

AGREEMENT FOR SOLID WASTE DISPOSAL & RECYCLING SERVICES

This Agreement for Solid Waste Disposal & Recycling Services (hereinafter referred to as the "Agreement") is entered into between the MT. DIABLO UNIFIED SCHOOL DISTRICT (hereinafter referred to as the "District") and CONCORD DISPOSAL SERVICE, INC., a California corporation (hereinafter referred to as the "Company"). The District and Company are sometimes singularly referred to as "Party" and sometimes collectively referred to herein as the "Parties." This Agreement for Solid Waste Disposal & Recycling Services will take effect as of the date signed by all Parties ("Effective Date").

Section I **Recitals**

WHEREAS, the District is expressly authorized under California Government Code Section 53060 to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, the Company has provided solid waste disposal and recycling services to certain schools within the District under a previous agreement and the Parties wish for the Company to continue performing such services for the District;

WHEREAS, the District and the Company hereby enter into this Agreement whereby Company will continue to provide solid waste disposal and recycling services at certain schools and properties owned and/or occupied by the District; and

WHEREAS, the provisions of California Government Code Section 53060 have been fully satisfied as the Company is specially trained, experienced, and competent to perform the solid waste disposal and recycling services requested by the District;

WHEREAS, the Company has established a School Recycling Program for preschool through twelfth grade students in the District. The program teaches students about the importance of recycling and decision-making that benefits the environment. The Company has formulated grade appropriate lesson plans that are appropriately tailored to each grade level, which allows students to gain a better knowledge of the importance of recycling and waste reduction through interactive demonstrations and lesson plans;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES above stated, and the terms, covenants and conditions contained herein, the District and the Company do hereby agree as follows:

Section II **Scope of Work**

The Company currently provides, and shall continue to provide for the duration of this Agreement, solid waste, mixed recyclables collection services, food waste recycling collection services, and yard waste recycling collection services, at certain schools and properties owned and/or occupied by the District, as outlined and further identified in **Exhibit “A,”** which is attached hereto and incorporated herein by this reference.

Section III **Consideration**

(a) **Front-End Loader Bin Solid Waste Disposal Services:** : The monthly rates charged by Company to the District as of the Effective Date for front-end loader bin waste disposal services is outlined in **Exhibit “B,”** which is attached hereto and incorporated herein by reference. The monthly rate structure outlined in **Exhibit “B”** applies solely to the front-end loader bin solid waste disposal services, front-end loader and cart bin mixed recyclables collection services, and food waste care containers and/or co-collected yard waste recycling collection services provided by the Company to the District.

(b) **Roll-Off Compactor Solid Waste Disposal Services:** The Company shall continue to charge the current monthly commercial rate authorized by the City of Concord under the franchise agreement awarded to Company (“Current Commercial Rate”), for all roll-off compactor solid waste disposal services provided to the District.

(c) **Loose Roll-Off Debris Box Disposal Services:** The Company shall continue to charge the Current Commercial Rate for all loose roll-off solid waste disposal services provided to the District.

(d) **Front-End Loader & Cart Bin Mixed Recyclables Collection Services:** The monthly rates charged by Company to the District as of the Effective Date for front-end loader and cart bin mixed recyclables collection services is outlined in **Exhibit “B.”**

(e) **Food Waste Cart Containers and/or Co-collected Yard Waste Recycling Collection Services:** The monthly rates charged by Company to the District as of the Effective Date for cart food waste and or co-collected yard waste recycling collection services is outlined in **Exhibit “B.”**

(f) **Additional Services:** Should the District request that the Company perform any additional services not identified in **Exhibit “B”** or subsections (b) and (c) of this Section, the Company shall perform such additional services at a twenty (20) percent discount below the Current Commercial Rate authorized by the City of Concord under the franchise agreement awarded to Company then in effect at the time of request.

(g) **Rate Adjustment:** During the term of this Agreement and any subsequent extensions thereof, Company shall be entitled to an annual increase to the rates charged by Company of up to five (5) percent per year without the need for approval by the

District. If Company requests an annual adjustment increase to the rates in excess of five (5) percent, the District shall consider the request for such an annual adjustment to the rates based on the reasonable causes presented in Company's request for the increased rate adjustment.

Section IV **Term**

The term of this Agreement shall be three (3) years from the Effective Date. The Company shall have the option, at its sole discretion, to extend this Agreement for two (2) additional one (1) year periods. If Company wishes to exercise its options to extend the Agreement for the two (2) additional one (1) year periods, it must provide written notice to the District no later than ninety (90) days prior to the expiration of the Agreement, but no sooner than twelve (12) months prior to the expiration of the Agreement. Upon election of the Company to extend this Agreement, the Parties agree to meet and confer at least sixty (60) days prior to expiration of the Agreement, and any extensions thereto, to negotiate a mutually acceptable rate structure for any extensions to this Agreement.

Section V **Independent Contractor**

The Company, in the performance of this Agreement, shall be and act as an independent contractor. Company understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled. Company shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, workers compensation insurance, social security and income taxes with respect to Company's employees.

Section VI **Materials**

The Company shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the solid waste disposal and recycling services to be provided pursuant to this Agreement.

Section VII **Representations**

(a) Representations of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of California with full legal right, power and authority to execute and deliver this Agreement and perform its obligations hereunder. This Agreement has been duly executed and delivered by Company and constitutes a legal, valid and binding obligation of the Company. Neither

the execution or delivery by Company of this Agreement, the performance of its obligations, nor its fulfillment of the terms and conditions hereof conflicts with, violates or results in a breach of any applicable law; or conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Company is a Party or by which Company or any of its properties or assets are bound, or constitutes a default thereunder. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the Company, except such as have been duly obtained prior to execution of this Agreement.

(b) Representations of the District. The District is a duly organized and validly existing school district, created within the laws of California with full legal right, power and authority to execute and deliver this Agreement, and perform its obligations hereunder. This Agreement has been duly executed and delivered by the District and upon execution constitutes a legal, valid and binding obligation of the District enforceable against the District in accordance with its terms. The District has complied with applicable law in entering into this Agreement. Neither the execution or delivery by the District of this Agreement, the performance of its obligations hereunder, nor the fulfillment by the District of the terms and conditions hereof: conflicts with, violates or results in a breach of applicable law; or conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the District is a party or by which the District or any of its properties or assets are bound, or constitutes a default thereunder. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the District, except such as have been duly obtained from District prior to execution of this Agreement.

Section XIII

Insurance

The Company further covenants and agrees to take out, maintain, and keep in full force and effect during the term of this Agreement the following insurance:

i. Workers' Compensation Insurance insuring said Company against liability for death or injury to any and all employees employed by the Company in the performance of the work of this Agreement, and complying with all requirements of California law;

ii. General Liability: \$2,000,000 per occurrence for 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 District and the other additional insureds or the general aggregate limit shall be twice the foregoing required occurrence limit.

iii. Automobile Liability: \$2,000,000 per accident for personal injury and property damage.

All of the foregoing coverages: (i) shall be on an occurrence basis, and not claims made; (ii) shall have a deductible which does not exceed \$25,000 per occurrence; (iii) shall name the District as an additional insured (except workers compensation insurance); and (iv) shall be delivered to District, upon written request, policies embodying the required coverages or, in lieu thereof, a certificate issued by the insurance carrier showing the required coverages to be in force pursuant to the foregoing.

To the extent permitted by the terms of Company's and District's insurance policies and applicable law, Company and District mutually waive (but only to the extent of the insurance coverage actually available for the occurrence concerned) their rights to recover from each other by way of subrogation, assignment or otherwise.

Section IX **Indemnity**

The work to be performed under this Agreement will be performed entirely at Company's risk, and Company assumes all responsibility for the condition of any equipment used in the performance of this Agreement.

(a) Company agrees to defend, protect, indemnify and hold harmless District and its officers, employees, agents, or volunteers from and against any claim, demand, expense, loss or liability arising out of the performance of this Agreement by Company, except such loss as may be caused by the negligent or willful misconduct of District.

Section X **Assignment**

(a) Assignment by Company. Company covenants and agrees not to subcontract its duties or rights under this Agreement to any other person or to sell, assign, or voluntarily or involuntarily transfer this Agreement, without the prior written consent of the District. However, District shall not unreasonably withhold its consent to any such assignment. It shall not be deemed to be an assignment, sale, or transfer under this Agreement if the ownership of Company is transferred to members of the Garaventa family or entities controlled thereby.

(b) Assignment by District. District covenants and agrees not to subcontract its duties or rights under this Agreement to any other person or to sell, assign, or voluntarily or involuntarily transfer this Agreement, without the prior written consent of the Company. However, Company shall not unreasonably withhold its consent to any such assignment.

Section XI

Independent Company

The Parties intend that their relationship be one of independent contractor or companies. District is interested only in the results to be achieved, and the conduct and control of the work will lie solely with the Company. Nothing contained in this Agreement or otherwise shall be construed so as to create a partnership between or a joint venture by Company and District or constitute either the agent or employee of the other. Company shall not represent itself to be an agent or employee of the District and has no authority, express or implied, to act on behalf of the District or to bind District to any obligation whatsoever. Employees of Company are not employees of District and are not entitled to any of the benefits that District provides for District employees.

Section XII
Breach and Right to Cure

Notwithstanding any of the provisions of this Agreement to the contrary no default by either Party hereto shall result in a breach of this Agreement or a termination or limitation of any rights of such Party in this Agreement unless and until the other Party shall have notified the defaulting Party in writing of said default, and (i) the defaulting Party shall have failed to cure said default within thirty (30) days after the receipt of said written notice where the default is capable of being cured within thirty (30) days, or (ii) where such default cannot, with the exercise of reasonable diligence, be cured within thirty (30) days, if such party immediately with due diligence, commences to cure, correct or remedy such default and thereafter diligently and continuously pursues such cure, correction or remedy to completion.

Section XIII
Notices

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows:

District

Mt. Diablo Unified School District
Attn:

Contractor

Concord Disposal Service, Inc.
Attn: R.M. Bonnifield, Esq.
4080 Mallard Dr.
Concord, CA 94520

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Section XIV
Entire Agreement of Parties

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. The Previous Agreement and any other prior or contemporaneous agreements among the Parties, whether written or oral, are hereby terminated and shall no longer be of any further force or effect. This Agreement cannot be amended, modified, waived, rescinded or terminated orally, but only by an instrument in writing, signed by both Parties to this Agreement.

Section XV
Severability

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

Section XVI
Incorporation of Recitals and Exhibits

The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

Section XVII
Cooperation

The Parties agree to meet and confer in good faith if any amendments or modifications are proposed and to cooperate reasonably and in good faith in the implementation of this Agreement.

Section XVIII
Governing Laws

This Agreement is made in accordance with, and shall be governed by and construed in accordance with, the laws of the State of California as they are interpreted and applied to persons resident in and transactions wholly occurring in the state of California.

Section XIX
Uncontrollable Circumstance

Either Party may be excused from its obligations hereunder if it shall be prevented from performing those obligations due to an uncontrollable circumstance provided such Party expeditiously takes all actions within its control to end, or to ameliorate the effects

of such uncontrollable circumstance within a reasonable period of time from the circumstance.

Section XX
Drafting of Agreement

This Agreement is the product of negotiation and preparation by and among each Party hereto and their respective authorized representatives and attorneys. Accordingly, all Parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one Party or another, or the attorneys for one Party or another, and shall be construed accordingly.

Section XXI
Authorized Signatories

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign.

Section XXII
Binding Effect

This Agreement shall be binding and inure to the benefit of the Parties hereto and their respective successors, members and assigns.

Section XXIII
Cost, Expenses in Connection with
Underlying Litigation, Mediation, or Arbitration

In the event of a dispute arising out of this Agreement, the parties agree to mediation before the Judicial Arbitration and Mediation Service or another mutually agreeable mediator as a condition of any further legal action. All costs of mediation shall be shared equally by the parties. If the dispute does not reach a full and final settlement at and/or following mediation, the dispute shall be resolved by binding arbitration in accordance with the Rules of the American Arbitration Association in effect at the time a demand for arbitration is filed with the Association. The parties hereto hereby stipulate that any arbitration action will be filed and heard by the American Arbitration Association. Any party to the dispute may file, in the manner provided by the Rules of the Association, a demand for arbitration. The written decision of the arbitrator appointed by the association will be final and conclusive as to all parties to the dispute. If any party fails or refuses to appear or participate in the arbitration proceedings, the arbitrator may decide the dispute on the evidence presented in the proceedings by the other party or parties to the dispute. The arbitrator will have the power and may award to any party or parties to the dispute any sums for costs, expenses and attorneys fees that the arbitrator deems proper. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction having jurisdiction thereof.

Section XIV
Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: _____
Name:
Title:
Date:

CONCORD DISPOSAL SERVICE, INC.

By: _____
Name:
Title:
Date: