

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and GOLD COAST RECYCLING, INC with an address at 5275 COLT STREET, VENTURA CA 93003 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

LESLIE WELLS, DEPUTY DIRECTOR OF PUBLIC WORKS, RESOURCE RECOVERY & WASTE MANAGEMENT DIVISION, DEPARTMENT OF PUBLIC WORKS at phone number 805-882-3611 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. GEORGE HARRISON at phone number 805-207-0222 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: PW, RESOURCE RECOVERY & WASTE MANAGEMENT DIVISION – ACCOUNTING
130 EAST VICTORIA STREET, SUITE 100
SANTA BARBARA CA 93101
FAX: 805-882-3633

To CONTRACTOR: ATTN: GEORGE HARRISON
GOLD COAST RECYCLING, INC
5275 COLT STREET
VENTURA CA 93003
FAX: 805-642-9340

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

CONTRACTOR shall commence performance on July 1, 2019 and end performance upon completion, but no later than June 30, 2020 unless otherwise directed by COUNTY or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes

plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

12. NO PUBLICITY OR ENDORSEMENT

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

13. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use

such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

18. NON-ASSIGNMENT

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. TERMINATION

- A. By COUNTY. COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

1. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
 2. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.
- C. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

20. **SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. **SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. **REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

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

24. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

25. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

28. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF COUNTERPARTS

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

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not

have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

31. **SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. **PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Gold Coast Recycling, Inc.**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
Steve Lavagnino, Chair, Board of
Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

PUBLIC WORKS

By: _____
Scott D. McGolpin
Department of Public Works

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA, CPFO
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Ray Aromatorio
Risk Management

By: _____

CONTRACTOR:

George Harrison, General Manager
Gold Coast Recycling, Inc.

By: _____
Authorized Representative

Name: _____

Title: _____

EXHIBIT A

STATEMENT OF WORK

1. CONTRACTOR is to supply all labor and equipment necessary to receive, process, and market all commingled recyclable materials resulting from this contract. For purposes of this contract "recyclable materials" is defined as all types of materials delivered to CONTRACTOR'S facility collected pursuant to the South Coast recycling program. CONTRACTOR shall divert all recyclable materials in a manner that is acceptable for diversion credit under AB 939. Under no circumstances may CONTRACTOR landfill, burn, or convert for burning the recyclable materials diverted.
2. CONTRACTOR shall receive and process recyclable materials without limitation as to amount, weight or periodic variances in quantity generated.
3. All recyclable materials diverted shall meet or exceed secondary material market specifications for each class of recovered product.
4. The CONTRACTOR shall possess and maintain throughout the term of this contract all federal, state, and local permits needed to operate the facility that will accept and process the recyclable materials.
5. CONTRACTOR'S facility shall receive recyclable materials Monday through Saturday between 6:00 a.m. and 5:00 p.m. The schedule for the delivery of the materials to the CONTRACTOR'S facility will be at the discretion of the COUNTY.
6. COUNTY trucks delivering recyclable materials to the facility shall be able to enter CONTRACTOR'S facility, obtain the necessary weight ticket and unload all commodities in a maximum of 30 minutes provided that COUNTY drivers perform in a diligent and efficient manner. However, if more than two (2) COUNTY trucks arrive within a one-hour period, the maximum time will be increased to 60 minutes. In addition, if a COUNTY truck is back-hauling residual, it will have an additional 15 minutes added to the maximum time limits described above. If COUNTY trucks delivering recyclable materials exceed maximum time in waiting, then the CONTRACTOR will be charged an hourly fee equal to three times the cost of overtime for that driver multiplied by the time it takes to leave the South Coast Recycling and Transfer Station, deliver the material to the CONTRACTOR'S facility and return to South Coast Recycling and Transfer Station, rounded up to the nearest hour. The time of arrival will be noted on all weight tickets. If the time of COUNTY driver at the CONTRACTOR'S facility exceeds the limits listed above, then the reason for the delay will be noted on the weight ticket which will be signed by both the COUNTY driver and CONTRACTOR representative.
7. The COUNTY will only deliver to the CONTRACTOR commingled recyclable materials from both residential and commercial sources.
8. CONTRACTOR shall provide personnel to ensure the safe maneuvering of COUNTY vehicles by COUNTY employees and proper placement of loads when unloading.

9. If the CONTRACTOR is unable to accept recyclable materials for any reason, the CONTRACTOR will be responsible for ensuring that such recyclable materials are delivered to and processed by an alternate facility. CONTRACTOR shall be responsible for the difference between the fee charged at the CONTRACTOR'S facility under the provisions of this contract and the fee charged at the alternate facility arranged by the CONTRACTOR as well as the fees covering transportation to the alternate facility.
10. CONTRACTOR will assume liability for the recyclable materials, but not inadvertent hazardous waste contamination. COUNTY will assume the cost of clean-up and proper disposal of said hazardous materials. The COUNTY's responsibility shall not apply to 1) hazardous contamination of recyclable materials that have been commingled with materials from other sources or; 2) universal waste as defined by the State of California (household batteries, fluorescent light bulbs, electronic devices, mercury containing devices, etc.). CONTRACTOR will provide the proper handling and disposal of any inadvertent hazardous waste contamination or universal waste discovered in the loads of recyclable materials and documentation regarding actual costs of handling and proper disposal.
11. CONTRACTOR will be required to have a certified truck scale on-site to weigh all incoming loads of recyclable materials. Each loaded vehicle shall be weighed upon entering the CONTRACTOR'S processing facility and weighed after tipping the recyclable material. A copy of the weight slip shall be presented to the truck driver delivering said load at the time of departure. CONTRACTOR will be required to maintain a daily log of the time, sequential ticket number, vehicle number, gross vehicle weight, and tare vehicle weight. This information will be available to the COUNTY when requested.
12. On a monthly basis, CONTRACTOR will submit an invoice, including a compilation of the weight logs as well as the contamination and process loss logs, to the COUNTY representative designated in the contract by the end of the month following the service period.
13. On a monthly basis, actual tonnages for each material marketed and prices received must be included with the monthly reimbursement including the revenues from the California Redemption Value program, scrap value and costs associated with processing fees. Differentiation between the revenues should also be described in monthly reports including but not limited to the scrap value and the California Redemption Value. If no price is available for a given commodity, a minimum price comparable to industry averages for the Los Angeles Area will be used.
14. CONTRACTOR will be required to complete and submit appropriate reports to the Department of Conservation (DOC), indicating the total tons of material attributed to each South County Curbside Identification Number assigned by the DOC.
15. All residual tonnage or the equivalent thereof from the processing of the COUNTY's recyclables will be returned to the COUNTY for proper disposal. CONTRACTOR will be required to notify the COUNTY representative designated in this Agreement or his/her designee, when there is residual tonnage requiring pickup. The CONTRACTOR will arrange a time when COUNTY trucks can retrieve the residual for backhauling to COUNTY facilities. Backhauling by the COUNTY must take place in a timely manner. If more than one month's worth of residual is accumulated by the CONTRACTOR due to a lack of responsiveness from the COUNTY, then the CONTRACTOR may charge the COUNTY a storage fee of \$5,000 per month rounded up to the nearest month.
16. CONTRACTOR shall maintain records required to conduct its operations, to support requests it

may make to COUNTY, and to respond to requests from COUNTY in the conduct of COUNTY business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years after the expiration of this Agreement.

17. CONTRACTOR agrees that all required records relating to operations addressed in this contract shall be provided or made available to COUNTY and its official representatives during normal business hours. COUNTY may have access to, review, copy, or otherwise utilize any of the records described in this section for auditing purposes.
18. CONTRACTOR shall maintain financial records relating to its operations pursuant to this contract separate and segregated from such records relating to its other operations. CONTRACTOR shall also maintain complete descriptions of related party transactions (such as material sales to related companies), and all records necessary to support monthly reports submitted to COUNTY.
19. The CONTRACTOR will be the sole recipient of residential commingled recyclables from the South Coast Recycling and Transfer Station. In the event that the COUNTY intends to change the status of the CONTRACTOR as the sole recipient of commingled recyclables from the South Coast Recycling and Transfer Station, the COUNTY will give CONTRACTOR sixty (60) days notice with an explanation of the reason for the change and an opportunity for CONTRACTOR to correct any service deficiencies related to the change.
20. If the CONTRACTOR determines a significant change in the characterization of COUNTY material, defined as a 2% change in value excluding market change, then the CONTRACTOR will notify the COUNTY for the purpose of renegotiating the terms of this agreement. This change will be determined by an internal characterization conducted by the CONTRACTOR comparing the average characterization of materials delivered by the COUNTY per quarter against the previous quarter. The methodology for the characterization has to be mutually agreed upon by both the CONTRACTOR and the COUNTY. If no new agreement to terms is accepted, then this agreement may be terminated with a 60 day notice.
21. The percentages of types of material per ton will be determined by a facility-wide audit performed by Gold Coast on an annual basis which is approved by the COUNTY.

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EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including processing fees, not to exceed \$ **1,500,000**.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR'S satisfactory performance, based upon the scope and methodology contained in **Exhibit A** as determined by COUNTY.
- C. **Monthly**, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice for the service performed over the period specified. These invoices must cite the assigned Board Contract Number and must comply with Exhibit A. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Exhibit B1** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation. Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms that facilitate COUNTY review and analysis.

The format of each report shall be approved by COUNTY. In addition to submitting all reports on paper, CONTRACTOR agrees to submit all reports in an electronic format approved by COUNTY, compatible with COUNTY's software/computers at no additional charge.

Monthly reports and invoices shall be submitted within thirty five (35) calendar days after the end of the service month.

All reports and invoices shall be submitted to:

Carlyle A. Johnston
Resource Recovery & Waste Management Division
130 East Victoria Street, STE 100
Santa Barbara, CA 93101

Each monthly report and invoice shall, at a minimum, contain:

- 1) Incoming Tonnage - Tonnage received under this contract.
- 2) Sorted Recyclable Materials – Tonnage, after sorting, broken down by material type, such as but not limited to:
 - OCC (Card Board)
 - ONP (Newspaper)
 - Mixed Paper
 - Clear glass
 - Brown glass
 - Green glass
 - Mixed glass
 - Aluminum
 - Tin cans / bi-metal
 - Scrap metal

- PET (Plastic #1)
- Natural HDPE (Plastic #2)
- Colored HDPE (Plastic #2)
- Mixed Plastic (Plastics #3 through #7)
- Mix #1 (unsorted recyclable material)
- Residue

And all other categories of recyclables to which CONTRACTOR sorts material.

Any change of the types of material diverted for recycling will be included in the Monthly reports.

3) Recyclables Revenue - Revenue received during the preceding month by CONTRACTOR for the sale of recyclable materials by material type, including for each material: a) Price per ton b) Number of tons sold at each price c) Total Revenue (if the same material type was sold at different prices, include this information for each price point at which material was sold, or report the average price weighted by the number of tons)

4) Department of Conservation Funds (CRV) - Amount received from Department of Conservation, as:

- a) CRV reimbursement
- b) CRV processing payment
- c) CRV supplemental processing payment
- d) other

5) Processing Fee Charged per ton by CONTRACTOR, which is described in Exhibit B1

6) Total owed by CONTRACTOR or COUNTY by multiplying the total number of tons processed by the contractor by the processing fee.

D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

EXHIBIT B1

FEE SCHEDULE

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a processing fee per ton of materials processed of \$70.
- B. PAYMENT DETAILS: Monthly, COUNTY shall pay to the CONTRACTOR the processing fee multiplied by the total number of tons processed by the CONTRACTOR.

CONTRACTOR may deduct tons as moisture loss on COUNTY material that has been contaminated with water during days affected by rain. Deductions will be assumed to be 20% of total tons delivered during the affected days.

COUNTY shall pay the CONTRACTOR within 30 days of the receipt of the monthly report and invoice. The monthly report and invoice shall be delivered to the COUNTY within 35 days of the end of each month. The price will be the actual price received by the CONTRACTOR for the month in which it was sold. For multiple sales of the same quantity in a month, all price points and related tonnage will be accounted for.

If no price is available, a minimum price as indicated by industry averages for the Los Angeles area will be used.

1. **Late Payment:** Should COUNTY not have paid CONTRACTOR within the period set above, COUNTY shall pay CONTRACTOR 10% of the outstanding balance not received on time as a late penalty, and 1.5% per month in interest until the balance is paid. Payment date is determined as date of receipt by CONTRACTOR. An exception is made for time when characterizations are being performed, calculated and agreed upon by CONTRACTOR and COUNTY – during these time periods late fees are not applicable.

- C. AUDIT:
1. **Access to CONTRACTOR Data:** The COUNTY may, at COUNTY's option, request and be provided with Contractor's financial reports/statements in connection with any audit or review.
 2. **Right to Inspect:** COUNTY shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this contract, or any other similar records or reports of CONTRACTOR or its affiliates that COUNTY shall reasonably deem, necessary to evaluate monthly reports, determine the accuracy of tonnage reporting, payment of shared revenue, and payment of Department of Conservation funds, and to evaluate Contractor's performance provided for in this contract. CONTRACTOR shall make all records and documents to be reviewed and inspected by COUNTY and/or its representative as a part of any audit or other record review conducted by COUNTY for the purpose of verifying reported data and remittances, available for COUNTY's review, inspection and copying within twenty-four (24) hours of receiving written notice from COUNTY requesting the same.
 3. **Cost of Audit:** COUNTY may conduct or authorize an audit of the CONTRACTOR at any time. Should any audit conducted or authorized by the COUNTY disclose that recyclable revenue due the COUNTY or the amount invoiced by CONTRACTOR to COUNTY for processing were underpaid by five percent (5%) or more for the period under review, CONTRACTOR shall pay for the full cost of the audit, and COUNTY may expand the scope of the audit.

EXHIBIT C

Indemnification and Insurance Requirements (For Service Contracts Not Requiring Professional Liability Insurance)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.