

**AMENDED AND RESTATED AGREEMENT FOR THE TRANSPORT AND
BENEFICIAL REUSE OF GREEN WASTE**

THIS AMENDED AGREEMENT for the Transport and Beneficial Reuse of Green Waste (“**Agreement**”) is dated _____, 2021 (“**Execution Date**”) and is between County Sanitation District No. 2 of Los Angeles County (the “**District**”) - Department of Industrial Relations (DIR) registration number 100010096, and Circle Green, Inc., a California company (“**Vendor**”) - DIR registration number _____. The District and the Vendor are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties.**”

The District is the operator of the Puente Hills Material Recovery Facility (PHMRF), located at 2280 S. Workman Mill Road, Whittier, California (the "**PHMRF Facility**") and the District is also the operator of Downey Area Recycling and Transfer Facility (the “**DART Facility**”), located at 9770 E. Washburn Rd., Downey, CA 90241, collectively referred to in this agreement as the “**Facilities.**” DIR registration number for this project is _____.

On February 13, 2019 (“**Original Contract Date**”) the District entered into an agreement entitled *Agreement for Transport and Beneficial Reuse of Green Waste* with Circle Green. That prior agreement provided for the Vendor to transport Green Waste from the Facilities and to provide for the beneficial reuse of that material. The Parties now intend to amend that 2019 agreement to require the payment of prevailing wage, pursuant to *Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal. 5th 158, and the separation of Food Waste from Green Waste by Vendor’s employees at the PHMRF Facility. This Agreement supersedes and replaces, in its entirety, the 2019 agreement.

The Parties desire to provide for Vendor’s transportation of Green Waste (as defined below) from the Facilities and to provide for the beneficial reuse of that material. The Vendor possesses the required equipment, expertise and the proper permits and licenses to perform its beneficial reuse business.

The Vendor also seeks, and the District will allow separation of Food Waste from commingled Food Waste and Green Waste loads at the PHMRF Facility and possesses the required equipment, expertise and the proper permits and licenses to perform separation.

The Parties therefore agree as follows:

1. DEFINITIONS.

1.1 Additional Tonnage is defined in Section 7.2 below.

1.2 BAS is defined in Section 2.2 below.

1.3 Chief Engineer means the District’s Chief Engineer and General Manager, or his or her authorized representative.

1.4 Commencement Date is defined in Section 10 below.

1.5 Contamination means impurities, such as municipal solid waste or putrid materials, food, material processed from commingled collection, biosolids and palm fronds. The Vendor shall provide the District with prompt written notification of any changes in waste acceptance procedures and protocols and changes to what constitutes contamination, but in no event shall such notice be less than thirty (30) calendars days from the effective date of the change.

1.6 DART Facility means the District's Downey Area Recycling and Transfer Facility, located at 9770 E. Washburn Rd., Downey, CA 90241.

1.7 Default is defined in Section 11 below.

1.8 District means the County Sanitation District No. 2 of Los Angeles County.

1.9 DIR means the California Department of Industrial Relations.

1.10 Diversion means activities which reduce or eliminate the amount of solid waste from solid waste disposal (Section 40124 of the Public Resources Code).

1.11 Facilities means DART and PHMRF, as defined in this Sections 1.6 and 1.21 respectively.

1.12 Green Waste means biodegradable waste such as leaves, grass clippings, yard trimmings, wood waste, branches and stumps less than 24 inches in diameter, home garden residues, and other miscellaneous organic materials.

1.13 Fees and Taxes is defined in Section 5.5 below.

1.14 Food Waste means any discarded solid, semisolid, and liquid material that was acquired for animal or human consumption, is separated from the municipal solid waste stream at the point of generation, and any putrescible matter produced from human or animal food storage, production, preparation, handling and consumption activities. Food waste includes food-soiled paper.

1.15 Maximum Contamination Rate means one percent (1%) by dry weight of Contamination (defined in Section 1.5) in Green Waste delivered to Vendor's Facility.

1.16 Monthly Fuel Adjustment means the monthly amount of the Per Ton Fuel Price Adjustment as described in Section 6.4.

1.17 Monthly Report is defined in Section 9 below.

1.18 Party or Parties refers individually to either the District or the Vendor or collectively to both the District and the Vendor.

1.19 Per Ton Fuel Price Adjustment means the adjustment made to the Tipping Fee for fuel used by Vendor in transporting Green Waste as provided in Sections 6.2 and 6.3.

1.20 Per Truck Fee is defined in Section 5.4 below.

1.21 PHMRF Facility means the District's Puente Hills Materials Recovery Facility, located at 2808 Workman Mill Rd., Whittier, CA 90601.

1.22 Quarterly Green Waste Quality Characterization means studies that may be performed at the request of the Vendor on a quarterly basis, or up to no more than four times a year if the Contamination rate is believed to be higher than the Maximum Contamination Rate. During the study, a random day will be chosen by the Vendor who may come to a District Facility unannounced. Three representative samples of approximately 200 pounds, decided on by both parties, will be randomly selected from the Green Waste pile that is prepared for loading, and placed into secure bins. The District will characterize the bins content within a week by manually removing Contamination from these samples. The samples and the Contamination will be weighed to determine the Contamination rate by weight. Vendor shall have the right to observe the entire process described herein.

1.23 Reuse Sites means the Vendor's facilities that are designated to receive and reuse the Green Waste from the District's Facilities, or any alternative reuse site designated pursuant to Section 2.9.

1.24 Round Trip Mileage is defined in Section 2.2(b) below.

1.25 Term is defined in Section 10 below.

1.26 Tipping Fee is the per ton rate to be paid to Vendor for each ton of Green Waste and for commingled Food Waste and Green Waste loads transported and beneficially reused pursuant to this Agreement as calculated in Section 5, and invoiced in Section 8.1.

1.27 Truckload Trash Allotment means up to two truckloads (up to 24 tons per load) per month of Contamination and Unacceptable Waste extracted from District's Green Waste loads delivered to Vendor's facilities. Vendor shall have the right under this Agreement to deliver the Truckload Trash Allotment to the PHMRF Facility at no charge to Vendor.

1.28 Unacceptable Waste means Green Waste or commingled Food Waste and Green Waste that: (i) contains hazardous materials, (ii) pathogen density and metal concentrations above levels referenced in Title 14 of the California Code of Regulations pertaining to Land Application, or (iii) contains metal objects capable of damaging Vendor's processing equipment.

1.29 Vendor means Circle Green, Inc., a California corporation.

1.30 Work is defined in Section 2.1 below.

2. VENDOR'S HANDLING OF GREEN WASTE

2.1 Transportation and Beneficial Reuse. Throughout the duration of this Agreement, the Vendor shall transport from the District Facilities and provide for Diversion of the District's Green Waste ("**Work**") in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

2.2 Transportation of Green Waste. Except as otherwise provided for herein, Green Waste must be transported to Beneficial Ag Services, located at 8271 Chino Avenue, Ontario, CA ("**BAS**"), or one of BAS' facilities, to be picked, screened, processed, and composted prior to land applying to one of the following Reuse Sites identified as: (i) Circle Green Farms I, located at 17900 Sheep Creek Road, El Mirage, CA, (ii) Circle Green Farms II, located at the NWC of Sheep Creek Road and El Mirage Road, El Mirage, CA, (iii) Circle Green Farms III, located at the SWC of El Mirage Road and Meridian Road, El Mirage, CA, or (iv) Perris Farm I, located at 26298 San Jacinto Avenue (NEC of San Jacinto Ave. and Dunlap Drive), Perris, CA. Any proposed alternate Reuse Sites must first be approved by the Chief Engineer in accordance with Section 2.9 below.

a. The Vendor represents, warrants, and certifies that the Reuse Sites use of the Green Waste conforms to and will at all times during the Term conform to California law regarding Diversion of waste material from disposal pursuant to the Public Resources Code (Section 41780, *et seq.*).

b. Round trip mileages set forth below will be used to calculate the Per Ton Fuel Price Adjustment in Section 6.2 or 6.3. The "**Round-Trip Mileage**" from the Facilities to and from the Reuse Sites (via BAS) is:

- (i) 180 miles between Circle Green Farms I and the DART;
- (ii) 163 miles between Circle Green Farms I and the PHMRF;
- (iii) 184 miles between Circle Green Farms II and the DART;
- (iv) 167 miles between Circle Green Farms II and the PHMRF;
- (v) 184 miles between Circle Green Farms III and the DART.
- (vi) 167 miles between Circle Green Farms III and the PHMRF.
- (vii) 146 miles between Perris Farm I and DART.
- (viii) 124 miles between Perris Farm I and PHMRF.

District may at any time follow Vendor's trucks to verify the final destination of Green Waste and inspect the Reuse Sites.

2.3 Vendor's Pick-Up of Green Waste. The Vendor shall, upon 24 hours' notice from the District by e-mail or telephone call, be present at the time and at the

Facilities designated by the District in the notice with tractors and trailers and any other equipment sufficient and necessary to transport the number of loads of Green Waste identified by the District in the notice. At a minimum, Vendor shall provide trucks with 53 foot long trailers (or equivalent) that are designed to haul approximately 23-24 tons or just under the maximum street legal weight limits (such as “walking floor” trailers) and the District shall load them with Green Waste as close as possible to the maximum street legal limits. In the event that the net weight of Green Waste placed into the Vendor’s trailer by the District is consistently less than 90% of the street legal capacity of the specific truck and trailer combination, Vendor shall have the option of (i) directing the truck to the District’s Facility’s tipping floor, dumping the Green Waste and departing with an empty load, in which case the District shall pay the fee set forth in Section 5.4 below, or (ii) transporting the load pursuant to the terms of the Agreement. The load-out hours at the PHMRF are 4:00 a.m. to 5:00 p.m., Monday through Saturdays. The load-out hours at the DART are 5:00 a.m. to 5:30 p.m., Monday through Friday and 6:00 a.m. to 1:30 p.m. on Saturdays. These hours are subject to change by the District. If the hours change, the District will notify the Vendor in writing.

2.4 Vendor’s Tractors and Trailers. The Vendor is solely responsible for providing sufficient tractor and trailer combinations, and any other necessary equipment, for each load of Green Waste to be transported from the Facilities. The Vendor is solely responsible for ensuring all tractor trailers are compliant with all applicable California laws, including, without limitation, DMV and emissions laws. The Vendor may not leave its tractors and trailers or any other equipment at the Facilities when not in use. The Vendor’s trailers shall be empty and clean, not containing any material prior to being loaded with Green Waste from District’s Facilities. If District personnel determine the Vendor’s trailer not to be clean, the Vendor shall empty and clean the trailer prior to receiving Green Waste from District’s Facilities.

2.5 Compliance with Site Safety Rules. The Vendor shall strictly adhere to all posted site rules at the Facilities, including (but not limited to) prohibitions pertaining to scavenging and posted speed limits. All the Vendor’s drivers shall wear reflective safety vests at all times while at any of the Facilities. At any time when the Vendor’s staff working on the tipping floor or drivers are outside of their tractors and in the load-out tunnels, they shall wear hardhats, safety glasses, and reflective safety vests.

2.6 Vendor’s Responsibility for Equipment. The Vendor is responsible for any costs it incurs arising from normal wear and tear on its equipment. The Vendor shall bring to the attention of the District’s site personnel any damage incurred to the Vendor’s equipment caused by loading Green Waste before leaving the Facilities.

2.7 Covering Loads. The Vendor shall, immediately after pulling out of the load-out tunnels or designated load-out area, cover all trailers with covers, such as tarps.

2.8 Tare Weights. The first three times the Vendor brings each of its tractors and trailers to any of the Facilities, the tare weights for its equipment will be established by weighing in empty at the scales of the Facilities. Additional weigh ins may be required if the tare weights vary significantly. After tare weights have been established,

the District may verify those weights from time to time by requiring that the Vendor's equipment weigh in at the Facilities' weigh scales before loading. After loading, each tractor and trailer must drive to the scales at the Facilities for weighing and the District will issue the Vendor's driver a receipt indicating the tare weight, gross weight and net weight.

2.9 Requirement for Diversion. The Vendor may not dispose of Green Waste at any landfill or transformation facility or make any other use of the Green Waste that does not result in its Diversion. The Vendor may not bring the Green Waste to Reuse Sites other than those identified in Section 2, except pursuant to the prior written approval of the Chief Engineer. If the Chief Engineer approves an alternate Reuse Site, any modification of the Tipping Fee and Per Ton Fuel Price Adjustment for the alternative location will be made only pursuant to a written authorization by the Chief Engineer.

2.10 Vendor's Maintenance of Records. The Vendor shall maintain all records relating to the Work and this Agreement, including financial records, in their original form. These records must be retained by the Vendor for a period of no less than three (3) years following the last payment made by the District to the Vendor under this Agreement or the expiration of the Term of this Agreement, whichever is later. The Vendor shall timely provide any additional reports requested by the District with respect to this Agreement or the Work.

2.11 District Audits. The District's authorized personnel or representatives may examine and audit any or all the Vendor's records relating to this Agreement or the Work at any time during the retention period set forth in Section 2.10. In addition, the District may audit the Vendor's Work (by, for example and without limitation, periodic inspections of the Reuse Sites) to verify the Vendor's compliance with this Section 2 and to confirm that the Green Waste is being beneficially reused.

2.12 District's Representations. Except in the event Vendor has indicated that it is unable or unwilling to transport any additional tonnage above 6,500 tons per month as provided for in Section 7.2, in the event of Vendor defaults as provided for in Sections 11.2-11.4, or in the event the District elects to transfer up to a maximum of 45 tons per day Green Waste to facilities it owns, co-owns or operates in joint partnerships, the District represents that during the term of this Agreement Vendor shall be the District's sole transporter of Green Waste from the Facilities.

3. SEPARATION OF FOOD WASTE AND GREEN WASTE AT THE PHMRF FACILITY

3.1 Separation Operation. Vendor shall provide staff to separate comingled loads of Food Waste and Green Waste ("**Comingled Green Waste**") received as a single waste stream at the PHMRF Facility. The District will spread the loads with District's equipment and Vendor's staff will sort the bags of Food Waste from the Green Waste. Separated Green Waste will be piled in an area designated by the District ("**Separated Food Waste**") until transported and handled by the Vendor as discussed in Section 2. Separated Food Waste will be placed in separate 3-yard bins free of any non-

organic contamination. The user provided separated bags and Food Waste will be processed at the PHMRF facility at no cost to the Vendor.

3.2 Staffing. Vendor shall maintain at least one trained employee at the PHMRF, a minimum 3 days per week, every other day at times requested by the District (Monday, Wednesday and Friday) (“**Minimum Picker Staffing**”). In the event that Vendor picker staff has downtime they shall be allowed to pick the trash from the non-comingled Green Waste piles that Vendor is currently accepting. Vendor’s staff shall perform all work within the designated area agreed upon by the District. Vendor staff will always observe District’s safety protocols and maintain two-way communication with site personnel.

4. THE DISTRICT’S ACTIVITIES AT THE FACILITIES

4.1 Loading Green Waste. When the Vendor’s trailers are ready to accept Green Waste at the Facilities, the District will top load the Green Waste into the Vendor’s trailers at the designated Facilities loadout ports. The District will use an excavator, or similar equipment, to distribute and tamp down the material in the trailer in order to load Green Waste to the maximum legal weight limit or the maximum volume of the trailer. The District will remove or tamp down items protruding above the top of the trailer so that the Vendor’s trailers can be covered by tarps. The District’s personnel will exercise normal caution during loading and tamping operations to prevent damage to Vendor’s trailers.

4.2 Weighing Vendor’s Tractors and Trailers. The District shall record the weight of all loads and provide Vendor with a copy of the record of the weight.

4.3 Separating Food Waste and Green Waste. District shall provide adequate floor space to safely conduct separation activities and provide 3-yard bins to collect Food Waste. District will manage removal and replenishment of the 3-yard bins. District will also supply a loader and operator to remove Green Waste and spread out the comingled Food Waste and Green Waste in the separation area to allow Vendor’s staff the ability to complete the separation work.

4.4 Contamination of Green Waste. The District shall inspect the Green Waste and remove any Contamination in excess of the Maximum Contamination Rate as well as any Unacceptable Waste as defined in Section 1.28.

4.5 Excessive Contamination. In the event that Vendor in good faith has reason to believe that the Contamination in any given month is likely to exceed the Maximum Contamination Rate, Vendor shall notify the District and the District shall perform a Quarterly Green Waste Quality Characterization at a facility per Section 1.22. The amount of Contamination in any given month delivered from the District’s Facilities to BAS shall not exceed the Maximum Contamination Rate. It is the sole responsibility of the Vendor to provide evidence to the District that the Contamination level of Green Waste delivered to the Vendor’s facility exceeded the Maximum Contamination Rate. The Vendor shall demonstrate to the District’s satisfaction that the contaminated Green Waste and

Unacceptable Waste load delivered under the Truckload Trash Allotment, described in Section 1.29, originated from a District Facility.

Vendor shall have the right to make changes in its waste acceptance procedures and protocols and to what constitutes Contaminated Waste due to changes in the regulations or as a result of actions by any local enforcement agency, provided Vendor gives the District 30 calendar days' notice prior to the effective date of the change.

5. CONTAMINATION REMOVAL, TIPPING FEE AND HAULING COST

5.1 Removal of Contamination. Removal of Contamination of Green Waste at Vendors Sites will be performed pursuant to, and in accordance with the requirements and specifications for the Truckload Trash Allotment and the limits specified for Excessive Contamination.

5.2 Tipping Fee for Transport and Diversion of Green Waste. The initial per-ton Tipping Fees for the Work are:

A. Green Waste:

- DART to BAS and then to an approved Reuse Site = \$67.00 per ton - for monthly tonnage between 1 ton and 2,500 tons.
- DART to BAS and then to an approved Reuse Site = \$67.00 per ton - for monthly tonnage between 2,501 tons and 3,500 tons.
- PHMRF to BAS and then to an approved Reuse Site = \$67.00 per ton - for monthly tonnage between 1 ton and 3,000 tons.

5.3 Processing Cost for the Separation of Food Waste. The processing cost for any loads of Separated Green Waste shall be \$5.75 per ton ("**Food Waste Separation Rate**") plus the Tipping Fee for Transport and Diversion of Green Waste. Any increases in the Prevailing Wage Rates shall result in a corresponding increase in the Food Waste Separation Rate.

5.4 Cost for Unused Truck(s). The District shall pay to the Vendor a fee equal to \$200.00 per truck (the "**Per Truck Fee**") for any truck that Vendor provides the Facilities at the request of the District that the District does not load.

5.5 Pass-Through Taxes and Fees. "**Fees and Taxes**" mean any and all federal, state, local or other taxes, assessments, fees, host charges, gross receipts taxes or charges, surcharges, or similar charges directly or indirectly (provided at no mark-up by Vendor) related to the acceptance, transportation, processing, storage, burial or disposal of material that are paid by or imposed on the Vendor, the Reuse Site(s) or operations, by law, ordinance, rule, regulation, or agreement with a government authority. The Tipping Fees for all services in this Agreement are, except as otherwise provided for herein, inclusive of all costs, including, but not limited to government Fees and Taxes. If new or increased Fees and Taxes are imposed, assessed, levied on, or charged to the Vendor, the Vendor may adjust

the Tipping Fee so that all new or increased Fees and Taxes are passed through to the District at cost. The Vendor shall provide the District with 30-days advance written notice of any change in the Tipping Fee due to new or increased Fees and Taxes and how such increase was calculated. Increases in Tipping Fees as a result of new Fees and Taxes shall be limited to a maximum of 10 percent during any twelve-month period.

6. ADJUSTMENTS AND PRICE ESCALATION

6.1 Annual Tipping Fee Adjustment. Effective two years after the Commencement Date and each year thereafter on the anniversary of the Commencement Date, as defined in Section 10, the Vendor may request an annual adjustment in the Tipping Fee rates identified in Section 5.2, not to exceed the percent change in the Urban Consumer Price Index (CPI-U) during the previous year as published by the Bureau of Labor Statistics for the Los Angeles-Riverside-Orange County area. All cost adjustment requests must be submitted no later than 30 calendar days before the anniversary when the proposed adjustment would become effective. If cost adjustment requests are made later than 30 days, the Vendor will receive the increase 30 days from the date the request was made by the Vendor.

6.2 Diesel Fuel Price Adjustment (FPA). The Tipping Fee in Section 5.2 will be adjusted when the average monthly price of diesel fuel is more than \$4.00 per gallon or less than \$3.70 per gallon. Under those circumstances, the Vendor shall calculate a Per Ton Fuel Price Adjustment to adjust the Vendor's monthly invoice amount according to the following formula:

$$\text{FPA per ton} = [\text{Retail Fuel Price} - \$3.85] \times \frac{\text{Round Trip Mileage}}{(5.5 \text{ miles/gallon})(22.5 \text{ ton/trip})}$$

a. The “**Retail Fuel Price**” is a monthly average of all weekly diesel fuel prices supplied by the U.S. Department of Energy, in the Energy Information Administration (“EIA”) California Retail On-Highway Diesel Price Index for a given month. These values are available on the EIA website at: <http://www.eia.doe.gov>.

b. The “**Round Trip Mileage**” will be based on the miles traveled between the Facilities and the Reuse Sites provided by Vendor as described in Section 2.2(b) herein.

c. The “**Per Ton Fuel Price Adjustment**” will be multiplied by the tons of Green Waste hauled by and presented for beneficial reuse by the Vendor for the month as provided in Section 6.4, and added or subtracted from the invoice amount.

6.3 Alternative Fuels Price Adjustment (AFPA). The Tipping Fee in Section 5.2 will be adjusted when the average monthly price of Compressed Natural Gas (CNG) is more than \$2.56 per gallon or less than \$2.25 per gallon. Under those circumstances, the Vendor shall calculate a Per Ton Fuel Adjustment to adjust the Vendor's monthly invoice amount according to the following formula:

For CNG:

$$\text{AFPA per ton} = [\text{Retail Fuel Price} - (\$2.41)] \times \frac{\text{Round Trip Mileage}}{(5.5 \text{ miles/gallon})(\text{CF}:0.88)(22.5 \text{ ton/trip})}$$

a. The alternative fuels Retail Fuel Price and “**Reference Price**” will be expressed in dollars per gasoline gallon equivalent (“GGE”) for compressed natural gas (“CNG”), and dollars per diesel gallon equivalent (“DGE”) for liquefied natural gas (“LNG”) or other fuels. The conversion factors (“CF”) utilized in determining the AFPA for alternative fuels are available at <https://epact.energy.gov/fuel-conversion-factors>. For CNG, the Retail Fuel Price for the purpose of this formula will be the monthly average CNG price for California, available at <http://www.cngnow.com/average-cng-prices>.

b. The Round Trip Mileage will be based on the miles traveled between the Facilities and the Reuse Sites provided by Vendor as described in Section 2.2(b).

c. The Per Ton Fuel Adjustment will be multiplied by the tons of Green Waste hauled by and presented for beneficial reuse by the Vendor for the month as provided in Section 6.4, and added or subtracted from the invoice.

6.4 Monthly Fuel Adjustment. The “**Monthly Fuel Adjustment**” is the total Fuel Adjustment applicable each month based upon the tons of Green Waste hauled and beneficially reused by the Vendor for that month. The Monthly Fuel Adjustment is calculated by taking the monthly tons of Green Waste delivered from the respective District Facility to the applicable Reuse Site and multiplying that number by the Per Ton Fuel Price Adjustment for transportation between the respective District Facility and applicable Reuse Site.

7. QUANTITY OF GREEN WASTE FOR TRANSPORT AND DIVERSION

7.1 Vendor’s Required Capacity. The Vendor shall provide all services included in its proposal for the RFP (which is incorporated herein by this reference) and necessary to transport and to qualify for Diversion up to 3,000 tons per month of Green Waste from the PHMRF and 3,500 tons per month of Green Waste from DART. The Vendor shall ensure that there is adequate capacity at the Reuse Sites to accept at least 6,500 tons per month of Green Waste from the Facilities.

7.2 Additional Tonnage. If the Vendor is capable of transporting and delivering for Diversion more than 6,500 tons per month of Green Waste and the District requests in writing that the Vendor transport and deliver for beneficial reuse Green Waste from the Facilities in an amount greater than 6,500 tons per month, and the Vendor gives notice in writing that it is willing to transport more than the 6,500 tons per month, then Vendor shall indicate the amount of additional tons (“**Additional Tonnage**”) per month that it is willing to transport and make all necessary arrangements to accommodate the increase in tonnage no later than 60 calendar days after the Vendor’s receipt of the District’s written request to accommodate the additional tonnage.

7.3 No Minimum Tonnage Commitment. Vendor acknowledges that District has no control over the quantities of Green Waste or commingled Food Waste and Green Waste that are delivered to its Facilities. Subject to the terms and provisions set forth in Section 2.12 of this Agreement, the District makes no representation or guarantee with respect to the tonnage of Green Waste to be accepted by the Vendor.

8. INVOICING AND PAYMENT

8.1 The Vendor's Invoice. For each calendar month, the Vendor shall present the District with an invoice listing the origination point and end point destination (after processing at BAS) of each and every load during the month. Each monthly invoice will include the following amounts for payment of the sum of:

- a. The applicable Tipping Fees for the Reuse Sites multiplied by the tons of Green Waste delivered from the Facilities; and
- b. The Monthly Fuel Adjustment, if applicable.

8.2 Time for Payment by the District. The District shall pay all undisputed invoiced amounts within 30 calendar days after receiving a monthly invoice from the Vendor, subject to Section 8.3 and receiving a Monthly Report pursuant to Section 9. In the event of the District is late paying on more than one occasion per 12-month period, the District shall pay a late fee of 5% of the amount of the late payment.

8.3 Disputed Invoices. If the Vendor disputes the amount of any payment, the Vendor shall provide notice to the District of the dispute and the specific grounds for the dispute no later than 20 calendar days after receiving a payment from the District or 20 calendar days after the date payment would otherwise be due from the District pursuant to Section 8.2, whichever is sooner. The Parties shall make a good faith effort to settle any dispute or claim arising under this Agreement.

9. MONTHLY REPORTS

9.1 Submission of Monthly Reports. The Vendor shall prepare and submit simultaneously with its submission of its monthly invoice a written "**Monthly Report.**" Failure by the Vendor to timely submit the Monthly Report will constitute a default of this Agreement. The District's receipt of a sufficient Monthly Report is a condition for the District's payment of that month's invoice. The Vendor shall transmit the Monthly Report to the District in a spreadsheet format using electronic mail.

9.2 Contents of Monthly Reports. The Monthly Report must contain, at a minimum, the following information:

- a. Transaction number from the District's weigh receipt for each load;
- b. Date and time of transaction for each load;
- c. The District's Facility from which each load originated;

- d. Gross, tare and net weight of each load;
- e. License or truck number for each tractor and trailer transporting each load;
- f. The Reuse Sites to which each load was delivered; and
- g. Total tons of Green Waste delivered to each Reuse Site from each District's Facility during each calendar month.

10. TERM OF AGREEMENT

This Agreement will be effective on January 1, 2022 and continue until February 12, 2024 (“**Term**”).

11. EXTENSION, TERMINATION, AND NON-PERFORMANCE

The term “**Default**” shall mean the failure of a party to observe or perform any material covenant, condition, or term of this Agreement or the breach of any representation or warranty.

11.1 Extension. Prior to the end of the existing Agreement, with mutual and written consent from both parties, the Agreement may be extended for two (2) additional two (2) year extensions.

a. The terms and conditions of the extended Agreement including but not limited to all fees and costs listed above must be mutually agreed upon by both parties six calendar months prior to the end of the existing Agreement. The Vendor shall, in writing, provide the District with its decision as to whether to continue with the next term.

b. In the event an extension is not agreed to six calendar months prior to the end of the existing Agreement, the District reserves the right to not extend the existing Agreement and seek an alternate service provider. If the District decides not to extend the existing Agreement, any purchase order will terminate at the end of the initial term regardless of any monetary balance remaining on the purchase order.

11.2 Termination for Cause. Each Party shall notify the other in writing if they are in breach of any of its obligations under this Agreement. Upon the occurrence of a Default, each Party shall have a minimum of 10 days from receipt of written notice to cure such Default. For Defaults that cannot be reasonably cured within 10 days of receipt of said notice, the time limit to cure shall be extended for so long as the defaulting Party commences to cure such Default with reasonable promptness and diligently pursues that cure to completion. Upon the expiration of any applicable cure period, the aggrieved party shall have the right, but not the obligation, to terminate this Agreement and shall have recourse to any other right or remedy to which the aggrieved party may be entitled by law or in equity, including, but not limited to, the right to recover all damage or loss suffered as a result of the Default.

11.3 Non-Performance. Should the Vendor fail to mobilize and provide removal, transport and reuse services within the time provided in Section 2.3 of this Agreement, and subject to the provisions set forth in Section 16.4 below, the District may arrange for these services to be provided by an entity other than the Vendor provided the District first gives Vendor notice of such failure and 24 hours to cure, and further provided as follows: (a) if Vendor's trucks don't show up by the expiration of the aforementioned cure period, the District may arrange for trucking services from the District Facilities to BAS, or to another approved Vendor facility, for processing, and Vendor shall accept such loads and be responsible for such transportation costs and any additional direct costs incurred by the District as a result of Vendor's failure to provide such transportation services; or (b) In the event that Vendor is unable to accept the District's loads at BAS (or any other approved Vendor facility) for processing, the District may arrange for alternate loading, removal, transport and reuse services with another entity, in which case Vendor shall reimburse the District for any actual additional costs incurred due to Vendor's failure to perform. If the cure period stated above extended into a period of time where the District's Facility is not open, the time to cure shall be tolled during such time, and the remaining cure period shall resume when the District's Facility next opens for business. With respect to subparagraph (b) above, after the receipt of Vendor's invoice for payment of Work, the District shall deduct any and all additional costs, pursuant to this Section 11.3, from any amounts otherwise due to the Vendor. In the event that the additional costs described above exceed the amount otherwise due to the Vendor, the Districts shall invoice the Vendor for the difference. The District may invoke this Section 11.3 and arrange for the performance of services described in this Agreement for so long as Vendor is unwilling or unable to perform such services with or without declaring a suspension of the Vendor's services pursuant to Section 11.4 of this Agreement.

11.4 Suspension. The Chief Engineer may suspend the Work if he or she determines that the Vendor can no longer timely perform the required services or if conditions exist at any of the Reuse Sites that are not in compliance with regulations or permits as determined by the appropriate responsible agency pursuant to a "Notice of Violation" or similar written notice. During this period, the Chief Engineer may hire another entity to perform the services to be provided by the Vendor under this Agreement pursuant to Section 11.3. The Vendor shall reimburse the District for any additional cost the District incurs during the period of suspension pursuant to Section 11.3. The Chief Engineer shall lift the suspension and allow services to resume if the Chief Engineer determines that the Vendor can timely and legally perform required services and any unacceptable conditions have been corrected. The Chief Engineer may require the Vendor to resume its performance of its duties under this Agreement on a trial basis to demonstrate continuous, reliable performance before lifting the suspension.

12. APPLICATION OF PREVAILING WAGE

12.1 Wage Rates, Travel, and Subsistence.

a. Wage Rates. Pursuant to the provisions of Article 2 Chapter 1, Part 7, Division 2, of the Labor Code (section 1770 *et seq.*), the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in

the locality in which this work of improvement is to be performed for each craft, classification, or type of worker needed to provide the work contemplated under this Agreement from the Director of the DIR. These rates are listed in Attachment 2 of this Agreement, on file with the District, and copies will be made available to any interested party on request. Vendor shall post a copy of such wage rates at the Facilities.

For any worker employed to perform work, where such work is not covered by any classification listed in the published general prevailing wage rates determinations or per diem wages determined by the DIR, said worker shall be paid not less than the minimum rate of wages specified in the classification which most nearly corresponds to the employment of such person in such classification.

b. Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at a rate set forth in the prevailing wage determinations issued by the DIR or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in this Agreement, or authorized by law.

c. Wage Rates Not Affected By Other Contracts. Vendor shall pay and shall cause to be paid to each Employee to whom prevailing wage rates apply not less than the general prevailing rate of per diem wages determined by the DIR, regardless of any contractual relationship which may be alleged to exist between Vendor and Employee.

d. Travel And Subsistence. Vendor shall pay and shall cause to be paid to each Employee performing work travel and subsistence payments, as such travel and subsistence payments are defined by the DIR and in accordance with Labor Code § 1773 *et seq.*, including but not limited to Labor Code § 1773.1.

e. Change In Prevailing Wage. If the DIR issues a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, Vendor must comply with current prevailing wages at all times pursuant to determinations by the DIR and Labor Code § 1773 *et seq.* Prevailing wage determination rates are issued twice a year, in February and August and, as of the date of this contract, the effective date of a determination is 10 days after the issue date of the determination. So, for example, if the prevailing wage determination is issued February 22, the effective dates for implementing said new rate is March 3rd in leap years, and March 4th in non-leap years.

f. Minimum Wage Rates. Any worker employed to perform work, which work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the DIR, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

g. Per Diem Wages. Vendor shall pay and shall cause to be paid to each Employee performing work per diem wages including, but not limited to, employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.1.

h. Posting of Wage Rates. Prior to commencing any work, Vendor shall post the required notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Facilities. The required notice/poster is available on the Labor Commissioner's website.

i. Forfeiture and Payments. Pursuant to Labor Code § 1775, Vendor shall forfeit to District not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the DIR, for such craft or classification in which such worker is employed for any work performed. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of Vendor's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage, the previous record of Vendor in meeting his or her prevailing rate of per diem wage obligations, or Vendor's willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if Vendor had knowledge of it or the obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker by Vendor.

j. Monitoring and Enforcement by Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). Vendor shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code section 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. Vendor must sign up for, and utilize, the Labor Commissioner's electronic certified payroll records submission system. The District will have direct and immediate access to all CPRs for work performed under this Amended Agreement that are submitted through the Labor Commissioner's system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.

The Labor Commissioner and DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Facilities ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Facilities, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by Vendor. Vendor and all Employees shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity

related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

12.2 Records of Wages Paid: Certified Payroll Submissions and Inspection.

12.2.1. Payroll Records.

a. Pursuant to section 1776 of the Labor Code, Vendor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.

b. All payroll records as specified in Labor Code § 1776 of Vendor shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code § 1771.4(a)(3) on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code § 1776 shall be certified and submitted to the District in hard copy (not electronic) with each application for payment or invoice. All payroll records shall be available for inspection at all reasonable hours at the principal office of Vendor on the following basis:

(i) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(ii) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.

(iii) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by Vendor, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Vendor.

c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.

d. Vendor shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.

e. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or redacted to prevent disclosure of an individual's name, address and social security number. The name and address of the Vendor awarded the work shall not be marked or redacted. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or redacted only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

f. The Vendor shall inform the District of the location of all payroll records, including the street address, city and county, and shall provide notice of a change of location and address within five (5) days of same.

g. Vendor shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that Vendor fails to comply within the 10- day period, the Vendor shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from payments then due to Vendor.

h. Responsibility for compliance with this Article shall rest upon Vendor.

12.2.2. Withholding of Contract Payments & Penalties.

The District may withhold or delay contract payments to Vendor if:

a. The required prevailing rate of per diem wages determined by the DIR is not paid to all Employees performing work;

b. Vendor fails to submit all required certified payroll records with each application for payment or invoice, but not less than once per month;

c. Vendor submits incomplete or inadequate payroll records;

d. Vendor fails to comply with the Labor Code requirements concerning apprentices; or

e. Vendor fails to comply with any applicable state laws governing workers on public works projects.

12.3 Apprentices.

12.3.1. Apprentice Wages and Definitions. All apprentices employed by Vendor to perform work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, as determined by the DIR, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with section 3070) of Division 3, are eligible to be employed under this Agreement. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California apprenticeship Council.

12.3.2. Apprentice Labor Pool. When Vendor employs workers in any apprenticeable craft or trade, Vendor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the work, for a certificate approving the Vendor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving Vendor, shall arrange for the dispatch of apprentices to Vendor in order to comply with this section. Vendor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Facility of the work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Vendor shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade at the Facility, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

12.3.3. Journeyman/Apprentice Ratio; Computation of Hours. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. Vendor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of

a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

12.3.4. Journeyman/Apprentice Ratio. Vendor, if covered by this section upon the issuance of the approval certificate, or if previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by Vendor that it employs apprentices in the craft or trade in the state on all of its contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting Vendor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

12.3.5. Apprenticeable Craft or Trade. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting Vendor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- a. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- b. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- c. There is a showing that the apprenticeable craft or trade is replacing at least one- thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- d. Assignment of an apprentice to any work performed under this Agreement would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

12.3.6. Ratio Exemption. When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

12.3.7. Apprentice Fund. If Vendor employs journeymen or apprentices in any apprenticeable craft or trade and is not contributing to a fund or funds to administer and

conduct the apprenticeship program in any such craft or trade in the area of the site of the Facility, to which fund or funds other contractors in the area of the site of the Facility are contributing, Vendor shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Facility in the same amount or upon the same basis and in the same manner as the other contractors do, but if the trust fund administrators are unable to accept the funds, Vendor shall pay a like amount to the California Apprenticeship Council. Vendor may add the amount of the contributions in computing its bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code § 227.

12.3.8. Vendor Compliance. The responsibility of compliance with paragraph 12.3 and section 1777.5 of the Labor Code for all apprenticeable occupations is with Vendor.

12.3.9. Decisions Of Joint Apprenticeship Committee. All decisions of the joint apprenticeship committee under this paragraph 12.3 and Labor Code § 1111.5 are subject to Labor Code § 3081.

12.3.10. No Bias. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code § 3077.

12.3.11. Violation of Labor Code. Pursuant to Labor Code § 1777.7, in the event Vendor willfully fails to comply with the provisions of this paragraph 12.3 and Labor Code § 1777.5:

a. The DIR shall deny to Vendor the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council.

b. If Vendor violates section 1777.5 it shall forfeit as a civil penalty the sum of two hundred dollars (\$200) for each calendar day of noncompliance. Notwithstanding section 1727, upon receipt of a determination that a civil penalty has been imposed, District shall withhold the amount of the civil penalty from the contract progress payments then due or to become due.

c. In lieu of the penalty provided for in subdivision (a) or (b), the DIR may for a first time violation and with the concurrence of the joint apprenticeship committee, order Vendor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

d. Any funds withheld by District pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

e. The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

12.4 DIR Registration.

12.4.1. Registration by Vendor and All Subcontractors of Any Tier. Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of Vendor under the Agreement. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the work by Vendor. The failure of Vendor to be properly registered with DIR at all times during performance of the work is a material breach of the Contract and subject to termination for cause. An affirmative and ongoing obligation of Vendor under the Agreement is the verification that all subcontractors of any tier are at all times during performance of the work in full and strict compliance with the DIR registration requirements. Vendor shall not permit or allow any subcontractor of any tier to perform any work without Vendor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code § 1771.1. Vendor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

13. INDEMNITY

The Vendor shall indemnify, defend, and hold harmless the District, its directors, officers, employees, agents, successors and assigns, and each of the other Los Angeles County Sanitation Districts, and their directors, officers, employees, agents successors and assigns, from and against any and all claims, actions, liabilities, damages, losses, costs, and expenses (including court costs and reasonable attorney's fees and expenses), arising out of or in any way related to (a) Vendor's performance of its obligations under this Agreement, (b) any bodily injury, personal injury, or property damage caused by or resulting from any acts or omissions or negligence of the Vendor or any of its employees, agents or representatives, and (c) any violation by the Vendor or any of its employees, agents or representatives of applicable laws, regulations, codes or ordinances. This indemnification obligation of the Vendor in Section 13(c) above includes but is not limited to the failure by Vendor to pay the proper prevailing wage rate as set by the California Department of Industrial Relations to any employee, representative, or agent working on a District project or otherwise under this Agreement, or to otherwise comply in all respects with California prevailing wage laws applicable to District projects, including under the *Kaanaana v. Barrett Business Services, Inc., et al.* (2021) 11 Cal.5th 158 decision.

The District shall indemnify, defend, and hold the Vendor, its directors, officers, employees, agents, successors and assigns, harmless from and against any and all claims, actions, liabilities, damages, losses, costs, and expenses (including court costs and reasonable attorney's fees and expenses), arising out of or in any way related to (a) the Districts performance of its obligations under this Agreement, (b) any bodily injury, personal injury, or property damage caused by or resulting from the negligent acts or omissions of the

District, (c) delivery of Unacceptable Waste to the Reuse site(s), except as allowed by this Agreement, and (d) any violation by the District of applicable law.

14. INSURANCE

14.1 Required Coverage. The Vendor shall obtain and keep in force during the Term of this Agreement, at its sole expense, comprehensive general liability insurance with endorsements naming the District as an additional insured, covering all activities and operations undertaken in accordance with this Agreement, including the transportation of Green Waste in any vehicle, including those leased by the Vendor, whether liability is attributable to the Vendor or the District. The foregoing provision also applies to any activity or operation performed by the Vendor through a contract with others and/or operation performed by others through a contract with the Vendor. The policy or policies must insure the District, its directors, officers, employees, and agents, and all the other Los Angeles County Sanitation Districts, their directors, officers, employees, and agents, against all claims arising out of or in connection with the activities and operations performed in accordance with this Agreement. The coverage must provide the following minimum limits, which may be increased during the Term of this Agreement as requested by the Chief Engineer and agreed to by the Vendor:

Automobile Liability:

Bodily Injury	\$1,000,000 each person \$1,000,000 each occurrence \$1,000,000 aggregate products and completed operations
Property	\$1,000,000 each occurrence \$1,000,000 aggregate

General Liability:

Bodily Injury	\$3,000,000 each person \$3,000,000 each occurrence \$3,000,000 aggregate products and completed operations
Property	\$3,000,000 each occurrence \$3,000,000 aggregate

All liability insurance policies must bear an endorsement or have an attached rider that provides that, in the event of expiration, proposed cancellation, or reduction in coverage of the policies for any reason whatsoever, the District will be notified by certified mail, return receipt requested, at least 30 calendar days before expiration, cancellation, or reduction in coverage is effective. Coverage must be provided by an insurer that has at least an “A” Policy Holder’s Rating and “X” Financial Rating in accordance with the current *Best’s Key Rating Guide*.

14.2 Evidence of Coverage. The Vendor shall provide the District with evidence of coverage by providing a certificate of insurance within seven (7) calendars days of acceptance of this Agreement. The District retains its right to copies of all required policies including endorsements upon request.

14.3 Workers Compensation Coverage. The Vendor shall demonstrate to District that it carries Workers Compensation Insurance in accordance with legal requirements, but in no event less than \$1,000,000 per occurrence.

15. FORCE MAJEURE

Neither the Vendor nor the District will be responsible or liable for failure to meet their respective obligations under this Agreement if that failure is due to causes beyond the Vendor's or the District's reasonable control. Such causes include, but are not limited to: strikes, fire, flood, civil disorder, acts of God or of the public enemy, acts of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemics, freight embargoes or delays in transportation, and changes in federal, state, or local law that renders the District's Green Waste impermissible or illegal for use by the Vendor or at one or more Reuse Sites. The Vendor shall immediately notify the District in writing of the occurrence of any condition believed to constitute a force majeure under this section. If a condition of force majeure exists for 30 calendar days or more, either Party may terminate this Agreement by giving notice in writing in accordance with Section 17. The notice will become effective 24 hours after receipt. No Party, however, will be relieved of any obligation or liability to the extent that any delay related to a force majeure cause arises out of that Party's own acts or negligence.

16. COMPLIANCE WITH VENDOR'S COMPOST PERMIT.

Vendor has a compost permit for green waste only, which does not include the composting of food waste ("Vendor's Compost Permit").

In the event that the provisions of this Agreement pertaining to Food Waste, and/or the Parties' methods of handling said Food Waste, are the cause of any noncompliance with Vendor' Compost Permit, including, but not limited to, any Notice of Violation , area of concern, and/or warning, by the Local Enforcement Agency ("LEA") or legitimate complaints (including, but not limited to, complaints of increased odors, bugs, or pests) ("**Non-Compliance**"), the Parties shall work together in good faith to modify this Agreement, if possible, to eliminate the Non-Compliance. If the Parties cannot mutually agree to measures to eliminate the Non-Compliance, either party may terminate this Agreement with 30 days written notice to the other Party.

17. ADDITIONAL PROVISIONS

17.1 No Exclusivity. The District may allocate any portion of the Green Waste available at its Facilities among multiple vendors, including the Vendor.

17.2 Entire Agreement. This Agreement represents the entire understanding between District and Vendor as to transportation and beneficial reuse of Green

Waste. No prior oral or written understanding is of any force or effect with respect to the matters covered in this Agreement.

17.3 Assignment. The Vendor may not sell or assign its interest in this Agreement without the prior written approval of the Chief Engineer. The provisions of this Agreement will be binding upon the Vendor and any successors or assigns. In the event of an assignment, Vendor shall be relieved of all obligations under this Agreement, provided assignee executes a commercially reasonable assumption agreement.

17.4 Subcontracting. The Vendor may subcontract the performance of its obligations under this Agreement to the following entities listed in Attachment 1, attached hereto. In addition, Vendor may subcontract performance of its obligations under this Agreement to other entities, not listed in Attachment 1, if: (a) the Vendor has submitted to the District in writing the identity, address, and qualifications of each proposed subcontractor in strict compliance with the RFP; (b) the Proposer has contractually imposed on each subcontractor all of the provisions of this Agreement; (c) the Vendor shall not be relieved of its responsibility for discharging each and all obligations under this Agreement; (d) the Vendor has obtained the express, written prior approval of the District for the subcontract. In the event Vendor fails to timely mobilize trucks pursuant to Section 11.3 above, and whether it be during the cure period specified therein, after the cure period in which the District is providing substitute services, or during a suspension period pursuant to Section 11.4, Vendor may subcontract trucking services to subcontractors not listed in Attachment 1 provided that within 30 days of providing such services, Vendor provides District with the information required to comply with the provisions in this section and Section 12 PREVAILING WAGE, and further provided that said trucks only deliver the Green Waste to one of Vendor's Reuse Sites.

17.5 Litigation Costs. If either Party initiates any legal or administrative proceeding relating to any issues arising out of this Agreement, the prevailing Party will be entitled to recover all reasonable attorneys' fees and legal expenses, in addition to any other relief granted.

17.6 Governing Law. The provisions of this Agreement will be interpreted and enforced in accordance with the laws of the State of California. Venue for any action will be in the Superior Court of Los Angeles County. In addition, the Vendor shall abide by and obey all applicable laws, rules, regulations and ordinances of the United States of America, the State of California, and local jurisdictions. The Vendor will also be in compliance with SCAQMD Rule 1193 for the term of the Agreement.

17.7 Waiver. Either Party may waive compliance by the other Party with respect to any provisions of this Agreement. No waiver of any provision may be construed as a waiver of any other provision. No waiver may be construed as an ongoing waiver with respect to subsequent events unless it expressly so provides. Any waiver must be in writing, signed by the waiving Party, and recite the provisions being waived.

17.8 Remedies. The remedies and relief set forth in this Agreement are cumulative and not in the alternative and are in addition to any other remedies or relief that

may otherwise be available to the Parties, at law or in equity. The Parties may pursue any and all available remedies and relief, either sequentially or in concert, including without limitation, the right to enjoin any violation, or threatened violation, of this Agreement.

17.9 Action by Chief Engineer. Except as otherwise provided in this Agreement, the Chief Engineer may take all actions on behalf of the District in connection with any approvals or actions required of or by the District under this Agreement.

18. NOTICE

Any legal notice, request, payment or instrument required or permitted to be given under this Agreement must be in writing and must be delivered personally (including by means of professional messenger service) or sent by express mail, nationally recognized overnight delivery carriers (with delivery tracking capabilities), registered mail, certified mail, return receipt requested. Notices delivered via overnight delivery carriers will be deemed received upon receipt (with proof of delivery), and notices delivered personally or by express mail will be deemed received upon receipt or within two business days after being deposited in the United States mail, registered or certified, postage prepaid, and addressed to the party for whom intended, as follows:

If to District:

Chief Engineer and General Manager
Los Angeles County Sanitation Districts
1955 Workman Mill Road
Whittier, California 90601
Attention: Habib Kharrat

If to Vendor:

Circle Green
8271 Chino Ave.
Ontario, CA 91761
Attention: Kevin Sutton

With Copy to:

Andrew P. Byrne, Esq.
1140 Highland Avenue, Ste. 250
Manhattan Beach, CA 90266

19. CHANGES IN REGULATIONS AND LAW

The terms of this Agreement are based upon the regulations currently in place for the handling and management of green waste materials. If changes in regulations (or enforcement of existing regulations) occur, Vendor shall notify the District and the Parties

shall work in good faith to mutually agree upon changes to the services and rates provided by Vendor in this Agreement. If Vendor and the District cannot mutually agree upon changes to the Agreement due to changes in regulations (or of enforcement of existing regulations) before such changes take effect, Vendor shall have the right to terminate this Agreement upon 60 days written notice.

20. SEVERABILITY

If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstance is, to any extent, held invalid or unenforceable, the remainder of this Agreement will not be affected, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

21. CONFLICTS

In the event of a conflict between the terms of this Agreement and the terms contained in the RFP, the terms of this Agreement shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Parties are signing this Agreement as of the Execution Date.

**COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY**

By: _____
Chairperson, Board of Directors

ATTEST:

By: _____
Secretary to the Board

APPROVED AS TO FORM:
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP

By: _____
District Counsel

CIRCLE GREEN, INC.

By: Kevin Sutton
Its: President

Attachment 1

List of Subcontractors

Pre-approved Trucking Subcontractors:

- Mario Alvarez Trucking
- S&D Transportation
- Clean Waste Trucking
- Rafaela Ochoa Trucking
- Cabo Trucking

Attachment 2

General Prevailing Rate of Per Diem Wages and General Prevailing Rate for Holiday and Overtime Work

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

Craft: Landfill Worker (Operating Engineer)

Determination:

SC-63-12-41-2021-1

Issue Date:

February 22, 2021

Expiration date of determination:

March 31, 2021* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

Localities:

All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties.

Wages and Employer Payments:

Classification (Journeyperson)	Basic Hourly Rate	Health and Welfare ^a	Pension	Vacation and Holiday	Training	Other ^b	Hours	Total Hourly Rate	Daily Overtime Hourly Rate (1 ½ X)	Saturday Overtime Hourly Rate (1 ½ X) ^c	Sunday/ Holiday Overtime Hourly Rate (2 X)
Mechanic	\$22.15	\$4.21	\$1.05	\$1.78	\$0.06	\$3.80	8.0	\$33.05	\$44.125	\$44.125	\$55.20
Lead Equipment Operator	\$20.15	\$4.12	\$0.95	\$1.61	\$0.06	\$3.44	8.0	\$30.33	\$40.405	\$40.405	\$50.48
Lead Truck Driver/ Equipment Operator	\$19.15	\$4.07	\$0.90	\$1.52	\$0.06	\$3.26	8.0	\$28.96	\$38.535	\$38.535	\$48.11
Truck Driver – End Dump/ Walking Floor/Low Bed	\$18.15	\$4.02	\$0.85	\$1.44	\$0.06	\$3.08	8.0	\$27.60	\$36.675	\$36.675	\$45.75
Truck Driver – Roll Off/Transfer Station Loader Operator/ Maintenance/ Fueler/ Mechanic Helper	\$17.15	\$3.98	\$0.80	\$1.35	\$0.06	\$2.90	8.0	\$26.24	\$34.815	\$34.815	\$43.39
Scale House	\$16.15	\$3.93	\$0.75	\$1.27	\$0.06	\$2.72	8.0	\$24.88	\$32.955	\$32.955	\$41.03
Load Checker/ Water Truck Driver/ Parts Runner	\$14.00	\$3.70	\$0.50	\$0.85	\$0.06	\$1.81	8.0	\$20.92	\$27.92	\$27.92	\$34.92
Laborer	\$14.00	\$3.61	\$0.40	\$0.68	\$0.06	\$1.45	8.0	\$20.20	\$27.20	\$27.20	\$34.20

Determination: SC-63-12-41-2021-1

Page 2 of 2

Recognized holidays:

Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the [Director's General Prevailing Wage Determinations Website](http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm) (<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>). Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

Travel and/or subsistence payment:

In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the [Director's General Prevailing Wage Determinations Website](http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm) (<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>). Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

^a Includes an amount for Sick Leave.

^b Amount for employee stock ownership.

^c Rate applies to the sixth consecutive day of work.