternative facility is provided by Contractor.

#### **4.03 Recyclable Material Collection.**

**4.03.1 Residential.** By January 15, 2015, Contractor shall have provided each Single Family Dwelling Residential Service Recipient with one 64-gallon Container for Recyclable Materials (as set forth in Section 4.12.3) for the Collection of commingled Recyclable Materials of the types designated in this Section. Single Family Dwelling Recyclable Materials Collection service shall be provided at Curbside, or (for an additional charge not exceeding the maximum rate therefor set forth in Exhibit "D") from an alternative location approved by Contractor. Contractor shall cooperate with Residential Service Recipients to determine mutually acceptable alternative Collection locations for difficult Collection areas; provided, that in instances where a mutually acceptable alternative location cannot be agreed upon, District shall make such determination. Recyclable Material Collection from Residential Waste Generators shall be weekly, on the same day as Solid Waste Collection service.

Recyclable Material Collected by Contractor shall include, as a minimum, aluminum cans, glass bottles and jars, bi-metal and tin cans, plastic food containers (plastic Nos. 1 through 7), newspapers, mixed paper (including, but not limited to magazines, discarded mail, brown paper bags [including brown paper bags with shredded paper], telephone books without covers, white and colored paper and corrugated cardboard. All such materials shall be commingled in Containers for Recyclable Material (as provided in Section 4.12.3) except that household batteries in a plastic bag must be placed on the top of the Containers for Recyclable Material Collection. Plastic bags do not qualify as Recyclable Material. Containers for Recyclable Material are to be placed on Curbside for pick-up by 6 a.m. on the scheduled day of collection. District reserves the right, pursuant to Section 2.06 to direct Contractor to specify additional Recyclable Material for Collection to achieve diversion requirements under the Act.

**4.03.2 Commercial, Industrial, and Institutional.** Contractor shall offer all Commercial, Industrial and Institutional Service Recipients Collection from one Container of all paper, cardboard, aluminum cans, glass bottles, metal cans, narrow neck plastic food containers (plastic No. 1 through 7) and small metal objects.

Contractor shall, upon a Service Recipient's request, provide annual waste audits to all Commercial, Industrial and Institutional Service Recipients. Contractor shall promote this service in its billing materials and through other public education activities. Contractor shall also encourage all Commercial, Industrial and Institutional Service Recipients to return products and packaging from their customers, patrons and clients for reuse, recycling, or composting by Contractor. Contractor shall Collect Recyclable Material from schools at least once per week.

Maximum rates for Commercial, Industrial, and Institutional Recycling Collection services shall not exceed fifty (50) percent of the maximum rates for Solid Waste Collection provided to such Service Recipients. Commercial, Industrial and Institutional Recycling Collection shall be performed at a time mutually agreed upon by Contractor and the Service Recipient.

#### **4.04 Yard Waste.**

**4.04.1 Collection.** Contractor shall Collect Yard Waste from Single Family Dwelling Residential Service Recipients bi-weekly on the regularly scheduled day of the week for Collection as posted on Contractor's website. Containers for Yard Waste shall be provided by the Residential Service Recipients; provided, that a maximum of four (4) thirty-gallon Containers shall be made available for each Single Family Dwelling by Contractor for such Collection. Contractor shall include a description of Composting Programs in Contractor's Education and Public Awareness Program pursuant to Section 5.05.

**4.04.2 End Uses for Yard Waste.** Contractor shall endeavor to develop new markets for all Yard Waste that Contractor Collects in order to achieve District's diversion requirements under the Act. Contractor shall provide end uses for Yard Waste that maximize diversion credits according to regulations established by the California Integrated Waste Management Board.

**4.05 Diversion Program Goal.** Contractor shall achieve the diversion requirements set forth in accordance with State law.

#### **4.06 Collection Locations.**

**4.06.1 Residential.** Notwithstanding any other provision of this Agreement, Collection of Solid Waste, Yard Waste, and Recyclable Materials for Single Family Dwellings, and for Multi-Family Dwellings comprised of two (2) units, shall be from Curbside, or (for an additional charge not exceeding the maximum rate therefor set forth in Exhibit D) from an alternative location approved by Contractor. Collection from Multi-Family Dwellings consisting of three (3) or more units shall be at Curbside, or from a location or

locations on the Multi-Family Dwelling Premises specified by the Service Recipient subject to Contractor's overriding specifications with regard to sanitation, Collection vehicle clearance, aesthetics, Contractor's cost considerations, and similar criteria.

Notwithstanding the foregoing, Collection Services provided to Disabled Persons (defined in Exhibit A) may be provided at a location on the Premises occupied by said Persons approved by Contractor, giving due regard to sanitation, Collection vehicle clearance, aesthetics, Contractor's cost considerations, and similar criteria.

**4.06.2 Commercial, Industrial, and Institutional.** Collection of Solid Waste and Recyclable Material from Premises occupied by Commercial, Industrial, and Institutional Service Recipients shall be made on the Premises at a location or locations specified or approved by Contractor, giving due regard to sanitation, Collection vehicle clearance, aesthetics, Contractor's cost considerations, and similar criteria.

**4.06.3 Unusual Circumstances.** Collection of Solid Waste, Yard Waste, and Recyclable Material from Residential Service Recipients whose Premises present unusual, extraordinary, or difficult circumstances for such Collection may be made at an alternative location or locations for an additional charge corresponding to the cost incurred by Contractor in providing such specialized service. By way of example, only, collection from Premises with long driveways may constitute an usual circumstance.

#### **4.07 Special Provisions.**

**4.07.1 Christmas Trees.** Contractor shall provide an annual Christmas Tree Collection for all Residential Service Recipients only, except for flocked trees or trees containing tinsel or other decorations. Christmas Tree Collections shall be provided on the same day as Yard Waste Collections occurring in the month of January.

**4.07.2 Household Battery, Oil, and Paint Recycling.** Contractor shall provide weekly Collection of household batteries in conjunction with Contractor's Recycling Collection Services to Residential Service Recipients. Contractor's Recycling Facility shall be made available to District's Service Recipients for receipt of other household Hazardous Wastes.

Contractor shall accept at Contractor's Recycling Facility Recyclable and certain non-Recyclable Bulky Goods and Yard Waste, including the following items: tires, car batteries, Styrofoam plastic packaging, used motor oil, and latex paint (limited to 5 gallons per household per month).

Subject to the approval of the County of San Mateo Department having regulatory jurisdiction, Contractor shall schedule two Collections per year for the Collection of Non-Recyclable items (including, but not limited to, motor oil, aerosols, caustics, gasoline, pesticides and paint) within District's service area.

**4.08 Nonconforming Solid Waste, Recyclable Material, Yard Waste.** Contractor may elect not to Collect Solid Waste, Recyclable Material or Yard Waste that does not conform to the respective definitions thereof or otherwise conform to pertinent federal, state or local laws or regulations. Contractor shall notify the Waste Generator of the reason for such rejection by means of a “tag” attached to the Solid Waste, Recyclable Material or Yard Waste or the Container therefor, or by other written means. Contractor shall report monthly to District any such notices issued. Contractor may refuse to Collect Solid Waste, Recyclable Material or Yard Waste from, and shall not be obligated to continue to provide such service to, any Waste Generator who, after a third written warning in a given twelve (12) month period, fails to sort Recyclable Material or Yard Waste from Solid Waste or who otherwise fails properly to cause his or her Solid Waste, Recyclable Material or Yard Waste to conform to pertinent requirements therefor or who fails properly to place the Container(s) therefor for Collection. Notwithstanding the foregoing, District shall have the authority to render the final decision to terminate or reinstate service.

**4.09 Processing and Marketing.** Contractor shall process, market, and sell, donate, or reuse all Recyclable Material and Yard Waste Collected pursuant to this Agreement. Contractor shall provide a list to District, updated annually, of its primary material processing facilities or reuse recipients for Recyclable Material and for Yard Waste.

**4.10 Hours of Operation/Schedules.**

**4.10.1 Residential.** Solid Waste, Recyclable Material, and/or Yard Waste shall be Collected from Premises occupied by Residential Service Recipients only on weekdays between the hours of 7 a.m. and 6 p.m. Contractor shall notify District and such Service Recipients in writing at least two (2) weeks prior to instituting a change in their Collection day. No schedule change shall cause a lapse of more than seven (7) consecutive days in Collection service to any Residential Service Recipient. Contractor shall notify Residential Service Recipients of designated alternative Collection days when their regularly scheduled Collection days fall on holidays observed by Contractor.

**4.10.2 Commercial, Industrial, and Institutional Collections.** Solid Waste, Recyclable Material, and/or Yard Waste shall be collected from Premises occupied by Commercial, Industrial, and Institutional Service Recipients on such days (excluding weekends) and at such times as may be scheduled by Contractor with such Service Recipients; provided, that no such Collection shall be made from any Commercial, Industrial or Institutional Premises located within two hundred feet of residential Premises prior to 6 a.m. or after 6 p.m. on any day; provided, further, that, in addition to regularly scheduled Collection days for schools, Contractor shall Collect Recyclable Material from schools following “garage sales” or other fund-raising events, upon notification by the schools.

**4.10.3 Operations Plan.** Contractor shall submit to District, within 120 days of the Effective Date, a written operations plan describing Collection routes, frequency of Collections, and times of Collections of Solid Waste, Recyclable Material, and Yard Waste.

District shall review said plan and request such reasonable revisions thereto as District shall propose within thirty (30) days of receipt thereof. In the event the parties are unable to agree upon any such revisions to the plan, either party may invoke the dispute resolution provisions of this Agreement. Any proposed revisions to the plan shall likewise be made subject to District's review.

**4.10.04 Missed Collections.** Upon notification by a Service Recipient that Contractor has neglected to make a scheduled Collection, Contractor shall endeavor to Collect the uncollected materials as soon as reasonably practicable, but in no event more than twenty-four hours after receipt of such notice.

**4.10.05 Collection Not Made.** In any circumstances when Solid Waste is not collected from a Service Recipient, Contractor shall notify the Service Recipient of the reason for such non-collection by means of a "tag" attached to the Solid Waste or the Solid Waste Container or by other written means.

#### **4.11 Vehicles.**

**4.11.1 Specifications.** All vehicles used by Contractor for Collection of Solid Waste, Recyclable Material, and Yard Waste shall be designed to prevent leakage and spillage and shall meet sanitary standards conforming to highest industry practices. Contractor's name, local telephone number, and a Contractor-assigned vehicle identification number shall be prominently displayed on all vehicles, in letters and numbers not less than two and one-half inches (2 1/2") high. Contractor shall not place District's name, logo, or any other identification associated with District on Contractor's vehicles.

**4.11.2 Cleaning and Maintenance.** Contractor shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.

Notwithstanding the foregoing general requirements, the following provisions shall govern maintenance of Contractor's vehicles:

**A.** Vehicles shall be painted as necessary. Vehicles shall be thoroughly washed, and steam cleaned at least once per week so as to present a clean appearance. District may inspect Contractor's vehicles at any time to determine compliance herewith. Contractor shall also make vehicles available to the San Mateo County Health Department for inspection upon request.

**B.** Contractor shall inspect each vehicle daily to ensure that all equipment is operable. Vehicles that are not operating properly shall be removed from service until fully restored to operation. 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 submit such records to District upon request.



**C.** Contractor shall repair, or arrange for the repair of, any vehicle and equipment rendered less than fully operable, so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate repair records, which shall include the date and mileage, description of the repair and a signed verification by a maintenance supervisor that the repair has been properly performed.

**D.** Contractor shall furnish sufficient equipment to provide all services required under this Agreement, including availability of back-up Collection vehicles. Contractor shall furnish within thirty (30) days of request from District, a written inventory of all equipment and vehicles used in providing service, and shall submit an updated inventory to District annually. The inventory shall list all equipment and vehicles by manufacturer, identification number, date of acquisition, type, and capacity.

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

**4.11.3 Operation.** Vehicles and equipment shall be registered and operated in compliance with all applicable federal, state and local laws and regulations, including, without limitation, licensing requirements, weight restrictions, U.S. Environmental Protection Agency noise emission regulations (40 CFR Part 205) and other applicable noise control regulations. Noise control features shall be effective for all operations of equipment and vehicles. Contractor shall notify District of any accidents involving Contractor's vehicles within District's service area and the issuance of any notice of violation (citation) or service of a criminal complaint for Vehicle Code violations or other violation of law involving the operation of Contractor's vehicles within District's service area within twenty-four (24) hours of the occurrence of the foregoing incidents.

## **4.12 Containers.**

**4.12.1 Residential Solid Waste.** Containers for Single Family Dwelling Service Recipients for Solid Waste and Yard Waste Collection shall be provided in accordance with section 4.02.1. Multi-Family Dwelling Service Recipients shall be provided with appropriately-sized Containers (carts or bins) by Contractor for Solid Waste Collection, Recyclable Material and Yard Waste only.

**4.12.2 Non-Residential Solid Waste.** Contractor shall provide Commercial, Industrial, and Institutional Service Recipients with appropriately-sized Containers for Solid Waste. Containers with a capacity of one cubic yard or greater shall be available in sizes set forth in Exhibit D. The size, type, and number of Containers furnished to such Service Recipients shall be determined by agreement of Contractor and the Service Recipient. All Containers having a capacity of one cubic yard or greater shall conform to applicable regulations for Solid Waste bin safety and shall be supplied with reflectorized markings. All Containers shall be maintained in good condition with neatly and uniformly painted surfaces.

**4.12.3 Residential Recyclable Material.** Contractor shall provide Containers for Recyclable Material for Residential Service Recipients. Such Containers shall be aerated, secure, animal-resistant, and (if carts) shall have a capacity of sixty-four (64) gallons. Said Containers (if carts) shall be constructed of heavy gauge recycled plastic and installed with wheels and lids and shall be subject to approval by District.

**4.12.4 Commercial, Industrial, and Institutional Recyclable Material.** Contractor shall provide Commercial, Industrial, and Institutional Service Recipients with Containers for the Collection of Recyclable Material and Yard Waste of a size determined by Contractor and the Service Recipient. Said Containers shall conform to the standards described in Section 4.12.3.

**4.12.5 Delivery.** A 64-gallon Container for Recyclable Materials provided by Contractor shall be delivered to each Single Family Dwelling Residential Service Recipient on or before January 15, 2015, or, in the case of new service, within seven (7) business days of the request for new service. Contractor shall notify District if Contractor fails to deliver Containers within said time period.

**4.12.6 Repair or Replacement.** Upon notification by a Service Recipient that a Contractor-provided Container is missing or damaged so as to be inoperable, Contractor shall repair or replace the Container at no charge to the Service Recipient not more than one (1) time within any twelve (12) month period. Any additional replacements for a particular Service Recipient within said twelve (12) month period shall be at the cost of the Service Recipient, which cost shall not exceed the cost incurred by Contractor for the purchase thereof; provided, that Contractor shall not charge a Service Recipient for such cost until District's and Contractor's Managers (or their delegates) shall have conferred and agreed upon the appropriateness of such charge; provided, further, that Contractor's General Manager's decision shall be final.

**4.13 Minimization of Spills.** Contractor shall use due care to prevent Solid Waste, Recyclable Material and Yard Waste or fluids from leaking, spilling or otherwise being dispersed during the Collection or transportation thereof. Such materials shall promptly be recovered by Contractor. Each Collection vehicle shall be supplied with a broom, absorbent, and shovel or other appropriate instruments for such purpose. All Solid Waste, Recyclable Material and Yard Waste shall be securely enclosed and covered in Contractor's vehicles during transport. Solid Waste, Recyclable Material, and Yard Waste, or any of them, shall not be transferred from one vehicle to another in any public place except when necessary due to mechanical failure or accident, or otherwise upon approval of District.

#### **4.14 Personnel.**

**4.14.1 Qualifications.** Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner in accordance with all applicable federal, state and local laws and regulations. All drivers and

equipment operators shall be trained and qualified in the operation of the vehicles and equipment that they operate. Drivers shall possess a valid license for the appropriate class, issued by the California Department of Motor Vehicles and shall be required to participate in periodic driver safety training.

**4.14.2 Training.** Contractor shall establish and enforce a training program for Contractor's employees to identify Hazardous Waste. Contractor shall ensure that Contractor's personnel shall not knowingly place Hazardous Waste in Collection vehicles, nor knowingly dispose of such Waste at other than duly authorized Hazardous Waste Disposal Sites.

Contractor shall train its employees in courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform their work quietly. Contractor shall use its best efforts to assure 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 including, but not limited to, transfer, discipline or termination. If District notifies Contractor of a Complaint related to discourteous or improper behavior, Contractor shall consider reassigning the employee to duties not entailing contact with the public while Contractor investigates and undertakes any requisite corrective action. Contractor shall provide effective operational, health and safety training for all of its employees who use or operate vehicles and equipment or who are otherwise directly involved in Collection or related activities.

**4.14.3 Identification.** Contractor shall provide its employees and subcontractors who, in the course of their duties may come in contact with the public (including Service Recipients) with visible identification, identifying them with Contractor. Upon District's request, Contractor shall notify Contractor's Service Recipients of the form of said identification. Contractor shall provide a list of current employees and subcontractors to District upon request.

**4.14.4 Fees and Gratuities.** Contractor shall not permit any officer, employee, agent, or subcontractor employed by Contractor, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity from Service Recipients or members of the public for the Collection, transporting, Recycling, processing, and Disposal of Solid Waste, Recyclable Material and Yard Waste.

**4.14.5 Non-Discrimination.** Contractor shall not discriminate in the provision of services hereunder, or in the employment of Persons engaged in performance of said services on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation in violation of any applicable federal or state law.

**4.15 Report of Accumulated Solid Waste; Unauthorized Dumping.** Contractor shall direct its personnel to record the address or other location of (i) accumulated Solid Waste that has not been delivered for Collection and (ii) Solid Waste, Recyclable Material,

or Yard Waste that has been deposited and abandoned in an apparent unauthorized manner. Contractor shall endeavor to identify the Person or Persons who exercise control over such location and shall notify District thereof within five (5) days of observing such accumulation or deposit.

**4.16 Contingency Plan.** Contractor shall submit to District within 90 days of the Effective Date a written contingency plan describing the method and means by which Contractor shall provide uninterrupted service in the event of vehicular or other equipment breakdowns, and, particularly, upon occurrences of force majeure described in Section 10.02.1 as “Emergency Condition.”

**4.17 Routes.** Contractor shall select routes for Contractor’s vehicles to Collect and transport Solid Waste, Recyclable Material, and Yard Waste so as to minimize damage to public and private streets, and to avoid or minimize disturbing or inconveniencing the public or Service Recipients.

**4.18 Designated Solid Waste Disposal Site.** Contractor shall dispose of all Solid Waste collected under this Agreement at the designated Disposal Site, which shall initially be Ox Mountain, located in the City of Half Moon Bay, California. Contractor may change the designated Disposal Site at any time without any increase in District’s enacted maximum rates for Service Recipients or other charge to Service Recipients, but shall advise District in writing of any such change at least 90 days prior to making such change.

**4.19 Hazardous Waste.**

**4.19.1 Inspection, Notification.** Contractor shall conduct spot checks of Solid Waste, Recyclable Material and Yard Waste upon Collection thereof for the presence of Hazardous Waste or contamination by Hazardous Waste, and shall decline to Collect any Waste known to be so contaminated, or if Collection is otherwise prohibited under pertinent laws or regulations. Contractor shall notify all applicable agencies, including the California Department of Toxic Substances Control, Local Emergency Response Providers and the National Response Center of Hazardous Waste detected by Contractor in any Materials Collected by Contractor, or placed for Collection within District’s Service Area in amounts required to be reported. In addition to other required notifications, if Contractor observes within District’s Service Area any substances which Contractor or Contractor’s employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of, or released on any public property, including sewers, storm drains, streets or other public rights of way, Contractor shall immediately notify District or such other public agency which owns or otherwise exercises jurisdiction over such property.

**4.19.2 Hazardous Waste Diversion Records.** Contractor shall maintain records describing the types and quantities, if any, of Hazardous Waste observed in Solid Waste, Recyclable Material, and Yard Waste which were inadvertently Collected from Service Recipients within District’s Service Area, but which were diverted from landfill.

**ARTICLE 5  
CUSTOMER RELATIONS AND PUBLIC INFORMATION**

**5.01 Customer Relations.**

**5.01.1 Service Information.** Contractor shall prepare and distribute annually a notice to each Service Recipient, and to new Service Recipients upon commencing service, a list of all rates for Contractor's services, Contractor's Collection schedule, and a general summary of services, both required and optional, provided hereunder. Said notice shall be in a form subject to District's approval and may be included for distribution with Billings.

**5.01.2 Billings.** Contractor shall bill Residential Service Recipients for services rendered hereunder bi-monthly, or at such other frequency as Contractor shall determine. Contractor shall bill Commercial, Industrial, and Institutional Service Recipients monthly. Contractor shall provide the option for payment for services at the time of performance or upon receipt of a written bill. Bills may be paid by check, money order, credit card, electronic fund transfer (EFT), or cash; provided, that payment may be made by credit card for advance payment of annual service and for debris box service. In the event of payment by cash or money order, Contractor shall issue a written receipt and retain a copy thereof. District may require reasonable revisions to Contractor's billing format (as to size, font, itemization of certain charges, etc.) and frequency of issuance.

Contractor shall maintain for inspection by District or its designees, copies of said Billings and receipts, in chronological order, for a period of five (5) years after the date of service. Contractor may, at its option, maintain such records in computer form, on microfiche, or in any other manner that allows for convenient retrieval, inspection and verification of the records.

**5.01.3 Mailers.** District may require Contractor to provide mailers relating to service hereunder with Contractor's billings. Mailers shall be of such size and weight as not to increase postage costs customarily incurred for billings. Contractor shall mail a yearly brochure to Service Recipients listing all pertinent Collection dates, office hours and Recycling schedules.

District may also require Contractor to include mailers prepared by District (at District's cost) with Billings. District shall provide such mailers not less than thirty (30) days prior to Contractor's designated mailing date. Any increased costs incurred by Contractor through District mailers with Billings shall be borne by District.

**5.01.4 Delinquencies.** District shall collect delinquent payments in accordance with the provisions of Health and Safety Code Section 5473, et seq. Contractor shall provide District all information pertaining to delinquent accounts in accordance with District's scheduling requirements for conducting proceedings necessary for the collection thereof on the tax roll. District shall remit to Contractor the amount of delinquent payments received from collection on the tax roll from the Tax Collector of the County of San Mateo at the end of the fiscal year. District assumes no responsibility hereunder for the payment of any

account, delinquent or otherwise, and Contractor shall make no attempt to report any delinquent accounts to collection agencies or credit bureaus.

## **5.02 Customer Service.**

**5.02.1 Standard.** Contractor shall perform its services hereunder consistent with the highest standards of the Solid Waste, Recyclable Material, and Yard Waste Collection industry. Contractor shall respond promptly and professionally to all concerns communicated by Service Recipients and District. Such response to verbal communications shall be within 24 hours and to written communications within 72 hours of receipt thereof, excluding weekends and holidays. More than three occurrences of failure to meet the foregoing standard within a one-week period, based upon verified complaints of five percent (5%) or more of the Service Recipients within District's Service Area (determined with reference to Billings), shall be deemed an event of default for purposes of Article 11.

**5.02.2 Local Office.** Contractor's office hours, as a minimum, shall be from 7:30 a.m. to 4 p.m., Mondays through Fridays, excluding holidays. A responsible and qualified representative of Contractor shall be available during office hours for communication with the public, Service Recipients and District. Telephone contact with Contractor's office shall be provided by local or toll-free calls. Contractor shall also provide a local or toll-free telephone number for use during other than normal business hours by which either personal or voice mail contact may be made with Contractor. Contractor shall furnish District with a telephone number for emergency contact with a person having managerial operational authority, who shall be available twenty-four (24) hours per day, seven (7) days per week.

## **5.03 Complaints.**

**5.03.1 Documentation.** All Complaints shall be directed to Contractor. Daily logs of Complaints concerning Collections shall be retained for a minimum of five (5) years and shall be available to District for inspection at all times upon twenty-four hours' notice, upon District's request. Except for Complaints resolved within twenty four hours, Contractor shall log all Complaints received by telephone, including the date and time the Complaint was received, name, address, and telephone number of the complainant, a description of the Complaint, the name of the employee recording the Complaint, and the action taken by Contractor in response to the Complaint. All written Complaints and inquiries shall be date-stamped upon receipt and initial written response to such Complaint shall be made within one (1) business day of receipt. Contractor shall retain the record of the action taken by Contractor in response to such Complaints.

All service records and logs maintained by Contractor shall be available to District for inspection upon request at no cost to District. District shall have access to such records and shall be provided the opportunity to communicate with Contractor's personnel at any time during Contractor's regular business hours for purposes of monitoring the quality of Contractor's services or researching or reviewing Complaints. Contractor shall include a

summary of Complaints and disposition thereof in Contractor's annual report submitted pursuant to Section 8.05.

**5.03.2 Complaint Resolution.** The following provisions govern resolution of Complaints; provided, that said provisions are not exclusive and shall be in addition to any and all other rights or remedies which may accrue to District as a result of Contractor's performance or failure to perform its duties and obligations, express or implied, hereunder; provided, further, that the following provisions do not apply to annual reports under Section 8.05:

**A.** Contractor shall provide the first response to Complaints. Complaints not resolved by Contractor shall be referred to District, and District and Contractor shall discuss and endeavor to agree upon a resolution of the Complaint. Examples of such Complaints include, but are not limited to, questions regarding placement of Containers, size of Containers, type of Materials, and quantities placed in Containers, failure to provide service as required hereunder, applicability of a particular rate, and all other Complaints as District deems appropriate under the circumstances. Complaints regarding rates or maximum rates are not subject to this Dispute Resolution procedure.

**B.** All Complaints which cannot timely be resolved under A., above, shall be reviewed by District's Manager, who shall provide a written report thereof to Contractor. District's Manager shall review such Complaint to determine whether the Complaint can be resolved informally, or whether formal action is appropriate. If District's Manager determines that formal action is appropriate, he or she shall give written notice to Contractor and all interested parties of an administrative hearing to be held by him/her on the Complaint not less than ten (10) days from the date of said notice.

At the Manager's hearing, Contractor may present its response to the Complaint including, but not necessarily limited to, a written response with supporting documents. Within ten (10) days following the hearing, the Manager shall make a determination upon the Complaint. The hearing conducted by the Manager shall be informal, and rules of evidence shall not apply, but he/she may hear and consider such relevant statements, receive documents, or other materials, as he/she shall determine appropriate under the circumstances.

If the Manager determines that Contractor has violated, or is continuing to violate any of its duties or obligations under this Agreement, or otherwise is in violation of any of the provisions hereof, the Manager may issue a Compliance Order to Contractor or may order that the Complaint shall be heard by the Board. In all cases in which the Manager determines that the appropriate remedy should be Termination or payment of compensatory damages, the Complaint shall be heard by the Board. If the Manager orders that the Complaint shall be heard by the Board, he/she shall prepare a written report to the Board which shall state his/her findings, the basis therefor, and a recommended action.

**C.** Contractor may appeal to the Board a Compliance Order issued by the Manager by filing a notice of appeal with the Clerk of the District within ten (10) days of the date of

the Manager's Compliance Order. The Clerk shall set the matter for hearing by the Board within thirty (30) days of receipt of the notice of appeal unless Contractor consents to an extension of time.

If the Manager orders a Complaint to be heard in the first instance by the Board pursuant to this Section, the Clerk shall set the matter for hearing within sixty (60) days of the date of such order, unless the time for hearing is extended by consent of Contractor.

At its hearing the Board shall consider the Complaint *de novo*, irrespective of whether the hearing is on appeal by Contractor or by order of the Manager. If a Complaint is based upon the manner or quality of Contractor's service, the hearing shall be at a duly noticed public meeting of the Board. If a Complaint is based upon a violation of the standards and procedures implemented under this Agreement, the hearing may, but shall not necessarily be a public hearing, as the Manager shall determine, but shall be at a public meeting of the Board. The parties shall have a right to present evidence at the hearing before the Board.

The Manager or Contractor may request that the Complaint be referred to a fact-finding panel pursuant to D., below, prior to hearing and final determination by the Board. Upon such request, or on its own motion, the Board may order the matter to be heard by such panel. The findings of fact made by the panel shall be advisory only, and shall not be binding on the Board.

If the Board determines that Contractor has violated, or is continuing to violate, any of its duties and obligations, either express or implied, under this Agreement, the Board may issue a Compliance Order, Termination Order for violations described in Section 11.01, or Order for Payment of Compensatory Damages, as it deems appropriate. The Board's decision shall be the final administrative determination, and shall be supported by written findings.

**D.** A fact-finding panel shall be comprised of one member, each, appointed by Contractor and District, respectively. Those appointees shall, in turn, appoint a third panel member who shall be the panel Chairperson.

The fact-finding panel shall review the controversy between the parties pursuant to the provisions of Part 3, Title 9 ("Arbitration") commencing with Section 1280 of the California Code of Civil Procedure, as said provisions exist upon the date hereof or from time to time may be amended, revised, or superseded, except to the extent that any provisions of this Agreement conflict with the provisions of said Title 9 in which case this Agreement shall take precedence. Notwithstanding the foregoing, the fact-finding panel shall have authority only to receive evidence relating to the controversy and to make advisory findings of fact. The panel's findings of fact shall be written and shall identify the evidence upon which each finding, respectively, is based.



All costs for the fact-finding panel's services shall be borne solely by Contractor, except that District shall bear the costs and fees of its own attorney or attorneys and its witnesses.

**E.** Remedies available to District pursuant to this Article include issuance of a Compliance Order, Termination Order, or Order for Payment of Compensatory Damages. Such Orders may be issued subject to such terms and conditions as the Manager (in the case of Compliance Orders) and the District Board (in the case of all such Orders issued by it) shall deem appropriate.

The Manager or the Board, as applicable, may issue a Compliance Order upon a determination that Contractor has violated, or is in continuing violation of, any of its duties or obligations, either express or implied, under this Agreement. The Order shall direct Contractor forthwith to cease such violation, and may specify, if appropriate, the time within which such violation shall be remedied, and otherwise establish terms and conditions governing compliance.

"Termination Order" means the Board's order for termination of this Agreement upon a determination that Contractor has violated, or is in continuing violation of, any of the provisions of Section 11.01. Such Termination Order shall be effective not less than sixty (60) days from the date thereof. Contractor shall not be entitled to any revenues from Collection operations performed pursuant to this Agreement from and after the effective date of termination.

"Order for Payment of Compensatory Damages" means the Board's order for Contractor to pay compensatory damages upon a determination that Contractor has violated, or is in continuing violation of, any of its duties or obligations, either express or implied, under this Agreement, which has caused loss of revenues to District, or has caused District to incur costs or expenses, including, without limitation, attorney's fees, or has caused losses or damages to any Person. The Order shall direct payment of such damages in such amount, and subject to such terms and conditions, as the Board shall determine, and shall further direct Contractor forthwith to cease such violation, and may specify, if appropriate, the time within which such violation shall be remedied, and otherwise establish terms and conditions governing compliance.

**5.04 Contractor's Liaison.** Contractor designates the following officer or other management person of Contractor as Contractor's liaison to District with respect to resolving Service Recipient Complaints: the person designated to receive notice on behalf of Contractor in Section 13.13 or Contractor's Manager.

#### **5.05 Education and Public Awareness.**

**5.05.1 General.** Contractor acknowledges and agrees that education and public awareness are essential elements of any efforts to achieve Solid Waste diversion from Disposal. Accordingly, Contractor agrees to educate the public and Service Recipients concerning needs and methods to reduce, reuse, and recycle Solid Waste, and to

cooperate fully with District in this regard. Contractor's public education plan is incorporated herein by reference as Exhibit "C". Contractor shall instruct Service Recipients as to any necessary preparation of Recyclable Material and Yard Waste (such as reducing the size thereof), and the appropriate use and placement of Containers.

**5.05.2 District Review.** Contractor shall make available to District, and District shall review prior to distribution, all public educational materials prepared by Contractor. As a minimum, such materials shall describe the specific types of Recyclable Material and Yard Waste acceptable for Collection, requirements for preparation of such materials for Collection, appropriate placement of Containers and Collection Schedules. Contractor shall revise such educational and informational materials in accordance with District's reasonable requests regarding content and style.

**5.05.3 Community Events.** Contractor shall participate in community events and local activities for the promotion of diversion techniques. Such participation shall include providing, without cost, educational and informational materials regarding District's Solid Waste reduction and Recycling programs.

**5.05.4 Notification to New Service Recipients.** Contractor shall notify new Service Recipients of Contractor's Solid Waste, Recyclable Material, and/or Yard Waste Collection programs and services.

**5.05.5 Waste Generation/Characterization Studies.** Contractor acknowledges that District or the County of San Mateo may perform Solid Waste generation and characterization studies from time to time. Contractor agrees to participate and cooperate in accomplishing such studies and shall provide data and prepare reports, as needed, to determine weights and volumes of Solid Waste and characteristics thereof generated, disposed, transformed, diverted or otherwise processed to comply with the Act.

**5.05.6 Compilation of Information for State Law Purposes.** Contractor shall compile information on amounts of Solid Waste delivered to Contractor's Facilities, the Disposal Site(s), and such other information, which District may reasonably request for purposes of determining compliance with the Act or for any other public purpose.

**5.06 Damage to Property.** Contractor shall endeavor to resolve all claims made by Owners or occupants of Premises served by Contractor for damages to property including, but not limited to, Containers, as soon as reasonably practicable. In the event such damage shall have been caused by the negligence or intentional acts of Contractor, its officers, agents, or employees, Contractor shall promptly repair or replace the damaged property. The provisions of this Section 5.06 shall not be deemed a limitation upon any other provisions of this Agreement, or upon any rights or remedies that may accrue to District by reason of Contractor's acts or omissions to act hereunder; provided, that claims for damages to property shall not be subject to the Complaint resolution procedure under Section 5.03.2.

## **ARTICLE 6 MAXIMUM RATES**

**6.01 General.** The compensation provided to Contractor for the services provided hereunder shall be in the form of revenues received from Billings made to Service Recipients. Contractor may set its rates for such services at any level so long as the rate for a particular service does not exceed the then-applicable maximum rate for such service set forth in Exhibit D. The ability of Contractor to set its rates as provided in the previous sentence is a condition to Contractor's performance of this Agreement. Contractor's revenues from Billings shall be the full and complete compensation due Contractor under this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit, and all other things necessary to perform all services required hereunder in the manner and times specified. If Contractor's ability to set its rates is impaired for any reason beyond Contractor's control (including without limitation a court ruling or a protest by a majority of property owners), District and Contractor shall negotiate in good faith to take mutually agreed upon actions (including but not limited to complying with court-mandated procedures, revising rate increase proposals, and/or reducing Contractor's services or other obligations) with the goal of achieving a fair and equitable result for the Parties. Nothing in this Agreement shall be deemed an admission by District or Contractor that Article 13.C or 13.D of the California Constitution applies to maximum rates or the rates charged by Contractor under this Agreement.

**6.02 Maximum Rates.** The initial rates as of the Effective Date through and including December 31, 2015 shall be in accordance with the Schedule of Rates as set forth in Exhibit D, notwithstanding the foregoing:

**A.** Effective as of January 1, 2016, and each January 1 thereafter, Contractor shall be entitled to consideration of an annual adjustment in maximum rates calculated using the methodologies set forth in Exhibit "E". The methodology used each year shall be either index-based or cost-based, as indicated in Table 1 below. On or before the application submittal date listed in Table 1, Contractor shall submit to District an application ("Application") containing Contractor's reasonable good faith calculation of the Rate Adjustment Factor in accordance with Exhibit E and the proposed maximum rates for the ensuing Rate Year based on that Adjustment Factor. The Application shall be accompanied by appropriate supporting documentation, including, without limitation, any report (if publicly available) prepared by the City of Pacifica's rate consultant regarding maximum rates in the City of Pacifica for such Rate Year; provided, that said report shall serve only as an informative document relating to the City of Pacifica, and shall not necessarily be deemed relevant to determination of rates within District's service area.

District shall undertake an administrative review of Contractor's application for accuracy and consistency with the methodology set forth in Exhibit "E". Within thirty (30) days after Contractor's submittal, District shall notify Contractor in writing of any factual or calculation discrepancies in the Application that District has identified, and Contractor shall have the opportunity to revise the Application based thereon within thirty (30) days of receipt by Contractor of District's description of the discrepancies. District shall use its best

efforts, subject to the requirements of law, to enact the proposed maximum rates to take effect as of January 1 of the Rate Year following the year in which the Application was submitted.

	Rate Year Start Date	Method To Determine Rates for Such Rate Year	Application Submittal Date
	January 1, 2016	Index-Based	October 1, 2015
	January 1, 2017	Cost-Based	September 1, 2016
*	January 1, 2018	Index-Based	October 1, 2017
=	January 1, 2019	Index-Based	October 1, 2018
*	January 1, 2020	Cost-Based	September 1, 2019
=	January 1, 2021	Index-Based	October 1, 2020
*	January 1, 2022	Index-Based	October 1, 2021
=			

\* Applicable only if contract extended.

**B.** In addition to the above, District may direct Contractor to perform additional services or modify the manner by which Contractor performs existing services during the remaining term of this Agreement. Such additional services or modifications include, without limitation, the establishment of pilot programs and innovative services that entail new Collection methods, targeted routing, different markets or uses for Recyclable Material or Yard Waste, different kinds of services and/or new requirements for Waste Generators. Prior to and as a condition of commencement of additional or modified services, District and Contractor shall agree upon an adjustment to maximum rates, or such adjustment to maximum rates shall be established pursuant to the dispute resolution procedure in Section 13.22. District may at any time withdraw its direction to perform additional or modified services.

**C.** In addition to the above, and excepting fines and penalties resulting from Contractor's noncompliance with laws, Contractor shall be entitled to consideration of an adjustment to maximum rates sufficient to cover Contractor's reasonable increased costs (after application of the Operating Ratio to non-Pass-Through-Costs) arising from changes in law, increased regulatory fees, increased 3rd party processing costs, changes in disposal or processing facilities not within Contractor's control, and emergency services.

**6.03 Cost Savings Program.** Contractor is encouraged to achieve cost savings in its operations that will provide extraordinary maximum rate reductions to Service Recipients. Therefore, Contractor may, concurrently with its submittal of requests for adjustment to maximum rates, submit a written proposal for any extraordinary operating cost savings ("Cost Savings Program"). District shall either approve or disapprove the proposed Cost Savings Program. If Contractor and District fail to agree on such Program, Contractor shall not be required to initiate the Program, nor incur further significant additional capital investment beyond that required for normal operations.

## **ARTICLE 7 PERFORMANCE REVIEW**

**7.01 Performance Review.** District may review, or cause to be reviewed, Contractor's operations hereunder in conjunction with Rate Year maximum rate reviews. Such reviews may include, but shall not be limited to, analyses of both financial aspects and qualitative performance of Contractor's operations. Contractor shall cooperate with District in conducting such reviews.

**7.02 Scope.** The performance review may include, but not be limited to, quality of services then currently being provided, proposed new or substituted services, application of new technologies, Service Recipient Complaints, changes in applicable laws and regulations, new proposals for meeting or exceeding waste reduction and recycling goals, regulatory constraints, and the economic effect of said services.

**7.03 Report.** Unless otherwise agreed upon, within thirty (30) days of notice from District of a performance review, Contractor shall submit a report to District which shall, as a minimum, include: (i) recommended changes in existing services and/or new services to enable District to meet the waste reduction Recycling goals of District and the Act, (ii) financial aspects of such changes or new services, including costs, and corresponding maximum rate changes; (iii) review of Service Recipient complaints received during the prior Rate Year and the Rate Year in which the review is to be conducted, including Contractor's responses to such Complaints; and (iv) such other information as Contractor may deem pertinent to the review.

**7.04 Public Review.** Upon completion of the review conducted by or for District, District may prepare or cause to be prepared a report which shall be considered at a public meeting of the Board; provided, that at District's discretion, District may hold a public hearing for review of the report. Notice of such hearing shall be posted or published (or both) not less than one (1) week prior to the date set for the hearing.

**7.05 Action.** Following review of the performance report, including Contractor's and the public's comments or responses regarding the report, District may require Contractor to provide revised or new services, or substitute services, within a reasonable time; provided that such services shall be economically feasible, taking into consideration both costs and corresponding maximum rate adjustments therefor. District may also require Contractor to implement corrective action or procedures as a result of the review.

## **ARTICLE 8 RECORDS, REPORTS, AND INFORMATION**

**8.01 General.** Contractor shall prepare and maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to prepare the financial statements and other reports required by this Agreement. Contractor

shall collect data and information, and maintain records and reports necessary to comply with this Agreement and maintain Full Regulatory Compliance.

This Article is intended only to describe the general nature of records and reports, and the minimum content thereof, and does not define comprehensively what records and reports are required to be made and maintained. Upon written direction or approval of District, records and reports to be prepared and maintained pursuant hereto may be changed in number, format, or frequency. Where appropriate, all such records and reports may be maintained electronically, and transmitted both by electronic mail and United States Postal Service to District concurrently.

**8.02 Scope.** Contractor's records shall include, but not be limited to; (i) accurate and complete accounting records containing underlying financial and operating data relating to, and showing the basis for, computation of all costs associated with providing services under this Agreement; (ii) customer services and billing; (iii) Disposal Site(s) and costs associated therewith; (iv) disposition of Recyclable Material and Yard Waste; (v) sales value of Recyclable Material; (vi) markets for Recyclable Material; and (vii) such other records as are customarily prepared and maintained under industry-wide practices including, without limitation, corporate income tax records.

**8.03 Inspection.** Contractor shall make available to District, its auditors, officers, employees, and agents all records pertaining to Contractor's performance and operations under this Agreement during regular business hours at Contractor's offices or at a mutually agreed upon location. Inspection of said records by District shall be made with due regard to avoiding interference with Contractor's day-to-day operations; provided, that in no event shall District be precluded from inspecting said records. Contractor may designate which records, if any, contain proprietary information which Contractor desires to remain confidential.

**8.04 Retention.** Unless otherwise provided herein, Contractor shall retain all records and data related to Contractor's performance and operations under this Agreement for not less than five (5) years.

**8.05 Annual Reports.** Within one hundred twenty (120) days following the close of Contractor's fiscal year, Contractor shall deliver to District four (4) copies of its audited consolidated financial statements and profit and loss statements for such fiscal year. The statements shall have been audited by a certified public accountant (CPA) in accordance with Generally Accepted Auditing Standards (GAAS) and shall be accompanied by the CPA's unqualified opinion on such financial statements. Contractor shall provide to District an audited figure for Contractor's Gross Revenues under this Agreement for the fiscal year in question to enable District to determine the Franchise Fee contemplated by this Agreement.

**ARTICLE 9**  
**INDEMNIFICATION, INSURANCE AND PERFORMANCE BOND**

**9.01 Indemnification.**

**9.01.1 General.** Contractor shall defend, indemnify and hold harmless, at Contractor's sole cost and expense, District, District's Board, District's officers, employees, and agents (collectively, "Indemnitees") from and against any and all claims, demands, actions, suits or proceedings (whether judicial, quasi-judicial or administrative in nature) losses, liabilities, penalties and forfeitures of any and every kind and description (including, without limitation, attorney's fees and costs of suit) for damages (collectively, "Claims") including, but not limited to, personal injury, bodily injury, injury to, and death of, any Person and/or damage to property, including loss of use thereof, or for contribution or indemnity claimed by third parties arising out of, or occasioned in any way, directly or indirectly, by Contractor's performance of, or its failure to perform, its agreements, duties, obligations, rights and privileges under this Agreement, including, but not limited to, Contractor's failure to attain and maintain Full Regulatory Compliance or otherwise to comply with applicable laws, or Contractor's breach of its representations and warranties. The foregoing shall apply to all Claims except Claims caused by the sole negligence or intentional misconduct or intentional omission of Indemnitees.

**9.01.2 Hazardous Substance Indemnification.** Without limitation upon the provisions of Section 9.01.1, Contractor shall defend (with counsel reasonably acceptable to District), indemnify and hold harmless Indemnitees from and against all Claims of any kind whatsoever (including, but not limited to, Claims for special, consequential and punitive damages, and any and all response, remediation and removal costs) asserted against, paid, incurred or suffered, by Indemnitees arising from, or attributable to, the acts or omissions of Contractor, irrespective of Contractor's negligence or culpability, arising from, or attributable to, any repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan (irrespective of whether undertaken due to governmental action) concerning any Hazardous Substance, or Hazardous Waste Collected, transported, or Disposed under this Agreement. The indemnity afforded Indemnitees shall only be limited to exclude coverage for intentional wrongful acts and grossly negligent delivery of such Wastes to Contractor by Indemnitees. The forgoing indemnity is intended to operate as an agreement not barred under Section 107(e) of CERCLA (42 USC §9607(e)) and California Health and Safety Code Section 25364. The provisions of this Section 9.01.2 shall survive the expiration or termination of this Agreement. Nothing in this Section shall prevent Contractor from seeking indemnification or contribution from Persons or entities other than Indemnitees, for any liabilities incurred by Contractor or by the Indemnitees.

**9.01.3 Indemnification Under the Act.** In addition to all other relief provided District under this Agreement, Contractor agrees to defend, indemnify and hold harmless Indemnitees from and against any and all fines and penalties imposed against District pursuant to the Act in the event the source reduction and Recycling requirements, or any other requirements of the Act, are not met as a result of Contractor's failure to meet its

obligations hereunder including, without limitation, delays in providing information that prevents District from submitting any reports or information required under the Act in a timely manner.

**9.02 Insurance.** Contractor shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired vehicle liability insurance coverage relating to Contractor's services to be performed hereunder covering Contractor and District's risks on an occurrence (rather than a "claims made") basis and in form subject to the approval of District's counsel. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<b><u>Insurance Category</u></b>	<b><u>Minimum Limits</u></b>
Workers' Compensation	statutory minimum
Employer's Liability	\$5,000,000 per accident for bodily injury or disease
Commercial General Liability	\$5,000,000 per occurrence and \$10,000,000 aggregate for bodily injury, personal injury and property damage
Vehicle Liability	\$5,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Contractor's performance hereunder)

Concurrently with the execution of this Agreement, Contractor shall furnish District with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and vehicle liability insurance coverage, original endorsements:

- (a) Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after District shall have received written notification of cancellation or reduction in coverage by first class mail;
- (b) Providing that 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 (cross liability endorsement);
- (c) Naming District, its Board of Directors (and each of them), officers, boards, commissions, employees, and agents as additional insureds, utilizing form # CG 20-101185 or its equivalent;



- (d) Providing that Contractor's insurance coverage shall be primary insurance with respect to District, its Board of Directors (and each of them), officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by District for itself, its Board of Directors (and each of them), officers, boards, commissions, employees, or agents shall be in excess of Contractor's insurance and not contributory with it.

**9.03 Faithful Performance Bond.** Contractor shall take out and maintain during the term hereof a bond securing Contractor's faithful performance of its obligations under this Agreement, in conformance with the attached Exhibit "G". The principal sum of the bond shall be not less than the sum of the annual Billings of Contractor within District's Service Area. Said bond shall be issued by a surety or sureties authorized and admitted as such in the State of California with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better. The form of the bond shall be subject to the approval of District's counsel.

## **ARTICLE 10 EMERGENCY OPERATIONS**

**10.01 Purpose.** The purpose of this Article is to provide a procedure for Collecting Solid Waste from District's Service Area upon the occurrence of an emergency condition resulting from the causes described in Section 10.02.1 that endanger the public health, safety, and welfare. The parties acknowledge that either temporary cessation or cessation of indeterminate duration of the services hereunder may result in conditions detrimental to the public health, safety, and welfare, and that, in order to protect the public, invoking the extraordinary provisions of this Article may be necessary.

### **10.02 Emergency Condition.**

**10.02.1 Emergency Condition.** "Emergency Condition" as used in this Article means the existence of a condition or conditions which threaten or threatens the public health, safety, and welfare resulting from Contractor's failure or inability to perform its duties and obligations hereunder due to fire, flood, storm, earthquake, or other natural calamity, riot, insurrection, public disobedience, labor controversy, labor strike, insolvency of Contractor, or similar condition. "Emergency Condition" does not include the results of failure of Contractor to comply with standards and procedures implemented pursuant to this Agreement or other substandard performance by Contractor.

**10.02.2 Hearing; Determination.** District may hold a hearing on the question of the existence of an emergency condition upon giving not less than forty-eight (48) hours prior written notice thereof by certified mail to Contractor. At the hearing, Contractor and any and all interested Persons shall be given the opportunity to be heard on the question. Upon conclusion of the hearing, District shall determine if an emergency condition exists in District's Service Area. If it is determined that an emergency condition does exist, District

shall, by resolution, declare the existence of the emergency condition, and transmit a certified copy of the resolution to Contractor by certified mail or hand delivery.

**10.03 Emergency Operations.** From and after the declaration of an emergency condition pursuant to Section 10.02, District may assume and carry out, or appoint any qualified Person to assume and carry out, as the "Emergency Operator," the Solid Waste Collection operations of Contractor hereunder. Except as provided in Section 10.04, during the period the emergency condition exists, all revenues which, but for the emergency condition would accrue hereunder to Contractor, shall instead accrue and be payable to the Emergency Operator.

**10.04 Use of Contractor's Facilities.** Upon the declaration of an emergency condition pursuant to Section 10.02, Contractor shall make available and relinquish to the Emergency Operator all of Contractor's Facilities necessary or convenient for Collecting Solid Waste from District's Service Area. Further, Contractor shall provide the Emergency Operator access, and rights of access (to the extent necessary) to the Disposal Site(s) or other Facilities available to, or under the control of, Contractor for the transferring, processing and Disposal of Solid Waste, and Contractor shall, to the extent it possesses rights to use such Facilities, assign such rights to the Emergency Operator for use during the existence of the emergency condition. Notwithstanding the foregoing provisions of this Section 10.04, the use of Contractor's Facilities, and the assignment of rights by Contractor shall, in the case of Contractor's insolvency, bankruptcy, or other adverse financial condition, be subject to the provisions of the United States Bankruptcy Act (11 USC §101 et seq.) to the extent applicable.

During the existence of an emergency condition the Emergency Operator shall operate, maintain, and repair, without cost to Contractor, Contractor's Facilities used by it. Upon the cessation of the emergency condition, the right to use such Facilities shall expire, and the Emergency Operator shall return said Facilities to Contractor in a condition substantially the same as that which existed upon acquiring said Facilities, ordinary wear and tear excepted.

**10.05 Indemnification.** In the event that an Emergency Operator utilizes any Facilities of Contractor, District shall defend, indemnify, and hold harmless Contractor and its Affiliates from and against any and all losses, expenses, liens, claims, demands, and causes of action of every kind and nature (excluding those based upon the sole negligence or willful misconduct of Contractor, its officers, employees and agents) for death, bodily injury, personal injury, property damage, or other liability for damages (including costs of suit and attorneys' fees) arising out of the use of Contractor's Facilities by the Emergency Operator.

**10.06 Cessation of Emergency.**

**10.06.1 Hearing; Determination.** At any time after the Emergency Operator has commenced the Collection of Solid Waste, District may hold a hearing on the question of the cessation of the emergency condition upon giving not less than forty-eight (48) hours

prior written notice thereof by certified mail to Contractor. At the hearing, Contractor, the Emergency Operator, and any and all interested Persons shall be given the opportunity to be heard on the question. Upon conclusion of the hearing, District shall determine if the emergency condition has ceased. If it is determined that the emergency condition has ceased, District shall, by resolution, declare the cessation of the emergency condition, and transmit a certified copy of the resolution to Contractor by certified mail.

**10.06.2 Resumption of Service.** Upon the declaration of cessation of the emergency condition, the Emergency Operator shall return to Contractor its Facilities acquired and used by it under Section 10.04. Further, upon the declaration of cessation of the emergency condition, and unless District has terminated this Agreement pursuant to Section 10.07, Contractor shall recommence its operations hereunder and shall perform all of its duties and obligations in accordance with the provisions hereof, and shall be entitled to all of its rights hereunder, including accrual of revenues for its benefit, from and after the date upon which the emergency condition shall be deemed to have ceased.

**10.06.3 Limitation.** Notwithstanding anything herein contained to the contrary, no emergency condition shall exist for more than 180 consecutive days. Upon the expiration of said 180 days, and unless the emergency condition has ceased prior thereto, this Agreement shall terminate. In the event of such termination, no rights shall accrue to Contractor under this Agreement from and after the date of termination.

**10.07 District's Termination of Agreement.** Notwithstanding the provisions of Section 10.06.2, if, upon the cessation of the emergency condition, District determines Contractor is not substantially able to perform its duties and obligations hereunder due to the effects of the emergency condition, District's Board may declare this Agreement terminated effective upon the date of the cessation of the emergency condition. In the event of such termination, no rights shall accrue to Contractor under this Agreement from and after the date of termination.

## **ARTICLE 11 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

**11.01 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.** Any material fraud or deceit practiced, or attempted to be practiced, upon District;

**B.** Contractor's insolvency, inability, or unwillingness to pay its debts, or upon issuance of an order for relief in favor of Contractor in a bankruptcy proceeding;

**C.** Contractor's failure to provide or maintain in full force and effect the requisite insurance and bonds under this Agreement;

**D.** The violation of any orders or regulations by Contractor or the filing of any action or initiation of any administrative proceedings by any regulatory body having jurisdiction over District or Contractor related in any way to the services being performed under this Agreement alleging Contractor's violation of any orders or regulations, in each case, which violation District reasonably determines to adversely affect Contractor's ability to perform its obligations hereunder or increases District's liabilities; provided that Contractor may contest any such order, regulation, action or proceeding in good faith, in which case no breach of this Agreement shall be deemed to have occurred, unless and until such regulatory body makes a final determination that Contractor has violated an order or regulation;

**E.** Contractor's failure to provide Collection, transporting, Disposal and Recycling Services required hereunder for any reason within the control of Contractor, including labor disputes, for a period of two (2) consecutive days or more to five percent (5%) or more of the Service Recipients within District's Service Area (determined with reference to Billings) or failure to meet such requirements three (3) times in one (1) week with respect to a particular violation or omission pursuant to Section 5.02.01;

**F.** Contractor's failure to make any payments required under this Agreement or failure to provide District with required information, reports, or records in a timely manner;

**G.** Any other act or omission by Contractor which violates the terms, conditions, or requirements of this Agreement, the Act, or any other law, statute, ordinance, order, directive, rule, or regulation implemented thereof which is not corrected or remedied within the time duly established for such correction or remedy;

**H.** Any representation or statement made to District by Contractor in connection with, or as an inducement to, entering into this Agreement, or any amendment to this Agreement, which is known by Contractor to be false or misleading in any material respect at the time such representation or statement is made;

**I.** Attachment of, or levy upon, Contractor's Facilities, or any part or portion thereof;

**J.** Termination or suspension of Contractor's business including, without limitation, cessation of services due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) consecutive days; provided, that timely resumption of services shall be without cost to District or Service Recipients;

**K.** Contractor's failure to provide the reasonable assurances of performance as required under Section 11.07;

**L.** Contractor's failure to comply with the Records, Reports and Information requirements of Article 8, including, but not limited to, the Inspection, Retention and Annual Reporting Requirements of Sections 8.03, 8.04, and 8.05, respectively.

**11.02 Right to Cure.** Upon the occurrence of any Event of Default, District shall give Contractor written notice thereof and of District's intention to exercise its remedies hereunder, including termination. Contractor shall have the right to cure any default arising under subdivisions C, D, E, F, G, I, K, and L of Section 11.01, as provided in Section 11.03.

**11.03 Right to Terminate Upon Default.** Subject to Contractor's right to cure, if a default for any cause arising under subdivisions C, D, E, F, G, I, K, and L of Section 11.01 is not cured within ten (10) days after receipt of written notice of default from District if the public health, welfare or safety is threatened, or otherwise within thirty (30) days after receipt of said notice, then District may, at its option, terminate this Agreement. In such event, District shall give Contractor written notice of its intention to terminate not less than twenty (20) days prior to the effective date of termination stated in the notice; provided, that if the date is not specified in the notice, termination shall be effective twenty (20) days from the date of receipt of the notice by Contractor.

If District's Board determines that termination of this Agreement may cause an imminent threat to the public health, welfare and safety, the Board shall invoke the provisions of Article 10, and declare the existence of an emergency condition thereunder. In all other circumstances, District shall give Contractor notice of its intent to terminate this Agreement and that District's Board shall consider the question of termination at a meeting of the Board held not less than ten (10) days following such notice. Contractor shall be provided the opportunity to respond to the notice of intent at said meeting.

District's right to terminate under this Article 11 is cumulative and in addition to any and all other rights of District which may accrue to it upon a failure of Contractor to perform its duties, obligations and agreements under this Agreement. Without limitation upon the foregoing, in addition to damages, District may seek equitable relief or enforcement for any material default or other breach of the provisions of this Agreement.

**11.04 Excuse from Performance.** The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from doing so by reason of floods, earthquakes, other natural disaster, war, civil insurrection, riots, acts of any government (including judicial action, but excluding orders or notices of violation resulting from actions of Contractor), and other similar catastrophic events which are beyond the control of and not the fault, of the party claiming excuse from performance. Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events. 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 excused events shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, if Contractor is excused from performing its obligations to

Collect, transfer, transport, process and Dispose of Solid Waste hereunder for any of the causes listed in this Section for a period of ten (10) days or more, District shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' written notice, in which case the provisions of Article 10 and this Article 11 shall be applicable.

**11.05 Notice, Hearing and Appeal of District Breach.** If Contractor contends that District is in breach of this Agreement, Contractor shall file a written request with District for an administrative hearing before the Manager or his/her delegate. The request shall be made within ninety (90) days of the event or incident which allegedly gave rise to the breach. District shall notify Contractor of the time and date of the hearing, which shall be held within thirty (30) days of receipt of Contractor's request. Contractor shall present its position and all relevant facts first and then District staff shall make its presentation. Contractor shall be notified of the Manager's administrative decision in writing within fourteen (14) days of the administrative hearing.

Contractor may appeal the Manager's decision to the Board. Notice of the appeal shall be given in writing to District no later than fourteen (14) days after the date of issuance of the Manager's decision. District shall notify Contractor of the place, time and date the District Board shall consider Contractor's appeal. On the appeal, Contractor shall present its position and all relevant facts first; provided, that Contractor shall not present any facts or documents, or raise any issues not presented by Contractor at the administrative hearing before the Manager. District staff shall respond to the matters presented by Contractor, and Contractor may present a closing argument. Contractor shall be notified in writing within thirty (30) days of the District Board's decision.

**11.06 Assurance of Performance.** Each party may, at its option and in addition to all other remedies it may have, demand from the other Party reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the Party may require. If the other Party fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the Party, such failure or refusal shall be an event of default.

### **11.07 Service Performance Standards; Liquidated Damages**

**11.07.1 Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** District and Contractor further acknowledge that consistent, reliable Solid Waste, Recyclable Materials, and Yard Waste Collection and Disposal service is of utmost importance to District and that District has considered and relied on Contractor's representations regarding Contractor's achievement of the requisite standards of performance in entering into this Agreement. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties agree that if Contractor fails to achieve the performance standards, or otherwise fails to perform its obligations hereunder, District and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that District will suffer.

Therefore, without prejudice to District's right to treat such non-performance as an Event of Default under this Article 11, the parties agree that the following liquidated damages correspond to a reasonable estimate of the damages incurred from the default listed respectively therefor. By initialing at the places provided, each party confirms the foregoing and acknowledges that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damages provisions upon entering into this Agreement.

Contractor  
Initial Here \_\_\_\_\_

District  
Initial Here \_\_\_\_\_

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

**A. Collection Reliability.**

- 1) For each failure to commence service to a new Service Recipient account within seven (7) days after receipt of the order for service, in excess of (10) such failures annually: \$150.00
- 2) For each failure to Collect Solid Waste that has been properly set out for Collection, from an established Service Recipient account on the scheduled Collection day and not Collected within the period described in this Agreement in excess of fifteen (15) such failures annually: \$150.00
- 3) For each failure to Collect Solid Waste which has been properly set out for Collection, from the same Service Recipient on two (2) consecutive scheduled pickup days: \$150.00
- 4) For each failure to prepare for, or properly conduct, special Collections as described in Section 4.07, including advertising and press releases: \$250.00
- 5) For each failure to perform and submit Billing reviews: \$250.00

**B. Collection Quality.**

- 1) For each occurrence of damage to private property that exceeds seven (7) such occurrences annually: \$250.00
- 2) For each failure in excess of ten (10) occurrences annually (in the aggregate for each infraction) of the following infractions: (i) failure to return empty Containers to the proper place; (ii) failure to place Containers so as to avoid pedestrian or vehicular traffic impediments and (iii) failure to place Containers upright with lids or other security devices fastened: \$150.00
- 3) For each occurrence of excessive noise or discourteous behavior: \$250.00

4) For each failure over fifteen (15) occurrences annually (in the aggregate for each infraction) of the following infractions: failure to clean up spills by Contractor from (i) Solid Waste, (ii) Recyclable Materials and (iii) Yard Waste Containers: \$150.00

5) For each Collection in excess of ten (10) occurrences annually (in the aggregate for each infraction) of the following infractions: Collection during unauthorized hours of (i) Solid Waste, (ii) Recyclable Materials and (iii) Yard Waste: \$250.00

6) For each year that Contractor fails to meet the annual diversion goals described in Section 4.05: one (1) percent of gross receipts.

**C. Service Recipient Responsiveness.**

1) For each failure initially to respond to a service recipient Complaint within one (1) business day: \$100.00

2) For each failure to process service recipient Complaints to District as required by Article 5: \$100.

**D. Timeliness of Submissions to District.** For each calendar day a report is overdue, the daily liquidated damage amount shall be \$10. For purposes hereof, a report, or any revision or amendment thereto, shall be deemed overdue if it has not been submitted to District by mail or personal delivery within seven (7) days of its due date.

**11.07.2 Procedure.** Liquidated damages shall only be assessed after Contractor has been given the opportunity, but failed, to rectify in a timely manner, the corresponding default. District may determine the occurrence of a default giving rise to liquidated damages through the observation of its own employees or representative or upon investigation of Complaints.

Prior to assessing liquidated damages, District shall give Contractor notice of its intention to do so. The notice shall include a brief description of the alleged default. Contractor may review (and make copies at its own expense) all information in the possession of District relating thereto. Contractor may, within ten (10) days after receiving the notice, request a meeting with District. Contractor may present evidence in writing and through testimony of its employees and others relevant to the alleged default. District shall provide Contractor with a written explanation of its determination on each alleged default prior to authorizing the assessment of liquidated damages. The decision of District shall be final.

**11.07.3 Amount.** District may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be in default in accordance with this Agreement.

**11.07.4 Payment.** Contractor shall pay liquidated damages within ten (10) days after they are assessed. Upon non-payment within the ten (10) day period, District may



proceed against the performance bond required hereunder or give notice of intent to terminate this Agreement pursuant to Section 11.03.

**11.08 District's Remedies Cumulative; Specific Performance.** Notwithstanding the provisions of Section 11.03, all rights and remedies of District contained in this Article 11 and in this Agreement are cumulative, such that the exercise of any such right or pursuit of any such remedy, or the failure to exercise such right or pursue such remedy, shall not be deemed a limitation upon District to exercise or pursue any other right or remedy. The parties expressly agree that, in addition to consequential damages arising from any breach of any provision of this Agreement, District may seek specific performance or other equitable remedy in furtherance of District's rights and remedies.

## **ARTICLE 12 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

**12.01 Representations.** Contractor's representations and warranties to District are set forth herein below.

**12.02 Corporate Status.** Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California authorized to do business in California. Contractor has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

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

**12.04 Agreement Will Not Cause Breach.** To the best of Contractor's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance of this Agreement by Contractor: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.

**12.05 No Litigation.** To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a

material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the District in writing.

**12.06 No Adverse Judicial Decisions.** To the best of Contractor's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement and may subject this Agreement to legal challenge.

**12.07 Ability to Perform.** Contractor possesses the business, professional, and technical expertise to manage, handle, treat, store and dispose of the Solid Waste, and possesses the equipment, plant, and employee resources required to perform this Agreement.

## **ARTICLE 13 GENERAL PROVISIONS**

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

**13.02 Compliance with Law.** In providing services under this Agreement, Contractor shall at all times comply with the Act, the Environmental Laws, the Ordinance and all other applicable laws, regulations and directives including all amendments, revisions and reenactments thereto and thereof (Collectively, the "Laws"). In the event of any conflict between this Agreement and the Laws, the requirements of the Laws shall govern, and Contractor shall not be in breach of this Agreement if Contractor complies with the Laws in contravention of this Agreement; provided, that nothing in this Section is intended to limit or enlarge Contractor's obligations under this Agreement.

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

**13.04 Jurisdiction.** Any lawsuits between the parties arising out of this Agreement shall be brought and maintained in the courts of the State of California. With respect to venue, the parties agree that this Agreement is made in and will be performed in San Mateo County, California.

### **13.05 Assignment by Contractor.**

**13.05.1 Assignment Defined.** For the purpose of this Section, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer (not including return of leased Facilities to their owner) of at least twenty-five percent (25%) of Contractor's Facilities to a third party; (ii) 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 or control over Contractor's Facilities; (iii) any dissolution, organization, 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 control of Contractor or control over Contractor's Facilities; (iv) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, an attachment or a levy against this Agreement, the appointment of a receiver taking possession of Contractor's Facilities, or a probate transfer; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which effectively changes control of Contractor or divests Contractor of control of Contractor's Facilities.

Contractor acknowledges that this Agreement involves rendering a vital service to District's residents and business, and that District has selected Contractor to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations, and best management practices, (ii) Contractor's financial resources to maintain the required equipment and services to District under this Agreement, (iii) Contractor's Schedule of Rates, (iv) Contractor's quality of service and (v) Contractor's obligations to District under this Agreement. District has relied on each of these factors, among others, in entering into this Agreement.

Contractor shall promptly notify District's Manager in writing of any proposed assignment. No interest in this Agreement may be assigned, sold, hypothecated, mortgaged, subcontracted or otherwise transferred, either in whole or in part, without the prior written consent of District, which consent shall not unreasonably be withheld. Contractor shall notify District's Manager by certified mail not less than one hundred twenty (120) days in advance of any proposed assignment, sale, hypothecation, mortgage, subcontract or transfer. Failure by District to respond to any such notice within sixty (60) days of receipt thereof shall be deemed consent. Any assignment, sale, hypothecation, mortgage, subcontract or transfer made without the consent of District shall constitute a material breach of this Agreement. Under no circumstances shall District be obligated to consider any proposed assignment if Contractor is in default of its performance under this Agreement.

Contractor agrees that it shall require as a condition of any assignment that the assignee shall be responsible for and comply with all terms and provisions contained in this Agreement (including, but not limited to, maximum rates) for the remaining Term of this Agreement.

In the event that District's Board approves an assignment, sale, hypothecation, mortgage, subcontract or transfer, said approval shall not relieve Contractor of any of its obligations or duties under this Agreement unless otherwise provided in writing executed by District.

**13.05.2** No request by Contractor for consent to any assignment shall be considered by District unless and until Contractor has met the following requirements:

**A.** Contractor shall deposit with District District's estimated expenses (not to exceed Ten Thousand Dollars (\$10,000) for attorney's fees and investigation costs required for review of the capability of any proposed assignee to perform the duties and obligations of Contractor hereunder or otherwise to comply with the provisions of this Agreement, and for the preparation of any documents pertaining to the assignment;

**B.** Contractor shall furnish District with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years;

**C.** Contractor shall furnish District satisfactory proof that: (i) the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to, or exceeding, the scale of operations conducted by Contractor under this Agreement; (ii) in the last five (5) years, the proposed assignee has not been issued any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations for any significant failure to comply with the Act, the Environmental Laws or any other law or regulation relating to the public health, welfare and safety; provided that the assignee shall furnish District with a complete list of such citations and censures; (iii) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid Waste business practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste, including Hazardous Substances; (v) the proposed assignee can meet the guaranty and performance bond requirements of Contractor hereunder; and (vi) any other information required by District to ensure that the proposed assignee can fulfill the terms of this Agreement has been submitted to District.

**D.** Contractor shall furnish District with an executed addendum to this Agreement indicating that the Agreement has been assigned to Assignee and that the Assignee shall be responsible for, and comply with, all terms and provisions contained within this Agreement (including but not limited to the maximum rates) for the remaining Term of this Agreement.

**13.06 Binding on Assigns.** Except as expressly otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties.

**13.07 Affiliated Companies.** If Contractor enters into any financial transactions with a Related Party Entity or Affiliate for the provision of labor, equipment, supplies, services, capital, or any other necessary items, related to the furnishing of service under

this Agreement, that relationship shall be disclosed to District, and in the financial reports submitted to District. In such event, District's rights to inspect records, and obtain financial data, shall extend to such Related Party Entity or entities to the extent necessary to evaluate such transactions, assess the financial wherewithal of the Related Party Entity, and determine on the basis of audited financial information the Franchise Fee contemplated by this Agreement.

**13.08 Subcontracting.** Contractor shall not engage any subcontractors for Collection or Disposal of Solid Waste without the prior written consent of District.

**13.09 Transition to Next Contractor.** Upon expiration of the Term, or earlier termination of this Agreement, Contractor shall cooperate with District and the successor contractor(s) to assist in an orderly transition. Contractor shall provide route lists and Billing information electronically in a format specified by District prior to expiration of the Term or earlier termination of this Agreement. Contractor shall not be obliged to sell its vehicles, equipment, Containers or other property to its successor; provided that, nothing herein contained shall be deemed to prohibit such sale.

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

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

**13.12 Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by Contractor.

**13.13 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: General Manager  
Granada Community Services District  
P.O. Box 335  
El Granada, CA 94018

If to Contractor: Ms. Christine Porter, Manager  
Recology of the Coast  
2305 Palmetto Avenue  
Pacifica, CA 94044

The above addresses may be changed from time to time by a notice given in accordance with this Section. A notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited with the U.S. Postal Service.

### **13.14 Representatives.**

**13.14.1 District's Representatives.** Except as expressly provided to the contrary, all actions to be taken by District shall be taken by the Manager who may delegate this responsibility in writing to another District employee or officer. Contractor may rely upon actions taken by such delegates if they are within the scope of the delegated authority.

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

**13.15 District Free to Negotiate with Third Parties.** District may investigate all options for the Collection and processing of Solid Waste after the expiration of the Term. Without limiting the generality of the foregoing, District may solicit proposals from Contractor and other parties for the provision of Collection services, and any combination thereof, and may negotiate and execute agreements for such services that will take effect upon the expiration or earlier termination of this Agreement.

**13.16 Compliance with District's Code.** Contractor shall comply with those provisions of District's Code, its Ordinances, resolutions and directives of District applicable to Contractor's duties, obligations and agreements hereunder; provided, that if a revision or amendment to the Code, Ordinances, resolution or directives, or a new enactment by District's Board materially affects Contractor's annual cost of operations, Contractor shall be entitled to consideration of a maximum rate adjustment pursuant to Section 6.02. Moreover, no such change may revoke or override the exclusive right of Contractor contained in Section 2.1 or revoke or override Contractor's designation of a Disposal Site pursuant to this Agreement.

**13.17 Privacy.** Contractor shall strictly observe and protect the rights of privacy of Service Recipients. Information identifying individual Service Recipients or the composition or contents of a Service Recipient's Solid Waste, Recyclable Material or Yard Waste shall not be revealed to any Person, governmental unit, private agency, or Contractor, unless required by a court of competent jurisdiction, statute, or upon written authorization of the

Service Recipient. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of Solid Waste characterization studies or analyses required by the Act.

**13.18 Integrated Contract.** This Agreement represents the full and complete understanding of every kind or nature pertaining to the subject matter hereof between the parties hereto, and all preliminary negotiations and agreements are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification, amendment or revision of this Agreement shall be effective only by written agreement or supplement approved and executed in the same manner as this Agreement.

**13.19 Included Provisions.** Each provision and clause required by law to be included in this Agreement shall be deemed to be included herein, and this Agreement shall be interpreted and enforced as though each were included herein. If through mistake or otherwise, any such provision is not included or is not correctly included, this Agreement shall be amended to make such inclusion on application by either party.

**13.20 Execution.** This Agreement shall be executed in original duplicates, and may be executed in original counterparts by the parties.

**13.21 Non-Discrimination.** Consistent with District's policy that harassment and discrimination are unacceptable employer-employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, Contractor's employees, officers, or agents, District, or a citizen by Contractor on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation is prohibited. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**13.22 Dispute Resolution.** Except to the contrary hereinafter provided, disputes regarding the interpretation of this Agreement or the performance of the parties hereunder shall be resolved in accordance with this Section. The parties shall first attempt to resolve disputes by informal conference. If a dispute cannot thereby be resolved, the parties shall attempt to resolve the dispute by mediation.

If a dispute cannot be resolved by mediation, the dispute shall be resolved by a panel of arbitrators appointed in accordance with this paragraph. Each party shall appoint an arbitrator to a three (3) member panel. Two panel members, one appointed by each party, shall appoint the third, neutral arbitrator; provided, that if they cannot agree upon the neutral arbitrator, either party may apply to a Judge of the San Mateo County Superior Court for appointment of the neutral arbitrator.

The Rules of Procedure of the American Arbitration Association for commercial arbitration shall govern the arbitration hereunder to the extent applicable. Within 60 days from conclusion of the hearing on the dispute, the panel of arbitrators shall render their written decision; provided, that a majority and minority decision may be rendered. The prevailing party in any such Arbitration may recover its reasonable costs and attorney's

fees from the other party. The decision of the arbitrators shall be final and binding upon the parties.

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

**13.24 Headings.** The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the interpretation of this Agreement nor to alter or affect any of its provisions.

**13.25 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.

**13.26 Amendments.** This Agreement may not be modified or amended in any respect except by a writing approved in the same manner as this Agreement and signed by the parties.

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

**13.28 Exhibits.** Exhibits "A" through "F," inclusive, attached hereto are incorporated herein and made a part hereof by this reference.

**13.29 Attorneys Fees.** The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees from the other party.

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

(signatures on following page)



**Granada Community Services District  
("District")**

\_\_\_\_\_  
Matthew Clark, President

Countersigned: \_\_\_\_\_  
Jim Blanchard, Secretary

**Recology of the Coast ("Contractor")**

By: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit A

### Definitions

The following words and terms and their variants as used in this Agreement have the meanings respectively ascribed thereto.

**“Act”** means the Integrated Waste Management Act of 1989 (AB939) Public Resources Code, Section 40000 et seq., as it may be amended from time to time.

**“Affiliate”** means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by ownership interest or management. An Affiliate includes a business in which Contractor owns a direct or indirect interest, a business that has a direct or indirect ownership interest in Contractor and/or a business that is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986 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 disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

**“Agreement”** means this Agreement, including any amendments and supplements thereto.

**“Annual Change”** in an index means the annual percentage change in the index calculated by dividing the difference between the most recent annual index value and the prior annual index value, by the prior annual index value. For example, if the most recent annual index value = 316.30, and the prior annual index value = 295.50, the Annual Change =  $(316.30 - 295.50) / 295.50 = 0.0703$  or a 7.03% increase.

**“Board”** or **“District Board”** means the Board of Directors of District, its governing body.

**“Billings”** means statements of charges for services rendered by Contractor hereunder.

**“Bulky Goods”** means objects larger than ordinarily may be accommodated by residential Solid Waste Containers including, but not limited to, objects not heavier than 200 pounds. Bulky Goods includes, but is not limited to: used furniture, mattresses, box springs, large appliances, bicycles, lawn mowers, unpainted lumber, large tree limbs and stumps, used building materials, used fixtures, and used bricks.

**“Collect”** or **“Collection”** means to take physical possession of, transport, and remove Solid Waste, Recyclable Material or Yard Waste within and from District’s Service Area.

**“Commercial, Industrial and Institutional Service Recipient”** means the Person to whom Contractor submits billing invoices for services rendered by Contractor hereunder to Persons whose businesses or institutional activities include, but are not limited to, retail sales, services, wholesale sales, research and development, governmental operations, public and private education, non-profit charitable activities, hospital and health care activities, manufacturing and industrial operations, but excluding businesses lawfully conducted upon Residential Premises and not constituting the primary use of the Premises.

**“Complaint”** means a written statement made by members of the public, Service Recipients, or Owners of Premises served by Contractor, or (as to District’s facilities) officers, employees or agents of District, or a written statement prepared and submitted to Contractor by District based on oral statements made by such complainants to District, alleging non-performance or deficiencies in performance of Contractor’s duties and obligations under this Agreement, or otherwise alleging a violation by Contractor of the provisions of this Agreement, in each case with respect to services provided to (or failed to be provided to) such complainants.

**“Construction Debris”** means used or discarded construction materials generated during the construction or renovation of a structure.

**“Containers”** means any and all types of Solid Waste, Recyclable Material, and/or Yard Waste receptacles including, but not limited to, metal or plastic cans, carts, bins, tubs, dumpsters, “roll-off” boxes, debris boxes, or boxes for Construction or Demolition Debris.

**“Contractor”** means Recology of the Coast, a California corporation.

**“CPI-U”** means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Francisco-Oakland-San Jose Metropolitan Area (Series Id: cuura422sa0) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

**“Curbside”** means the location of a Container placed for Collection, not more than fifteen (15) feet from the street curb. Where no street curb exists, the location shall be within five (5) feet from the outside edge of the street nearest the property’s entrance.

**“Demolition Debris”** means used or discarded construction materials generated during the razing or renovation of a structure.

**“Designated Waste”** means auto fluff, and petroleum-contaminated soils.

**“Disability”** means any mental or physical disability as defined in Section 12926 of the Government Code.

**“Disposal”** means the ultimate disposition of Solid Waste Collected by Contractor at a Disposal Site in Full Regulatory Compliance.

**“Disposal Site(s)”** or **“Designated Disposal Facility(ies)”** means the Solid Waste facility or facilities selected by Contractor for landfill Disposal of Solid Waste Collected by Contractor hereunder. Ox Mountain, Half Moon Bay, California, is the designated Disposal Site of Contractor as of the Effective Date of this Agreement.

**“District”** means the Granada Community Services District, a public agency located in the County of San Mateo, California.

**“District Code”** or **“District’s Code”** means the Granada Community Services District Code, including all amendments, revisions and reenactments thereto and thereof.

**“Environmental Laws”** means all federal and state statutes, county, local and District ordinances and resolutions concerning public health, safety and the environment including, by way of example and not limitation, the Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §9601 et seq.); the Resource Conservation and Recovery Act (42 USC §6902 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 Act (California Health and Safety Code §25100 et seq.); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code §25300 et seq.); the Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.); the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code §25249.5 et seq.); and all rules, regulations and directives enacted or promulgated pursuant thereto, and including all amendments, revisions and reenactments thereto and thereof.

**“Facility”** or **“Facilities”** means any plant, site, equipment, vehicles, machinery or other tangible property owned, leased or otherwise under the control of Contractor, and maintained, operated or used by Contractor for the performance of its duties and obligations under this Agreement.

**“Fiscal Year”** means the period commencing July 1 of one year and ending June 30 of the following year.

**“Full Regulatory Compliance”** means compliance with all applicable permits and regulations for a Facility such that Contractor shall at all times maintain the ability fully to comply with its duties and obligations under this Agreement.

**“Franchise Fee”** means the fee paid by Contractor to District for the rights and privileges granted by this Agreement.

**“Gross Revenues”** means any and all revenue derived from billing of Service Recipients for services performed hereunder, determined in accordance with Generally Accepted Accounting Principles, without subtracting costs of doing business.

**“Hazardous Substance”** means any of the following: (a) any substance defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §9601 et seq.; (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act (42 USC §6901 et seq.); (iv) the Clean Water Act (33 USC §1251 et seq.); (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act (42 USC §7401 et seq.); and (vii) California Water Code Section 13050; (b) all rules, regulations and directives enacted or promulgated pursuant thereto, and including all amendments, revisions and reenactments thereto and thereof, and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

**“Hazardous Waste”** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code Sections 25110.02, 25115, and 25117, and all substances listed as Hazardous Waste by the United States Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), including all amendments, revisions and reenactments to and of said laws, and all rules, regulations and directives promulgated thereunder.

**“Manager”** means District’s chief executive officer, howsoever designated by District, or his or her designee.

**“Materials Recovery Facility”** or **“MRF”** means a permitted Facility where Solid Waste, Recyclable Material or Yard Waste are sorted or separated for the purpose of recovering reusable or Recyclable Material.

**“Multi-Family Dwelling”** means any residential dwelling building structure, other than a Single Family Dwelling, used for residential purposes. Such dwellings normally have centralized Solid Waste and Recyclable Material Collection service for all units in a building and are billed as one address.

**“Owner”** means the Person having fee title to the Premises with respect to which Solid Waste, Recyclable Material and/or Yard Waste Collection services are, or shall be, provided under this Agreement.

**“Operating Cost”** means those costs reasonably necessary and actually incurred by Contractor to perform under this Agreement, excluding only those costs specifically excluded in this Agreement.

**“Operating Ratio”** means a factor used to calculate Contractor’s profit, and shall equal 90.0% (0.90). For example, if Contractor’s costs are 90, then Contractor’s calculated profit on those costs is 10, calculated thusly:  $(90/.90) - 90 = 100 - 90 = 10$ .

**“Ordinance”** or **“District’s Ordinance”** means District’s regulations governing the Collection of Solid Waste, Recyclable Material and Yard Waste contained in District’s Code, including all amendments, revisions and reenactments thereto and thereof.

**“Pass-Through Cost”** means a particular cost to which no element of overhead, administrative expense, profit, or other cost is added nor with respect to which any other amount is credited, such that the specific amount of such cost is included without modification in the calculations or reports to which such costs pertain. As of the Effective Date of this Agreement, the Franchise Fee comprises the only Pass-Through Cost.

**“Person”** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Mateo, towns, cities, or special purpose districts or any agency, subsidiary, or department thereof.

**“PPI - Fuel Pricing Index”** means the Producer Price Index – Commodities, Item No. 2 Diesel Fuel (Series Id: wpu057303), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

**“Premises”** means any land, lot, parcel of real property or building, structure or improvements thereon in District’s Service Area where Solid Waste, Recyclable Material and/or Yard Waste is generated or accumulated.

**“Rate”** or **“Maximum Rate”** means the maximum amount that Contractor may charge a Service Recipient for a given service hereunder.

**“Rate Year”** means the twelve (12) month period commencing January 1 of one year and concluding December 31 of the same year.

**“Recycling”** means the process of Collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be reused, remanufactured or processed. The Collection, transportation or Disposal of Solid Waste not intended for, or not capable of, reuse is not Recycling.

**“Recycling Facility”** means Contractor’s recycling facility in the City of Pacifica, California.

**“Recyclable Material”** means Source Separated discarded material that is capable of being reused, remanufactured or processed, other than Yard Waste.

**“Related Party Entity”** means any Affiliate that has financial transactions with Contractor pertaining to this Agreement.

**“Residential Service Recipient”** means the Person to whom Contractor submits billing invoices for services rendered by Contractor hereunder to Persons occupying Single Family Dwellings or Multi-Family Dwellings.

**“Service Area”** or **“District’s Service Area”** means that territory within, and, if applicable, outside District’s boundaries with respect to which District exercises franchising authority for the Collection of Solid Waste, Recyclable Material and Yard Waste, which territory is shown on a map on file in District’s Administrative Offices, to which reference is hereby made for the description thereof.

**“Service Recipient”** means, depending upon the context, Residential Service Recipient or Commercial, Industrial and Institutional Service Recipient, or both.

**“Single Family Dwelling”** means each Premises used for, or designated as, a single family residential dwelling, including a second unit (also known as "granny unit"), and each unit of a duplex, triplex or townhouse condominium for which separate or individual Collection of Solid Waste, Recyclable Material and/or Yard Waste Collection is provided.

**“Solid Waste”** means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including Construction and Demolition Debris, as defined in California Public Resources Code Section 40191, as that Section may be amended from time to time. Notwithstanding any other provision of this Agreement, Solid Waste, Recyclable Material and Yard Waste do not include abandoned vehicles and parts thereof, Hazardous Substances, Hazardous Waste, low-level radioactive waste, medical waste, or Designated Waste. In addition, Solid Waste does not include Recyclable Material or Yard Waste.

**“Source Separate”** or **“Source Separated”** means the act of separating Recyclable Material from Solid Waste and Yard Waste, or Yard Waste from Solid Waste and Recyclable Material, or the condition of Recyclable Material and/or Yard Waste having been so separated, for which, in each case, the separation is performed by the Waste Generator of said material.

**“Ton”** or **“Tonnage”** means a unit of weight equivalent to 2,000 pounds where each pound contains 16 ounces.

**“Unacceptable Spillage”** means any Solid Waste spilled or left at established Collection sites by Contractor after Collection, excluding small particles of grass clippings and leaves indistinguishable from normal amounts of street debris.

**“Waste Generator”** means any Person whose acts or activities produce Solid Waste, Recyclable Materials and/or Yard Waste in the first instance.

**“Yard Waste”** or **“Organic Materials”** means Source Separated grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six (6) inches in diameter and four (4) feet in length), and similar materials. Yard Waste does not include diseased plant life, large quantities of dirt, sod and materials not normally produced from farms, gardens or landscapes, such as, but not limited to, brick, rock, gravel, concrete, non-organic wastes, oil, and painted or treated wood or wood products.

**“Yard Waste Processing Facility”** or **“Designated Composting Facility”** means a facility where Yard Waste is sorted, ground and chipped, mulched or separated for the purposes of reuse or composting, so long as that material is diverted from landfill disposal.



## **EXHIBIT B**

### **District's Premises**

All District owned WASTE RECEPTACLES, including those currently located in the following areas:

- 1). Surfer's Beach walking path along Hwy. 1 to the RV Park
- 2). The Burnham Strip property (currently used as a PARKING LOT)
- 3). On Mirada Road in Miramar @ Magellan and @ Cortez
- 4). Beach end of West Point Avenue, Princeton

All PET WASTE stations within the District, including those currently located at:

#### In El Granada

- 1). Avenue Balboa @ Columbus St.
- 2). Avenue Balboa @ The Alameda
- 3). Avenue Portola @ Coronado St.
- 4). Avenue Cabrillo @ Plaza Alhambra
- 5). Avenue Granada @ Sevilla & Avenue Alhambra
- 6). Surfer's Beach (HMB)

## **EXHIBIT C**

### **Public Education Plan**

Contractor shall provide the following;

- Annual newsletters to all ratepayers served by Contractor within the District which shall include the following statement: If you have a complaint concerning your garbage service, please call Recology of the Coast for resolution. If the problem is not resolved in a timely fashion, please call the Granada Community Services District at (650) 726-7093.
- Notification at least once per year of the free Bulky Goods clean-up days, with additional information on the Contractor's website.
- Notices on the top of the billing statements.
- Contribute to the Granada Community Services District newsletter if requested.
- Continue working with all businesses to maximize recycling efforts.
- Continue working with the schools and donating monies for recycling programs.

**GRANADA COMMUNITY SERVICES DISTRICT  
RATES EFFECTIVE ON JANUARY 1, 2015  
ATTACHMENT D**

**RESIDENTIAL**

**CHARGE**

1. Weekly collection, single container placed in front of premises, wet and dry garbage ("first can service") in wheeled carts:
  - a. Container limits: Volume - 20 gals (3/10 cu yd), weight 40 lbs, per mo charge..... \$ 16.15
  - b. Container limits: Volume - 32 gals (1/4 cu yd), weight 60 lbs, per mo charge..... \$ 19.91
  - c. Container limits: Volume - 64 gals (1/2 cu yd), weight 100 lbs, per mo charge..... \$ 65.25
  
2. Special Services (charges added to above, basic changes):
  - a. Container placed at side or rear of dwelling - per container..... \$ 5.25
  - b. Container not placed at specified collection point and return call required- per container..... \$ 12.76
  - c. Extra 30 gallon bag with collection (excludes 20 gallon cart service), per bag..... \$ 6.76
  - d. Special collections combined with regular service, including collections for brush, yard clippings, boxes, ect..... estimate
  
3. Bulky goods dropoff service four times a year within GCSD service limits including greenwaste..... inc. w/service
  
4. Weekly commingled recyclable materials collection (64 gallon wheeled cart)..... inc. w/service
  
5. Every other week greenwaste (yard trimmings, ect.) collection, limited to four (4) thirty gallon containers - customers own containers..... inc. w/service
  
6. Bulky goods curbside collection service, limited to four (4) times per year One item up to 200 lbs or 5-30 gallon bags..... inc. w/service
  
7. Dropoff at Recycling yard in Pacifica of motor oil, latex paint, unpainted lumber, large pieces of metal, styrofoam, e-waste, large white goods, furniture, mattresses, large amounts of recyclable materials..... inc. w/service
  
8. Christmas trees free of charge thru January 31st of each year..... inc. w/service
  - a. After January 31st charge is \$20 per tree for removal..... \$ 20.00

**MULTIFAMILY, COMMERCIAL AND INDUSTRIAL SERVICE**

1. Service to restaurants, hotels, cafes, apartment houses, stores and similar places of business, factories, schools and institutions, wet and dry garbage - container limits: Volume - 30 gal cans (1/4 cu. Yd), weight - 75 lbs
  - a. Regular collections:
    - 1 - 32 gallon collection once per week..... \$ 30.69
    - 1 - 64 gallon collection once per week..... \$ 97.84
    - 1 - 96 gallon collection once per week..... \$161.03
  
  - b. Additional 64 or 96 gallon commercial carts picked up more than once per week will be original charge times the number of pickups..... Will vary by size

**GRANADA COMMUNITY SERVICES DISTRICT  
RATES EFFECTIVE ON JANUARY 1, 2015  
ATTACHMENT D**

- 2. Commercial Container Rental:
  - a. 1 cubic yard box - per mo..... \$ 43.15
  - b. 2 cubic yard box - per mo..... \$ 55.96
  
- 3. Commercial Container Collections:
  - a. 1 cubic yard box - per collection..... \$ 38.66
  - b. 2 cubic yard box - per collection..... \$ 76.90
  
- 4. Compacted Commercial Container Service:
  - a. 1 cubic yard box - per collection..... \$ 74.16
  - b. 2 cubic yard box - per collection..... \$149.78
  
- 5. Recyclable material collection up to five times per week..... inc. w/service

**DEBRIS BOX SERVICE**

- 1. 7, 14, 20 and 30 yard containers:
  - a. Container rental and delivery and pickup charge..... \$285.00
  - b. \$67 per ton confirmed by disposal site weight slip..... Will vary

**SPECIAL PROVISIONS**

- 1. Financial hardship rate for weekly collection for single container placed in front of premises, wet and dry garbage 32 gallon can (PGE CARE PROGRAM)..... \$ 16.92
  
- 2. Administrative charge for processing the collection of delinquent refuse charges on the tax roll-per account..... \$ 49.85
  
- 3. Charge to photocopy, fax or scan documents - 1st page..... \$ 2.00  
Each additional page..... \$ 0.50

## EXHIBIT E

### RATE ADJUSTMENT METHODOLOGY

#### 1. DEFINITIONS

In addition to the terms defined in Exhibit "A" of this Agreement, the following terms are defined as follows:

**1.1 "CPI-U"** means the Consumer Price Index, All Urban Consumers, All Items, Not Seasonally Adjusted, San Francisco-Oakland-San Jose Metropolitan Area (Series Id: cuura422sa0), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

**1.2 "CPI-W"** means the Consumer Price Index, Urban Wage Earners and Clerical Workers, All Items, Not Seasonally Adjusted, San Francisco-Oakland-San Jose Metropolitan Area (Series Id: cwura422sa0), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

**1.3 "California Gasoline and Diesel Prices Index"** means the U.S. Energy Information Administration (EIA), Petroleum and Other Liquids, U.S. On-Highway Diesel Fuel Prices (dollars per gallon) Weekly Retail Gasoline and Diesel Prices, California Diesel Ultra Low Sulfur (0 — 15 ppm) Dollars per Gallon, Period equals Monthly

**1.4 "Motor Vehicle Maintenance and Repair Index"** means the Consumer Price Index, All Urban Consumers, Motor Vehicle Maintenance and Repair, Not Seasonally Adjusted, U.S. City Average (Series Id: cuur0000setd), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

**1.5 "Annual Percentage Change"** is calculated as the Average Index Value for the 12-month period ending April 30 of the then-current Rate Year, minus the Average Index Value for the 12-month period ending April 30 of the prior year, and dividing the result by the Average Index Value for the 12-month period ending April 30 of such prior year. The Annual Percentage Change shall be rounded to the nearest hundredth of one percent (e.g., a calculated value of 0.02636 (2.636%) would be rounded to 0.0264 (2.64%)).

**1.6 "Average Index Value"** for a twelve (12) month period means the sum of the published monthly index values for such period divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values for such period divided by 6 (in the case of indices published bi-monthly).

**1.7 "Yard Waste Processing Fee"** for a given period means the highest per-ton fee payable by Contractor during such period for the processing of source separated Yard Waste Materials at the Yard Waste Processing Facility.

**1.8 "Disposal Fee"** for a given period means the highest per-ton fee payable by Contractor during such period for the Disposal of Solid Waste (including the Regulatory Fee Component).

**1.9 "Recyclables Transfer Station (Load-Out) Fee"** or "Recyclables Transfer Station Fee" for a given period means the highest per-ton fee payable by Contractor during such period for the transfer of Recyclable Materials at the Designated Transfer Facility to cover costs related to receipt of materials in Collection vehicles and loading

such materials into long-haul transfer vehicles. So long as the Designated Transfer Facility is owned by an Affiliate of Contractor, the Recyclables Transfer Station Fee shall equal \$6.64 per ton until December 31, 2014, and shall thereafter increase by the Annual Percentage Change in the CPI-U and changes in regulatory fees pursuant to Sections 3.6.1 and 4.6.1.

**1.10 "Recyclables Transport Fee"** for a given period means the highest per-ton fee payable by Contractor during such period for the transportation of Recyclable Materials from the Designated Transfer Facility to the Designated Processing Facility. So long as the Designated Transfer Facility is owned by an Affiliate of Contractor, the Recyclables Transport Fee shall equal \$22.66 per ton until December 31, 2014, and shall thereafter increase by the Annual Percentage Change in the CPI-U and changes in regulatory fees pursuant to Sections 3.6.2 and 4.6.2.

**1.11 "Base Component"** means, with respect to a given fee, the portion of such fee that represents Contractor's charge for transfer station, transport, processing, composting, or disposal and includes all Contractor's expenses, but excludes the Regulatory Fee Component.

**1.12 "Regulatory Fee Component"** means, with respect to a given fee, that portion of such fee that represents amounts payable by Contractor for all federal, State, and local fees applied to transfer, transport, processing, composting, or disposal.

If an index is discontinued, the successor index with which it is replaced will be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics, the index published by the Bureau which, in the reasonable opinion of District after conferring with Contractor, is most comparable will be used.

## **2. COST COMPONENTS**

Both index-based and cost-based Rate adjustments are effected by applying various adjustment factors as described herein to the following categories of costs and other amounts, which are referred to herein as "Cost Components" or "Components":

**2.1 "CBA Labor Costs"** for a given period means the direct and indirect costs incurred by Contractor during such period for Contractor's employees, who are governed by a collective bargaining agreement, including without limitation: (1) wage costs including costs for regular, overtime, holiday, vacation, and sick wages; (2) health and welfare costs; and (3) pension/retirement benefit costs, but excluding Workers Compensation and Payroll Taxes.

**2.2 "Non-CBA Labor Costs"** for a given period means the direct and indirect costs incurred by Contractor during such period for Contractor's employees, including supervisory personnel, who are not governed by a collective bargaining agreement, including without limitation: (1) wage and salary costs including costs for regular, overtime, holiday, vacation, and sick wages; (2) health and welfare costs; and (3) pension/retirement benefit costs, but excluding Workers Compensation and Payroll Taxes.

**2.3 "Workers Compensation"** for a given period means the costs incurred by Contractor during such period for workers compensation insurance premiums.

**2.4 "Payroll Taxes"** for a given period means the costs incurred by Contractor during such period for payroll taxes.

**2.5 "Vehicle-Related Costs"** for a given period means direct and indirect costs incurred by Contractor during such period associated with maintenance, repair, licensing and

registration of Contractor's vehicles and equipment, but excluding Fuel Costs and Lease Costs.

**2.6 "Fuel Costs"** for a given period means the costs incurred by Contractor during such period for fuel.

**2.7 "Yard Waste Processing Costs"** for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Yard Waste Processing Fee) of fees incurred by Contractor during such period for the processing of Yard Waste at the Designated Composting Facility.

**2.8 "Lease Costs"** for a given period means the costs incurred by Contractor during such period for leases of facilities, vehicles and equipment (including Containers) leased from Affiliates of Contractor.

Leases for new vehicles and equipment (including Containers) shall fully amortize Contractor's acquisition cost over a 7-year period, and leases for used vehicles and equipment (including Containers) shall fully amortize Contractor's acquisition cost over a 5-year period, in each case based on the date the vehicles or equipment are put into service, and assuming equal monthly payments over the life of the lease. After the 5- or 7-year amortization period, the lease costs shall not be included in subsequent Rate Years. Lease rates shall be calculated at a rate equal to 1.9% plus the rate (as of the date the asset is put into service by Contractor) for Treasury bonds of constant maturity having the same term as the lease term (e.g., 7-year bonds for a 7-year lease term), as such rate appears on the web site of the Federal Reserve Board (<http://www.federalreserve.gov/releases/H15/data.htm>).

**2.9 "Other Costs"** for a given period means all costs reasonably incurred by Contractor during such period in connection with or arising from Contractor's performance of its obligations under this Agreement, other than (i) costs attributable to the Cost Components set forth in Sections 2.1 through 2.8 above, (ii) Pass-Through Costs, (iv) Calculated Profit, and (v) Non-Allowable Costs.

**2.10 "Total Annual Cost of Operations"** means the sum of the Cost Components set forth in Sections 2.1 through 2.9 above. Total Annual Cost of Operations is used as a basis for determining Calculated Profit.

**2.11 "Calculated Profit"** means an estimate of Contractor's profit based on the Operating Ratio of 0.90. Contractor's profit margin with respect to a given amount (e.g., the Total Annual Cost of Operations) is calculated by dividing the given amount by the Operating Ratio, and subtracting from the result the given amount.

**2.12 "Other District Fees"** means an estimate of the amount of the fees other than the Franchise Fee (if any) payable by Contractor to District pursuant to this Agreement, used for purposes of determining Total Calculated Costs. Other District shall be Pass-Through Costs.

**2.13 "Calculated Franchise Fee"** means the amount of the Franchise Fee payable by Contractor to District pursuant to Section 3.01.1 of this Agreement, used for purposes of determining the Total Calculated Costs. The Franchise Fee shall be a Pass-Through Cost.

**2.14 "Recyclables Transfer Station (Load-Out) Costs"** or "Recyclables Transfer Station Costs" for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Recyclables Transfer Station Fee) of costs incurred by Contractor during such period for the transfer of Recyclable Materials at the Designated Processing Facility. Recyclables

Transfer Station Costs shall be Pass-Through Costs.

**2.15 "Recyclables Transport Costs"** for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Recyclables Transport Fee) of costs incurred by Contractor during such period for the transport of Recyclable Materials from the Designated Transfer Station to the Designated Processing Facility. Recyclables Transport Costs shall be Pass-Through Costs.

**2.16 "Disposal Costs"** for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Disposal Fee) of fees incurred by Contractor during such period for the disposal of Solid Waste at the Designated Disposal Facility. Disposal Costs shall be Pass-Through Costs.

**2.17 "Total Calculated Costs"** means the sum of the Cost Components set forth in Sections 2.10 through 2.16 above. Total Calculated Costs is used as a basis for determining the Rate Adjustment Factor under the index-based and cost-based Rate adjustment methodologies. Total Calculated Costs does not reflect or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by Contractor.

**2.18 "Pass-Through Costs"** means the Franchise Fee, Other District Fees, Disposal Costs, Recyclables Transfer Station Costs, Recyclables Transport Costs and Other Pass-Through Adjustments.

### **3. INDEX-BASED RATE ADJUSTMENT METHODOLOGY**

**3.1 Summary.** The index-based Rate adjustment methodology involves the application of the Annual Percentage Change in various price indices to certain categories of Contractor's Total Annual Cost of Operations for the current Rate Year; the calculation of profit; and the calculation of Other District Fees and Franchise Fees. The difference (measured as a will take effect on January 1, 2015, the Cost Components that make up Total Annual Cost of Operations will be as set forth on Exhibit "F" which components shall be adjusted to the extent any of the circumstances described in Section 6.02.B or Section 6.02.0 occur and such circumstances reasonably increase Contractor's costs of operation.

**3.3 Calculation of Adjustments to Cost Components.** Each of the Cost Components will be adjusted as follows: percentage) between Total Calculated Costs for the coming Rate Year and Total Calculated Costs for the current Rate Year is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Rates to determine the Rates for the coming Rate Year.

**3.2 Determination of Contractor's Costs.** With respect to the Cost Components that comprise Total Annual Cost of Operations, the starting point for the adjustment calculations referred to in Section 3.1 is the value of each Cost Component for the Rate Year in which Contractor's Application is submitted (i.e., the current year), as determined in the previous Rate adjustment process. For purposes of Contractor's Application submitted in 2014 to determine the Rates that

**3.3.1 CBA Labor Costs.** CBA Labor Costs for the coming Rate Year shall be determined by adjusting CBA Labor Costs for the current Rate Year in accordance with the procedures described in the then-current collective bargaining agreement.

**3.3.2 Non-CBA Labor Costs.** Non-CBA Labor Costs for the coming



Rate Year shall equal Non-CBA Labor Costs for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-W.

**3.3.3 Workers Compensation.** Workers Compensation for the coming Rate Year shall equal Workers Compensation for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U.

**3.3.4 Payroll Taxes.** Payroll Taxes for the coming Rate Year shall equal (i) Payroll Taxes for the current Rate Year multiplied by (ii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the coming Rate Year, determined in accordance with Sections 3.3.1 and 3.3.2, respectively, and divided by (iii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the current Rate Year.

**3.3.5 Vehicle-Related Costs.** Vehicle-Related Costs for the coming Rate Year shall equal Vehicle-Related Costs for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.

**3.3.6 Fuel Costs.** Fuel Costs for the coming Rate Year shall equal Fuel Costs for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the California Gasoline and Diesel Prices Index.

**3.3.7 Yard Waste Processing Costs.** Yard Waste Processing Costs for the coming Rate Year shall equal (i) the Base Component of the Yard Waste Processing Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees, multiplied by (ii) the total Tons of Yard Waste Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

**3.3.8 Lease Costs.** Lease Costs for the coming Rate Year shall be determined in accordance with Section 2.8 above.

**3.3.9 Other Costs.** Other Costs for the coming Rate Year shall equal Other Costs for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U.

**3.3.10 Total Annual Cost of Operations.** Total Annual Cost of Operations for the coming Rate Year shall equal the sum of the amounts calculated in Sections 3.3.1 through 3.3.9 above.

**3.4 Calculated Profit.** Calculated Profit for the coming Rate Year will be calculated by dividing the Total Annual Cost of Operations for the coming Rate Year (the value calculated in Section 3.3.10 above) by an operating ratio (0.90) and subtracting from the result the Total Annual Cost of Operations for the coming Rate Year.

**3.5 Total District Fees.** The Total District Fees for the coming Rate Year shall equal the sum of the Franchise Fee and Other District Fees for the coming Rate Year.

**3.6 Other Pass-Through Adjustments.** Other Pass-Through Adjustments for the coming Rate Year shall equal (i) the sum of the costs calculated in items 3.6.1 through 3.6.3 below, plus (ii) any amounts (actual or reasonably estimated) not included in Total Annual Cost of Operations for which Contractor is entitled to reimbursement through the Rate adjustment mechanism, plus (iii) any other amounts mutually agreed by District and Contractor to be "Other Pass-Through Adjustments" hereunder.

**3.6.1 Recyclables Transfer Station (Load-Out) Costs.** Recyclables

Transfer Station Costs for the coming Rate Year shall equal (i) the Base Component of the Recyclables Transfer Station Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transfer Station Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

**3.6.2 Recyclables Transport Costs.** Recyclables Transport Costs for

the coming Rate Year shall equal (i) the Base Component of the Recyclables Transport Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transport Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

**3.6.3 Disposal Costs.** Disposal Costs for the coming Rate Year shall

equal the per-Ton Disposal Fee at the Designated Disposal Facility for the coming Rate Year multiplied by the total Tons of Solid Waste Collected by Contractor for the most-recently completed 12-month period ending April 30.

**3.7 Total Calculated Costs.** The Total Calculated Costs for the coming Rate

Year shall equal the sum of the Total Annual Cost of Operations for the coming Rate Year (as calculated in Section 3.3.10 above), Calculated Profit for the coming Rate Year (as calculated in Section 3.4 above), Total District Fees for the coming Rate Year (as calculated in Section 3.5 above), and Other Pass-Through Adjustments for the coming Rate Year (as calculated in Section 3.6 above).

**3.8 Adjustment of Rates.** The Rate Adjustment Factor for the coming Rate Year

shall equal Total Calculated Costs for the coming Rate Year (as calculated in Section 3.7 above) divided by Total Calculated Costs for the current Rate Year, which shall be rounded to the nearest thousandth. Each then-effective Rate, as set forth on Exhibit "D", shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Year. The adjustment to each Rate shall be rounded to the nearest cent.

**4. COST-BASED RATE ADJUSTMENT METHODOLOGY**

**4.1 Summary.**

The cost-based Rate adjustment methodology involves: review of Contractor's actual, allowable and allocated Total Calculated Costs from Contractor's most recently completed Fiscal Year; allocation of those costs to the Cost Components that comprise Total Annual Cost of Operations; the application of the Annual Percentage Change in various price indices to those Cost Components to reflect a 2-year increase (i.e., the period from the most recently completed Fiscal Year to the coming Rate Year); the calculation of Calculated Profit for the coming Rate Year based on Total Annual Cost of Operations; the calculation of the Calculated Franchise Fee for the coming Rate Year based on Total Annual Cost of Operations plus Calculated Profit plus Other District Fees and Other Pass-Through Adjustments; and the pass-through of Other District Fees and other actual or reasonably expected changes in costs, if any, to determine Total Calculated Costs for the coming Rate Year. The difference (measured as a percentage) between Total Calculated Costs for the coming Rate Year and total Billings for the most-recently completed twelve (12) month period ending April 30 (adjusted to reflect the most recent Rate adjustment) is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Rates to determine the Rates for the coming Rate Year.

**4.2 Determination of Contractor's Costs.** Contractor's actual, allowable and allocated Total Calculated Costs from Contractor's most recently completed Fiscal Year shall be derived from Contractor's audited financial statements for such Fiscal Year, in accordance with the following steps:

**4.21 Allocation Across Franchises.** First, Contractor shall allocate its costs as set forth in such financial statements among the different jurisdictions to which Contractor provided services during the Fiscal Year. The amount of costs allocated to this Agreement shall be determined for each cost component described in Section 2 using one of the following allocation factors:

(a) Route allocation factor - Percentage of routes attributable to the District compared to total routes operated by Contractor, which shall be calculated as the number of routes Contractor operates to serve the District divided by the total routes Contractor operates to serve all jurisdictions, multiplied by 100.

(b) Single-Family Customer allocation factor - Percentage of Single-Family Customers in the District compared to the total Single-Family Customers served by the Contractor, which shall be calculated as the total number of Single-Family Customers served by Contractor under this Agreement, divided by the total number of Single-Family Customers served by Contractor in all jurisdictions, multiplied by 100. If Contractor expands its services to other areas in addition to Pacifica, Montara, and Granada, the District reserves the right to request that the Single-Family Customer allocation factor be modified to an allocation factor based on the total Customers including residential and commercial Customers.

(c) Tonnage allocation factor — Percentage of Tonnage of Solid Waste, Recyclable Materials and Yard Waste Collected by Contractor from District, compared to total Tonnage of Solid Waste, Recyclable Materials and Yard Waste, respectively, Collected by Contractor, which shall be calculated as the total number of Tons of the applicable materials type Collected by Contractor from District, divided by the total number of Tons of such materials type collected by Contractor from all jurisdictions, multiplied by 100.

(d) Drop box hauls allocation factor — Percentage of drop box hauls from District, compared to total hauls, which shall be calculated as the total number of hauls by Contractor from District, divided by the total number of hauls by Contractor from all jurisdictions, multiplied by 100.

The route allocation factor will be applied to all costs with the exception of (i) Other Costs, which shall be allocated using the Single-Family Customer allocation factor, (ii) Disposal Costs, which shall be allocated using the Solid Waste Tonnage allocation factor, (iii) Recyclables Transfer Station Costs and Recyclables Transport Costs, which shall be allocated using the Recyclables Tonnage allocation factor, and (iv) Yard Waste Processing Costs, which shall be allocated using the Yard Waste Tonnage allocation factor.

The allocation factors shall be calculated using the then-current route information, Customer account data and tonnage information. Based on such allocations, Contractor shall prepare a pro forma financial statement which reflects Contractor's costs of performing its obligations under this Agreement for such Fiscal Year.

**4.22 Removal of Non-Allowable Costs.** Second, Contractor shall adjust such pro forma financial statement by excluding therefrom all Non-Allowable Costs. "Non-Allowable Costs" means the following:

(a) Labor costs attributable to Contractor's employees who are governed by a collective

bargaining agreement resulting from adjustments to wages, health and welfare, and pension/retirement costs that are in excess of the adjustment made in accordance with the procedures described in the then-current collective bargaining agreement.

(b) Payments to directors and/or owners of Contractor, unless paid as reasonable compensation for services actually rendered.

(c) Travel expenses and entertainment expenses (above \$5,000 annually in total), unless authorized in advance by District.

(d) Payments, not covered by insurance, to repair damage to property of third parties or District for which Contractor is legally liable.

(e) Fines for penalties of any nature.

(f) Liquidated damages assessed under this Agreement.

(g) Federal or State income taxes.

(h) Charitable or political donations.

(i) Lease costs in excess of those determined in accordance with the preapproved methods described in Section 2.8.

(j) Attorney's fees and other expenses incurred by Contractor in any court proceeding in which District and Contractor are adverse Parties, unless Contractor is the prevailing Party in such proceeding.

(k) Attorney's fees and other expenses incurred by Contractor arising from any act or omission of Contractor in violation of this Agreement.

(l) Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or willful misconduct are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed.

(m) Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for District derived from the action of its citizens or ratepayers (such as in a CERCLA lawsuit) unless Contractor is found not liable in such claims.

(n) Payments to Related Party Entities for products or services in excess of (1) in the case of transactions other than Permitted Related Party Transactions, the cost to the Related Party Entity for those products or services, or (2) in the case of Permitted Related Party Transactions, the applicable amounts set forth in this Agreement for such transactions (such as the Recyclables Transfer Station Fee, the Recyclables Transport Fee, and Lease Costs).

(o) Goodwill.

(p) Costs of the Contractor's Employee Stock Ownership Plan.

(q) Depreciation and interest expenses because Contractor plans to lease equipment rather than purchase.

(r) Corporate and regional overhead costs greater than five and seven tenths percent (5.7%) of Total Annual Cost of Operations for the most-recently completed twelve (12) month period ending April 30. This cap on costs applies to the sum total of the following line item expenses: regional accounting fees, regional management fees, corporate accounting, IT fee, environmental compliance, human resources fee, corporate management, and public relations.

(s) Bad debt write-offs in excess of three percent (3.0%) of Gross Receipts for the most-recently completed twelve (12) month period ending April 30.

(t) Incremental costs (i.e., labor, fuel and other truck costs) attributed to delivering Solid Waste or Yard Waste to a disposal, processing or transfer facility other than the Ox Mountain Sanitary Landfill for any period when such other facility is used for Solid Waste or Yard Waste for any reason other than the unavailability of the Ox Mountain Sanitary Landfill (it being understood that if the Ox Mountain Sanitary Landfill is unavailable, such

costs and any associated Rate adjustment shall be determined pursuant to Section 6.02.C).

**4.2.3 Allocation to Cost Components.** Third, Contractor shall allocate the costs set forth in the adjusted pro forma financial statement prepared pursuant to Section 4.2.2 to each of the 12 Cost Components that make up Contractor's Total Annual Costs of Operations (taking into account the fact that Lease Costs are determined as set forth in Section 2.8).

**4.3 Calculation of Adjustments to Cost Components.** Calculated Total Cost for the coming Rate Year shall be derived from the Cost Components that make up Contractor's Total Annual Cost of Operations for the Fiscal Year as determined in Section 4.2.3, in the manner set forth below:

**4.3.1 CBA Labor Costs.** CBA Labor Costs for the coming Rate Year shall be determined by adjusting Allowable CBA Labor Costs for the previous Fiscal Year determined in accordance with Section 4.2 above adjusted in accordance with the procedures described in the then-current collective bargaining agreement, for the two (2) year period from the previous Fiscal Year to the coming Rate Year.

**4.3.2 Non-CBA Labor Costs.** Non-CBA Labor Costs for the coming Rate Year shall equal Allowable Non-CBA Labor Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the CPI-W, and multiplying the result by (ii) the same number used in clause (i).

**4.3.3 Workers Compensation.** Workers Compensation for the coming Rate Year shall equal Allowable Workers Compensation for previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the CPI-U, and multiplying the result by (ii) the same number used in clause (i).

**4.3.4 Payroll Taxes.** Payroll Taxes for the coming Rate Year shall equal (i) Allowable Payroll Taxes for the previous Fiscal Year determined in accordance with Section 4.2 above, multiplied by (ii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the coming Rate Year, determined in accordance with Sections 4.3.1 and 4.3.2, respectively, and divided by (iii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the previous Fiscal Year.

**4.3.5 Vehicle-Related Costs.** Vehicle-Related Costs for the coming Rate Year shall equal Allowable Vehicle-Related Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index, and multiplying the result by (ii) the same number used in clause (i).

**4.3.6 Fuel Costs.** Fuel Costs for the coming Rate Year shall equal Allowable Fuel Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the California Gasoline and Diesel Prices Index, and multiplying the result by (ii) the same number used in clause (i).

**4.3.7 Yard Waste Processing Costs.** Yard Waste Processing Costs for the coming Rate Year shall equal (i) the Base Component of the Yard Waste Processing Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees, multiplied by (ii) the total Tons of Yard Waste Collected by Contractor for the most-recently completed 12-month period ending April 30.

**4.3.8 Lease Costs.** Lease Costs for the coming Rate Year shall be determined in accordance with Section 2.8 above.

**4.3.9 Other Costs.** Other Costs for the coming Rate Year shall equal Allowable Other Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the CPI-U, and multiplying the result by (ii) the same number used in clause (i).

**4.3.10 Total Annual Cost of Operations.** Total Annual Cost of Operations for the coming Rate Year shall equal the sum of the amounts calculated in Sections 4.3.1 through 4.3.9 above.

**4.4 Calculated Profit.** Calculated Profit for the coming Rate Year shall equal Total Annual Cost of Operations for the coming Rate Year (as calculated in Section 4.3.10 above) divided by the Operating Ratio, and subtracting from the result Total Annual Cost of Operations for the coming Rate Year.

**4.5 Total District Fees.** The Total District Fees for the coming Rate Year shall equal the sum of the Franchise Fee and Other District Fees for the coming Rate Year.

**4.6 Other Pass-Through Adjustments.** Other Pass-Through Adjustments for the coming Rate Year shall equal (i) the sum of the costs calculated in items 4.6.1 through 4.6.3 below, plus (ii) any amounts (actual or reasonably estimated) not included in Total Annual Cost of Operations for which Contractor is entitled to reimbursement through the Rate adjustment mechanism, plus (iii) any other amounts mutually agreed by District and Contractor to be "Other Pass-Through Adjustments" hereunder.

**4.6.1 Recyclables Transfer Station (Load-Out) Costs.** Recyclables Transfer Station Costs for the coming Rate Year shall equal (i) the Base Component of the Recyclables Transfer Station Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transfer Station Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

**4.6.2 Recyclables Transport Costs.** Recyclables Transport Costs for the coming Rate Year shall equal (i) the Base Component of the Recyclables Transport Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transport Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

**4.6.3 Disposal Costs.** Disposal Costs for the coming Rate Year shall equal the per-Ton Disposal Fee at the Designated Disposal Facility for the coming Rate Year multiplied by the total Tons of Solid Waste Collected by Contractor for the most-recently completed 12-month period ending April 30.

**4.7 Total Calculated Costs.** Total Calculated Costs for the coming Rate Year shall equal the sum of Total Annual Cost of Operations for the coming Rate Year (as calculated in Section 4.3.10 above), Calculated Profit for the coming Rate Year (as calculated in Section 4.4 above), Total District Fees for the coming Rate Year (as calculated in Section 4.5 above), and Other Pass-Through Adjustments for the coming Rate

Year (as calculated in Section 4.6 above).

**4.8 Adjustment of Rates.** The Rate Adjustment Factor for the coming Rate Year shall equal Total Calculated Costs for the coming Rate Year (as calculated in Section 4.7 above) divided by total Billings for the most-recently completed twelve (12) month period ending April 30, which shall be rounded to the nearest thousandth. Each then-effective Rate, as set forth on Exhibit "D", shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Year. The adjustment to each Rate shall be rounded to the nearest cent.

The following outlines the calculations for determining total cost of operation per year:

**Total Cost of Operation per year = sum of A + B + C + D**

**A) (LC.Y-1 + LC.A)/O.R.**

- LC.Y-1 Labor cost last year
  - A.1 Wages /Salary
  - A.2 Benefit included -- Vacation, Holiday, Insurance (health, dental, Life). Union Agreement calls for full benefit for entire family
- LC.A Labor cost are then adjusted by then current collective bargaining agreement Both wages & benefits included in union agreement
- O.R Divided by Operating Ratio

**B) (TFC + FPI)/O.R.**

- TFC Contractors Total Fuel cost – Fuel cost is for truck’s diesel only
- FPI Increased by annual change in PPI –Fuel Price Index (PPI = Producer Price Index)  
**Producer Price Index (PPI)** program measures the average change over time in the selling prices received by domestic producers for their output. The prices included in the PPI are from the first commercial transaction for many products and some services (BLS)

Diesel fuel - pcu324110324110AY2 <http://data.bls.gov/cgi-bin/srgate>  
**Series Id:** PCU324110324110AY2 **Industry:** Petroleum refineries **Product:** Diesel fuel  
 Bureau of Labor Statistics (BLS)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2012	19.3	13.8	7.0	-0.1	-0.8	-11.5	8.8	5.5	7.7	13.0	-4.0	2.1	3.1
2013	-0.9	4.0	6.7(P)	6.0(P)	5.4(P)	3.6(P)							

P: Preliminary. All indexes are subject to revision four months after original publication.

- O.R Divided by Operating Ratio

**C) (TOC + CPI-U)/O.R.**

- TOC Contractors Total Other Cost (not labor, fuel or pass-through cost)
- CPI-U Increased by annual change in CPI – U
- O.R Divided by Operating Ratio

**D) (TPTC + CPI-U)/O.R.**

- TPTC Contractors good faith estimate of Total Pass Through Cost (pass through costs generally

included disposal fees, franchise fees and other District fees)

**O.R Operating Ratio - 90%** is Recology operating ratio to get guaranteed return of 10% on allowable expenses which do not include any pass through expenses. (DowJones 2011-2013 9.7% non guaranteed)

**Type of possible expense/revenue category breakdown**

<b>Costs</b>	<b>Revenue</b>
Service Delivery Labor	Residential Solid Waste
Vehicle Related	Non-Residential Solid Waste
Vehicle Depreciation	Recycling
Non Vehicle Maintenance	Debris Boxes
Non Vehicle Depreciation	
Disposal / Recycling fees	
Franchise Fee	
Administrative Support Labor	
Lease	
Administrative	



**EXHIBIT F**

**CONTRACTOR'S FAITHFUL PERFORMANCE BOND**

KNOW ALL PEOPLE BY THESE PRESENTS:

That \_\_\_\_\_, a California \_\_\_\_\_, as PRINCIPAL, and \_\_\_\_\_, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the hereinafter called OBLIGEE, in the penal sum of \_\_\_\_\_ and No/100 Dollars (\$) \_\_\_\_\_) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "SOLID WASTE, RECYCLABLE MATERIAL, AND/OR YARD WASTE COLLECTION SERVICES" with the District, to do and perform the following work, to wit: Collect Recyclable Material generated within the Granada Community Services District, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall become null and void; otherwise it shall remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, the original term of this bond is \_\_\_\_\_ to \_\_\_\_\_. Renewal of this bond for any additional periods shall be at the sole option of the Surety. Non-renewal of the bond by the Surety shall not constitute any right or claim against the bond by the Obligee.

Name/Title: \_\_\_\_\_

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_, 201\_\_.

a California Corporation

SURETY

By: \_\_\_\_\_  
(PRINCIPAL)  
(SEAL)

By: \_\_\_\_\_  
(ATTORNEY IN FACT)  
(SEAL)

The bond in all terms, conditions and limitations is acknowledged and accepted

By: \_\_\_\_\_

By: \_\_\_\_\_