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**MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT
AGREEMENT FOR SB 1383 MONITORING AND REPORTING SERVICES**

THIS AGREEMENT is made and entered into on _____, 20____, by and between the Monterey Regional Waste Management District, a California Garbage and Refuse Disposal District (California Public Resources Code §49100 et seq.), hereinafter referred to as the "District," and _____ *[insert name of Contractor]*, a _____, *[insert Contractor's status as a legal entity, i.e. a California corporation, general partnership, LLC, sole proprietorship or an individual "doing business as "]* hereinafter referred to as the "Contractor." District and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. The Cities of Carmel-By-the-Sea, Del Rey Oaks, Marina, Monterey, Sand City, Seaside, Pacific Grove, the Pebble Beach Community Services District, the County of Monterey, the District, and waste haulers, are collaborating on the regional implementation of the SB 1383 requirements.
- A. District desires to retain Contractor to monitor waste streams by conducting route reviews, where randomly selected carts and dumpsters on collection routes will be visually assessed for contamination, generate an electronic record for each inspection/route review, and upload data to Recyclist; hereinafter referred to as the "Project."
- B. Contractor represents and warrants that it has the qualifications, experience, and personnel necessary to properly perform the services as set forth herein.
- C. District desires to retain Contractor to provide such services.

Terms and Conditions

For of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises contained herein, District and Contractor agree to the following terms and conditions:

1. Scope of Work.

(a) Contractor is hereby hired and retained by the District to work in a cooperative manner with the District to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and by this reference made a part hereof. With prior written notice to Contractor, District may elect to delete certain tasks of the Scope of Work at its sole discretion.

Contamination monitoring in compliance with SB 1383 is to be provided for the Pebble Beach Community Services District and the cities of Carmel-By-the-Sea, Del Rey Oaks, Marina, Monterey, Pacific Grove, Sand City, and Seaside (the Agencies).

The Contractor shall conduct lid flip surveys on commercial and residential routes for a total of 107 routes. Route information will be provided by waste haulers prior to planning surveys. Each route requires 25 lid flips at random. Routes cover the mixed solid waste, organic waste, and recycling streams.

Per the requirements of section 1899.1 (c) of the SLCP: Organic Waste Reductions regulation, the Contractor shall generate an electronic record for each inspection/route review. Each record shall have name of account, name of person, description of hauler route, list of accounts reviewed, date of inspection/review, person who conducted the action, inspection/review findings, evidence supporting findings (to include photos), and a description of the location on the route where contaminants are found. Contractor shall enter data into the appropriate database within 30 days of route review.

The Contractor shall provide educational materials to each customer included in the route review, including but not limited to, materials regarding the route review, contamination, and best recycling practices. Educational materials will be provided by the Agency for the Contractor's use.

The Contractor's personnel conducting the survey shall dress professionally with clothing bearing the Contractor's company name and logo. The Contractor's personnel shall be solely responsible for their own safety, shall utilize personal protective equipment as dictated by the type of work being performed and conditions present at the time of work, and shall wear a high visibility safety vest at all times during the conduct of work. The Agency will provide a flyer explaining the purpose of the survey which the Contractor's personnel shall hand to customers if approached to help explain that they are conducting a survey for the Agency. The Agency will notify customers in advance of the survey, through direct mail or through billing inserts, that a survey will be conducted in their area in the near future.

The Contractor shall present the survey results to the Board of Directors for the MRWMD. The Contractor shall prepare an executive summary of survey results for use by the member agencies of the MRWMD no later than 90 days after route reviews are completed.

(b) Contractor shall perform all such work with skill and diligence and pursuant to generally accepted standards of practice in effect at the time of performance. Contractor shall provide corrective services without charge to the District for work which fails to meet these standards and which is reported to Contractor in writing within sixty days of discovery. Should Contractor fail or refuse to perform promptly its obligations under this Agreement, the District may render or undertake the performance thereof and the Contractor shall be liable for any expenses thereby incurred.

(c) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(b)(2), design professional certifies that all design professional services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in Section 1(a). By delivery of completed work, design professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws, and the professional standard of care in California.

(d) Contractor is responsible for making an independent evaluation and judgment of all relevant conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state and local laws and regulations and all other contingencies or considerations.

(e) District shall cooperate with Contractor and will furnish all information data, records and reports existing and available to District to enable Contractor to carry out work outlined in Exhibit "A." Contractor shall be entitled to reasonably rely on information, data, records and reports furnished by the District, however, the District makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Contractor which were furnished to the District by a third party. Contractor shall have a duty to bring to the District's attention any deficiency or error it may discover in any information provided to the Contractor by the District or a third party.

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on _____, 20____, *[Insert expiration date.]* unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the District's Board of Directors or by the District officer or employee authorized to give such approval; and

(ii) The office of the District Legal Counsel has indicated in writing its approval of this Agreement as to form; and

(iii) This Agreement has been signed on behalf of Contractor by the person or persons authorized to bind the Contractor hereto; and.

(iv) This Agreement has been signed on behalf of the District by the person designated to so sign by the District's Board of Directors or by the officer or employee authorized to enter into this Contract and is attested to by the District's Clerk of the Board.

(b) Contractor shall commence work on the Project on or by _____, 20__ . *[Insert date work is to commence]* This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the District and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) District liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement District shall compensate Contractor in an amount not to exceed _____ Dollars (\$_____.00) *[Insert written and*

numerical amounts] in accordance with the provisions of this Section and the Fee Schedule attached hereto as Exhibit B and incorporated herein by this reference. *[Delete after the word "Section" if there is no Fee Schedule as Exhibit B and adjust letter designation of other exhibits as required.]*

(b) Invoice(s) in a format and on a schedule acceptable to the District shall be submitted to and be reviewed and verified by the Project Administrator (see Section 5(a)) and forwarded to the District's Finance Department for payment. District shall notify Contractor of exceptions or disputed items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

(c) Contractor shall maintain clearly prepared, identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis. Contractor shall make available to the representative of District all such books and records related to this Agreement, and the right to examine, copy and audit the same during regular business hours upon 24-hour's notice for a period of four years from the date of final payment under this Agreement.

(d) Contractor shall not receive any compensation for Extra Work without the prior written authorization of District. As used herein, "Extra Work" means any work that is determined by the District to be necessary for the proper completion of the Project but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B. *[Delete last sentence if there is no Exhibit B]*

(e) Expenses not otherwise addressed in the Scope of Services or the Fee Schedule incurred by Contractor in performing services under this Agreement shall be reviewed and approved in advance by the Project Administrator (Section 5(a)), be charged at cost and reimbursed to Contractor.

(f) There shall be no charge for transportation within Monterey, Santa Cruz and San Benito Counties required for the performance of the services under this Agreement; travel to other locations must be approved in writing and in advance by the District, mileage will be charged at the then current standard rate for business travel as set by the U.S. Internal Revenue Service for such approved travel.

4. Termination or Suspension.

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten days written notice of intent to terminate, and (2) provided an opportunity for consultation with the terminating party prior to termination.

(b) If termination for default is effected by the District, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the Contractor at the time of termination may be adjusted to cover any

additional costs to the District because of the Contractor's default. If after the termination for failure of Contractor to fulfill its contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the District.

(c) The District may terminate or suspend this Agreement at any time for its convenience upon not less than thirty days prior written notice to Contractor. Not later than the effective date of such termination or suspension, Contractor shall discontinue all affected work and deliver all work product and other documents, whether completed or in progress, to the District.

(d) If termination for default is effected by the Contractor or if termination for convenience is effected by the District, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Contractor relating to written commitments that were executed prior to the termination.

5. Project Administrator, Project Manager & Key Personnel.

(a) District designates as its Project Administrator *[Insert name of person who will represent the District]* who shall have the authority to act for the District under this Agreement. The Project Administrator or his/her authorized representative shall represent the District in all matters pertaining to the work to be performed pursuant to this Agreement.

(b) Contractor designates _____ *[Insert name of person who will represent the Contractor]* as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to District at all reasonable times during the Agreement term.

(c) Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement. Contractor, at the sole discretion of District, shall remove from the Project any of its personnel assigned to the performance of services upon written request of District. Contractor has represented to District that certain key personnel will perform and coordinate the work under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of the District. In the event that District and Contractor cannot agree as to the substitution of key personnel, District shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows:

[Insert names of Contractor's key personnel - if no key personnel, delete the last sentence]

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under

this Agreement, Contractor shall obtain District's prior written approval to such employment. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor shall be fully responsible and liable for payment for, administration, completion, presentation, and quality of all work performed. If such persons are utilized, they shall be charged at cost. District reserves its right to employ other contractors in connection with this Project.

(b) If the work hereunder is performed by a design professional, design professional shall be directly involved with performing the work or shall work through his, her or its employees. The design professional's responsibilities under this Agreement shall not be delegated. The design professional shall be responsible to the District for acts, errors or omissions of his, her or its subcontractors. Negligence of subcontractors or agents retained by the design professional is conclusively deemed to be the negligence of the design professional if not adequately corrected by the design professional. Use of the term subcontractor in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use subcontractors for performance of any professional service under this Agreement.

(c) The District is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the District.

7. Skill of Employees. Contractor shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. Confidential and Proprietary Information. In the course of performing services under this Agreement Contractor may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the District. Should Contractor undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the District's prior express written consent.

9. Ownership of Data. Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the District for its use in any manner it deems appropriate. Contractor agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the District and waives and relinquishes all claims to copyright or intellectual property rights in favor of the District. Contractor shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Contractor shall use all reasonable efforts to ensure that any electronic files provided to the District will be compatible with the District's computer hardware and software. Contractor makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the District at the commencement of this Agreement. Contractor shall be

permitted to maintain copies of all such data for its files. District acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and, should District use these products or data in connection with additions to the work required under this Agreement or for new work without consultation with and without additional compensation to Contractor, Contractor makes no representation as to the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Work and shall have no liability or responsibility whatsoever in connection with such use which shall be at the District's sole risk. Any and all liability arising out of changes made by the District to Contractor's deliverables is waived against Contractor unless District has given Contractor prior written notice of the changes and has received Contractor's written consent to such changes.

10. Conflict of Interest.

(a) Contractor covenants that neither it, nor any officer or principal of its firm has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the District or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the District Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of the District in the performance of this Agreement. Contractor shall represent the interest of the District in any discussion or negotiation with franchise waste haulers and CalRecycle, and as such, may not accept compensation, commission or payment of any type from any such party or such party's agent.

(b) District understands and acknowledges that Contractor may be, as of the date of commencement of services under this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of the District relative to such projects. Any future position of the District on such projects may result in a conflict of interest for purposes of this section.

(c) No official or employee of the District who is authorized in such capacity on behalf of the District to negotiate, make, accept, or approve, or take part in negotiating, making accepting or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory, or similar function in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

11. Disclosure. Contractor may be subject to the appropriate disclosure requirements of the California Fair Political Practices Act, as determined by the District General Manager.

12. Non-Discrimination.

(a) During the performance of this Agreement the Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and the District. In performing this

Agreement, Contractor shall not discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (including cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. Contractor shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

(b) Contractor shall include the nondiscrimination and compliance provisions of this Section in all subcontracts.

13. Indemnification.

(a) Other than in the performance of design professional services by a design professional, which shall be solely as addressed by subsection (b) below, and to the full extent permitted by law, Contractor shall indemnify, immediately defend (with independent counsel reasonably acceptable to the District) and hold harmless the District, its Council, boards, commissions, employees, officials and agents (collectively "Indemnified Parties" or in the singular "Indemnified Party") from and against any claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs including but not limited to reasonable attorney's fees, court costs, expert witness fees and costs of alternate dispute resolution (collectively "Liabilities"), where same arise out of the performance of this Agreement by Contractor, its officers, employees, agents and sub-contractors. The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify and Contractor shall be obligated to defend in all legal, equitable, administrative or special proceedings upon tender to the Contractor of any claim in any form or at any stage of an action or proceeding, whether or not liability is established and the obligation extends through final judgment including exhaustion of any appeals. The Contractor's obligation to indemnify applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally determined that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined by said section 2782.8(c)(2) ("Design Professional") Design Professional shall indemnify, protect and hold harmless any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, or such acts or omissions of an officer, employee, agent or subcontractor of the Design Professional. Design Professional shall not have an immediate duty to defend an Indemnified Party, however, Design Professional's obligation to indemnify (including reimbursing the cost to defend) and hold the Indemnified Parties harmless applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally determined that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party the Design Professional's indemnification obligation shall be reduced in proportion to the established comparative liability. Within 30 days following Design Professional's receipt of a properly presented

written invoice Design Profession shall reimburse the Indemnified Party for the cost of reasonable attorney's fees and defense costs incurred by the Indemnified Party to the same extent of Design Professional's indemnity obligation herein. In no event shall the cost to defend charged to the Design Professional exceed the Design Professional's proportionate percentage of fault.

(c) The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to District, its employees and officials. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party unrelated to design professional services does not relieve Contractor from its separate and distinct obligation to defend District. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of District to monitor compliance with these requirements imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to provide an immediate defense to any Indemnified Party, as provided above, Contractor, upon notice from the District, shall defend the Indemnified Party at Contractor's expense by independent counsel reasonably acceptable to the District. Unless otherwise provided above, an Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended. Contractor may submit a claim to the District for reasonable defense costs (including attorney's and expert fees) incurred in providing a defense of any Indemnified Party to the extent such defense costs arise under principals of comparative fault from the Indemnified Party's active negligence, recklessness or willful misconduct.

(e) This obligation to indemnify and defend, as set forth herein, is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this Agreement or this Section.

14. Insurance.

(a) As a condition precedent to the effectiveness of this Agreement and without limiting Contractor's indemnification of the District, Contractor agrees to obtain and maintain in full force and effect at its own expense the insurance policies set forth in Exhibit "C" "Insurance" *[If there is no Exhibit B (Fee Schedule), see Sec. 3(a), above, Exhibit C may become Exhibit B]* attached hereto and made a part hereof. Contractor shall furnish the District with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf, along with copies of all required endorsements. All certificates and endorsements must be received and approved by the District before any work commences. All insurance policies shall be subject to approval by the District Legal Counsel and Risk Manager as to form and content. Specifically, such insurance shall: (1) protect District as an additional insured for commercial general and business auto liability; (2) provide District

at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to District's insurance program. Contractor's insurance is not expected to respond to claims that may arise from the acts or omissions of the District.

(b) District reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required herein by giving Contractor ninety days advance written notice of such change. If such change should result in substantial additional cost of the Contractor, District agrees to negotiate additional compensation proportional to the increased benefit to District.

(c) All required insurance must be submitted and approved the District Legal Counsel and Risk Manager prior to the inception of any operations by Contractor.

(d) The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the District. Non availability or non affordability must be documented by a letter from Contractor's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, Contractor's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which District may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect District's interests and pay any and all premium in connection therewith and recover all monies so paid from Contractor.

(e) By signing this Agreement, Contractor hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract. Unless otherwise agreed, a waiver of subrogation in favor of the District is required.

15. Independent Contractor. The parties agree that Contractor, its officers, employees and agents, if any, shall be independent contractors with regard to the providing of services under this Agreement, and that Contractor's employees or agents shall not be considered to be employees or agents of the District for any purpose and will not be entitled to any of the benefits District provides for its employees. District shall make no deductions for payroll taxes or Social Security from amounts due Contractor for work or services provided under this Agreement.

16. Claims for Labor and Materials. Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Agreement, so as to prevent any lien or other claim under any provision of law from arising against any District property (including reports, documents, and other tangible matter produced by the Contractor hereunder), against the Contractor's rights to payments hereunder, or against the District, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

17. **Discounts.** Contractor agrees to offer the District any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discounts to payment made under this Agreement which meet the discount terms.

18. **Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

19. **Dispute Resolution.** If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty days after issuance of the arbitrator's written decision, any party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

20. **Compliance with Laws.**

(a) Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California and the District including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California and shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

(b) If the Project is a "public work," or prevailing wages are otherwise required, Contractor shall comply with all provision of California Labor Code section 1720 *et seq.*, as applicable, and laws dealing with prevailing wages, apprentices and hours of work and Contractor must be in good standing and registered with the California Department of Industrial Relations in accordance with California labor Code section 1725.5.

(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder. For the term covered by this Agreement, the Contractor shall maintain or obtain as necessary, such permits and licenses and shall not allow them to lapse, be revoked or suspended.

21. **Assignment or Transfer.** This Agreement or any interest herein may not be assigned, hypothecated or transferred, either directly or by operation of law, without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

22. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, sent by facsimile ("fax") or certified mail, postage prepaid with return receipt requested, addressed as follows:

To District: Monterey Reginal Waste Management District
14201 Del Monte Boulevard
P.O. Box 1670
Marina, California
Marina, California 93933-1670
Fax: (831) 384-3567

To Contractor:

Fax (____) _____

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three days after deposit in the custody of the U.S. Postal Service. A copy of any notice sent as provided herein shall also be delivered to the Project Administrator and Project Manager.

23. Amendments, Changes or Modifications. This Agreement is not subject to amendment, change or modification except by a writing signed by the authorized representatives of District and Contractor.

24. Force Majeure. Notwithstanding any other provisions hereof, neither Contractor nor District shall be held responsible or liable for failure to meet their respective obligations under this Agreement if such failure shall be due to causes beyond Contractor's or the District's control except that an economic downturn of any type shall not be a justifiable cause for the failure to meet their respective obligations under this Agreement. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

25. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

26. Successors and Assigns. All of the terms, conditions and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment

27. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party

warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.

28. Waiver. A waiver of a default of any term of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

29. Severability. Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.

30. Construction, References, Captions. Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.

31. Advice of Counsel. The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.

32. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

33. Time. Time is of the essence in this contract.

34. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid.

IN WITNESS WHEREOF, Contractor and the District by their duly authorized representatives, have executed this Agreement, on the date first set forth above, at Marina, California.

**MONTEREY REGIONAL
WASTE MANAGEMENT DISTRICT**

CONTRACTOR

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

Attest: (Pursuant to Reso: 20____ - _____)

By: _____
Clerk of the Board

Approved as to form:

By: _____
District Legal Counsel

INSERT EXHIBIT A

Section 1 (a)

- SCOPE OF WORK -

[Final scope of work to be determined during negotiations with the selected firm.]

INSERT EXHIBIT B

Section 3 (a)

- FEE SCHEDULE -

[Final fee schedule to be determined during negotiations with the selected firm.]

B-1
Exhibit C - Insurance

Contractor agrees to provide insurance in accordance with the requirements set forth herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor shall furnish the District with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the District before any work commences. The District reserves its right to require complete, certified copies of all required insurance policies at any time. The following coverage shall be provided by Contractor and maintained on behalf of the District and in accordance with the requirements set forth herein. The District shall be named as an additional insured party as follows: "Monterey Regional Waste Management District and Agency, its Council, boards and commissions, officers, employees, agents, and volunteers."

Commercial General Liability (primary). Commercial general liability insurance covering Contractor's operations (and products where applicable) is required whenever the District is at risk of third party claims which may arise out of Contractor's work or presence on District premises. Contractual liability coverage is a required inclusion in this insurance.

General liability insurance coverage shall be at least as broad as ISO form CG 00 01 10 01 and approved in advance by the District Legal Counsel and Risk Manager. Total limits shall be no less than one million dollars (\$1,000,000) combined single limit per occurrence for general liability, bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be two million dollars (\$2,000,000). Contractor must give written notice to the District of any pending claim, action or lawsuit which has or may diminish the aggregate. If any such claim or lawsuit exists, Contractor shall be required, prior to commencing work under this Agreement, to restore the impaired aggregate or prove it has replacement insurance protection to the satisfaction of the District Legal Counsel and Risk Manager.

District, its Board of Directors, officers, employees, agents and volunteers shall be added as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contains the provisions required by this contract. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the District or any agent of District. Coverage is not expected to respond to the claims which may arise from the acts or omissions of the District. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices.

Umbrella Liability Insurance. Umbrella liability insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage.

Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policies limits shall be not less than one million dollars (\$1,000,000) per occurrence and in the aggregate, above any limits required in the underlying policies shall have starting and ending dates concurrent with the underlying coverage.

Business Auto. Automobile liability insurance is required where vehicles are used in performing the work under this Agreement or where vehicles are driven off-road on District premises, it is not required for simple commuting unless District is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

If automobile insurance is required for work under this Agreement coverage shall be at least as broad as ISO form CG 00 01 10 01 including symbol 1 (Any Auto) approved by the District Legal Counsel and Risk Manager. Coverage shall be endorsed to stated that the District, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insured with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible with a form equivalent to ISO form CG 20 10 10 93. Limits shall be no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. Starting and ending dates shall be concurrent. If Contractor owns no autos, a non-owned auto endorsement to the commercial general liability policy described above is acceptable.

Workers' Compensation/Employers' Liability. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under California law these coverages (or a copy of the State's Consent to Self-Insure) must be provided if Contractor has any employees at any time during the period of this Agreement. Policy(s) shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease and shall be scheduled under any umbrella policy described above. Unless otherwise agreed, policy(s) shall be endorsed to waive any right of subrogation as respects the District, its Council, boards and commissions, officers, employees, agents and volunteers.

Property Insurance. Property insurance, in a form and amount approved by the District Legal Counsel and Risk Manager, is required for Contractors having exclusive use of premises or equipment owned or controlled by the District. District is to be named a Loss Payee "As Its Interest May Appear" in property insurance in which the District has an interest, e.g., as a lien holder. Fire damage legal liability is required for persons occupying a portion of District premises.

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Contractor's profession, in a form and amount approved by the District Legal Counsel and Risk Manager, will be specified on a project-by-project basis if Contractor is working as a licensed professional. Contractor shall maintain such insurance for a period of five years following completion of the project. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Design professionals shall maintain such insurance in place until the expiration of the warranty period of the Project.

Contractor and District further agree as follows:

a) This Exhibit supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

b) Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.

c) All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the District or its operations limits the application of such insurance coverage.

d) Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

e) For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or toward performance of this Agreement.

f) All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Contractor, Contractor's employees, or agents from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the District.

g) Contractor's insurance shall be written by an acceptable insurance provided, as determined by the District, which satisfies the following minimum requirements: An insurance carrier authorized and admitted to do business in the State of California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current "A.M. Best" rating classification of "A-" or better and a financial size of \$10 million to \$24 million (Class V) or better, or a Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Self-insurance will not be considered to comply with these insurance specifications. Workers Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to the District.

h) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Contractor.

i) Contractor agrees to provide evidence of the insurance required herein, satisfactory to District Legal Counsel and Risk Manager, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Contractor's general liability and umbrella liability policies. Certificate(s) are to reflect that the insurer will provide at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Contractor agrees to provide complete copies of policies to District within ten days of District's request for said copies.

j) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

k) Any actual or alleged failure on the part of the District or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of District or any additional insured, in this or any other regard.

l) Contractor agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Contractor agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Contractor agrees to require that no contract used by any subcontractor, or contracts Contractor enters into on behalf of District, will reserve the right to charge back to District the cost of insurance

required by this Agreement. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with on behalf of District will be submitted to District for review. Contractor acknowledges that such contracts or agreements may require modification if the insurance requirements do not reflect the requirements herein. Failure of District to request copies of such agreements will not impose any liability on District, its Boards of Directors and commissions, officers, employees, agents and volunteers.

m) If Contractor is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

n) Contractor agrees to provide immediate notice to District of any claim or loss against Contractor that includes District as a defendant. District assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the District.

o) Coverage will not be limited to the specific location or individual entity designated as the address of the Project. Contractor agrees to have its coverage endorsed so that all coverage limits required pursuant to this requirement are available separately for each and every location at which Contractor conducts operations of any type on behalf of District. Contractor warrants that these limits will not be reduced or exhausted except for losses attributable to those specific locations and not by losses attributable to any other operations of Contractor.

p) Contractor agrees not to attempt to avoid its defense and indemnity obligations to District, its Council, boards and commissions, officers, employees, agents and volunteers by using as a defense Contractor's statutory immunity under workers' compensation or similar statutes.

r) Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Contractor and District or between District and any other insured or Named Insured under the policy, or between District and any party associated with District or its employees.

s) Contractor shall maintain commercial general liability, and if necessary, commercial umbrella liability insurance, with a limit of not less than one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

