

**Memorandum of Understanding between the City of San Leandro and
Oro Loma Sanitary District for Refuse, Green Waste and Recycling
Services in the L3 Area**

This Memorandum of Understanding (“Agreement”) is made and entered into as of the _____ day of _____, 2011 by and between the City of San Leandro (“City”) and Oro Loma Sanitary District (“District”).

RECITALS

WHEREAS, the City and the District wish to extend an existing mutual Agreement regarding refuse and recycling services within the City, presently provided by the District through its franchise agreement with Waste Management of Alameda County (WMAC), by entering into a new Agreement. The District has designated the portion of the City that receives residential, commercial and industrial refuse and recycling services by WMAC as the "L-3" area; and

WHEREAS, the City and District desire to enter into this Agreement to provide for the terms of service and the continuation of the Franchise Fee for the privilege of providing refuse services in the L-3 area; and

WHEREAS, this Agreement will represent the entire and integrated Agreement between the City and District and, except as expressly set forth herein, will supersede all prior negotiations, representations, agreements or approvals, either written or oral; and

WHEREAS, State law requires the City to be responsible for establishing and monitoring recycling programs to achieve defined goals for reducing the amount of refuse material that is placed in landfills. The City has the legal responsibility for recycling activities, in order to comply with the provisions of AB 939. The City has authorized the District to provide a recycling program in the L-3 area until September 1, 2012; WMAC presently provides this service for residents and businesses as part of its refuse franchise agreement with the District. The District is currently negotiating a new exclusive franchise agreement with WMAC for refuse service for an anticipated term of January 1, 2012 to August 31, 2024; and

WHEREAS, the District wants to continue to provide refuse and recycling services in the L-3 area whether through an exclusive franchise with WMAC or another service provider; and

WHEREAS, the City has the legal authority pursuant to its City Charter and the provisions of Chapter 5-5 of the San Leandro Municipal Code to require payment of a franchise fee for the privilege of providing refuse collection services within the L-3 area; and

WHEREAS, the City and the District will work cooperatively and in good faith to carryout and implement the terms of this agreement to provide quality and comprehensive refuse, green waste and recycling services to residents in the L-3 area; and

WHEREAS, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

- I. Upon execution of this Agreement, the District will provide refuse, green waste and recycling services for the L-3 area until September 1, 2024; thereafter, this agreement will continue indefinitely, unless terminated by either party upon giving written notice one (1) year prior to the effective termination date of any contract with third party contractors then in effect. The District will take no action to extend any franchise beyond August 31, 2024 without first providing written notification to City of its intent to do so at least one (1) year prior to taking any action.
- II. The District retains the right to negotiate, manage and contract with third party contractors to provide for solid waste, green waste and recycling services within the L-3 area. One (1) year prior to the expiration date of a service contract with third party contractors then in effect, the City and District shall meet to discuss whether they wish to continue this agreement under the existing terms and conditions. The first meeting will take place on or before September 1, 2023.
- III. As of the effective date of the new agreement for services between the District and WMAC or other new franchisee, and through August 31, 2024, subject to the provisions in Section X, the District will implement the following provisions to make the service level compatible with the services provided by the City's solid waste, green waste and recycling services contractor, Alameda County Industries (ACI):
 - (i) Provide residents up to two (2) 64-gallon recycling carts for bi-weekly collection.
 - (ii) Provide residents, upon request and at no additional cost, up to two (2) 96-gallon yard trimmings/food scraps carts for collection.
 - (iii) Offer commercial customers, upon request and at no additional cost, one (1) 96-gallon cart for recycling and one (1) 96-gallon cart for green waste/food waste recycling for weekly collection.
 - (iv) Provide the City with quarterly report data for the L-3 area in a format consistent to the data received from ACI, including but not limited to, customer counts by container size, garbage, recycling, organics tonnage data by sector, bulky goods pick-up counts and tons, and used oil/filter collection data.
 - (v) Sort through and recover materials from bulky goods collection with a minimum of 30% recovery.

- (vi) Distribute outreach to customers regarding new and existing services. Outreach shall be mailed to customers at the start of the contract. The District will provide the City the opportunity to review the outreach materials prior to mailing.
- (vii) Provide curbside household battery and mobile phone collection services.
- (viii) Provide solid waste and recycling collection services to the public schools within the L-3 area (Corvallis Elementary School, Dayton Elementary School, San Leandro High School, Thomas Jefferson Elementary School, and Washington Manor Middle School). Bin and cart services shall be provided at no charge to the schools, at current collection service levels or below. Debris box services shall be provided at the District's franchised rates in effect for the L-3 area. A public school shall receive solid waste (garbage) services at no cost upon meeting the following requirement:
 - Implement recycling collection in every classroom, meeting room and office at all the school's facilities; the District shall provide recycling bins to each school upon request; the school shall collect and recycle mixed paper, cardboard, bottles, cans, and all other materials accepted for recycling by WMAC. Representatives from WMAC and the District shall conduct waste audits to determine compliance at each school prior to the implementation of the no cost solid waste collection service, and from time to time thereafter. If, after initial compliance is established, noted deficiencies are reported in writing to the school, they must be corrected by the school within 30 days. Failure to correct said deficiencies within the allotted time shall result in the school beginning to pay the franchised solid waste rates then in effect in the L-3 area.
- (ix) Provide WMAC commercial recycling staff (20 hours per week), to conduct outreach in the L-3 area.
- (x) Provide residential collection of used automobile oil filters.
- (xi) Provide residential collection of food scraps.
- (xii) Strive to achieve the goal of 75% diversion by 2020 by taking the following actions:
 - Work with Multi-Family property owners and managers to implement recycling services as mandated by state and local laws and conduct public outreach to owners, managers and tenants about recycling requirements and services available through the District on an annual basis;
 - Conduct public outreach through annual billing inserts, a direct mailing piece, and the Oro Loma newsletter to promote the benefits of recycling and inform single family residential customers of the availability of up to two (2) 64-gallon recycling carts and up to two (2) 96-gallon green waste/food waste carts per unit;

- Conduct public outreach to commercial customers through direct contact and direct mailing (annually) to promote the availability of one (1) 96-gallon recycling cart and one (1) 96-gallon green waste/food waste cart for weekly collection.
 - Engage in active communication with the City regarding any new programs approved by Alameda County Waste Management Authority (ACWMA) as part of the Strategic Plan, and implement them by mutual agreement, so that the City and District participate at the same levels.
- (xiii) Meet the definition of “Adequate Commercial Recycling” as established by ACWMA to ensure future Measure D funding.
- IV. If changes in state or local laws mandate the City of San Leandro to implement specific diversion programs, the District shall provide the specific mandated services or programs in the L-3 area. If new state or local laws mandate higher diversion rates, the District will implement any services or programs necessary to achieve the higher diversion rate. The District will consult with the City to determine the appropriate services and programs.
- V. It is the City’s intention to continue to impose a franchise fee on WMAC or other franchisee in the amount of 12% of total revenues generated from all solid waste/refuse collection billings within the L-3 area, through August 31, 2024.
- VI. The District agrees to remit to the City an amount up to 1/3 of all Measure D Fees collected by the District during the previous fiscal year on behalf of the L-3 area (currently, the City’s share would be approximately \$39,000), for payment or reimbursement of actual costs associated with co-sponsoring certain additional recycling programs or events, which, in the sole opinion of the City, are compatible with other cities’ recycling programs or are in the best interests of the residents within the L-3 area. The District will pay vendors or release such funds to the City provided that the use of such funds is in compliance with the provisions of Measure D.
- VII. At least one year prior to the expiration of the franchise agreement between the District and WMAC or other franchisee, the City will advise the District in writing of any and all service level changes or enhancements for the L-3 area that the City wishes to include in the solid waste and recycling contract extensions with the District’s existing contractor and/or included in a Request For Proposal issued pursuant to a competitive bid type process. Such request must be reasonably attainable, and reasonably consistent with similar services provided by, or scheduled to be provided by the City’s solid waste/recycling contractor for City areas not encompassing the L-3 area. The City will further issue a similar letter to the District at least one (1) year prior to the expiration date of subsequent contracts negotiated by the District.

- VIII. The City and the District agree that this Agreement is in the best interests of the City, the District, and the residents and businesses in the L-3 area. Therefore, the City and the District hereby agree and endorse this Agreement as being in the best interests of their respective constituents.
- IX. The City and District hereby agree that each has taken the appropriate steps necessary to authorize and approve the Agreement stated herein. Specifically, the City Council took action at its meeting on _____ and approved the terms and conditions set forth herein, and has authorized and directed the City Manager to enter into this final agreement regarding the matters stated herein. Similarly, the District Board of Directors has also taken action at its meeting on _____, and approved the terms and conditions set forth herein and authorized the execution of this final agreement.
- X. The City shall indemnify, defend and hold harmless the District and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, by (a) the willful misconduct, negligent violations of law, or negligent acts or omissions of the City or its officials, officers, employees, agents and volunteers, or (b) acts for which they could be held strictly liable. The foregoing obligation of the City shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the District or its officers, employees, agents, or volunteers and (2) the actions of the City or its employees, subcontractors, or City Council approved and authorized agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of the City to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code and authorized by Government Code section 895.4.

In addition, the City agrees to indemnify and defend the District against any and all demands, losses, liability, claims, suits, actions, damages, causes of action and customer complaints (together, the "Claims") arising out of the provision of free services to L-3 area customers as provided for herein. The foregoing obligation of the City will arise only upon City's express written acceptance of a tender from the District to respond to any such Claims, which shall be City's express desire for the District to continue to provide services at no cost to L-3 area customers until such obligation is terminated by the Parties by a separate written amendment to Section III. If City does not respond within 15 days to District's tender or rejects an aforementioned tender, District shall have no further obligation to provide services at no cost to the L-3 area customers, and may charge for services provided from the date tender is rejected. Upon City rejection of a tender and simultaneous extinguishment of District obligation to provide free services to L-3 area customers, District understands and agrees that City's obligation to indemnify and hold harmless District for any and

all Claims is automatically terminated, and District shall bear the responsibility to defend itself from such Claims. The other provisions of this Agreement shall remain in full force and effect.

The District shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, by (a) the willful misconduct, negligent violations of law, or negligent actions or omissions of the District or its officials, officers, employees, agents, and volunteers, or (b) acts for which they could be held strictly liable. The foregoing obligation of the District shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents or volunteers and (2) the actions of the District or its employees, subcontractors, or District Board approved and authorized agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of the District to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code and authorized by Government Code Section 895.4.

To the extent any claims or litigations are instituted by any third party, both the City and the District agree to cooperate with each other as well as any legal counsel involved in representing the parties as to any reasonable activity requested or required in any legal proceeding related to this Agreement. Said cooperation includes without limitation, providing counsel with any and all relevant and non-privileged information in a timely fashion as well as making available any requested officers, directors, staff and/or employees to any and all necessary proceedings as required to defend against said claims.

- XI. Both the City and the District disclose and agree that they have each undertaken significant concessions and waived potential rights based upon the promises, representations, actions and agreements of one another in negotiating and including each other to enter into this agreement. The City agrees to not pursue any right it may have to assume responsibility for refuse, green waste and recycling services in the L-3 area during the term of this Agreement. The Parties expressly agree that they will be held strictly liable for any and all losses arising from either party's intentional refusal to abide by the terms of this Agreement.
- XII. The City and District hereby disclose to one another and expressly agree and affirm that the law firm of Meyers Nave Riback Silver & Wilson serves as City Attorney and General Counsel for the City and the District, respectively, and has previously and may continue to represent both parties in discussions and negotiations for these and other matters, including without limitation providing

advice and counsel to each of the respective parties as well as preparation of the final form of this agreement, submitting the agreement and providing recommendations to each of the entities governing bodies. Both the City and District expressly authorize the law firm to continue its representation of both entities, and expressly agree that such representation does not pose a conflict of interest for the law firm. To the extent the potential for a conflict may have existed in the past or may exist now or in the future, both the City and District expressly waive any such potential conflicts as they pertain to the law firm on this matter.

MISCELLANEOUS PROVISIONS

Mediation. If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and District, as parties to this Agreement, agree to diligently endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service and/or mediator before having recourse to a judicial forum.

Venue. If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the remaining provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties. However, this provision shall not be deemed to authorize or approve the transfer or assignment of any rights, duties or obligations of the parties.

Integration; Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and District and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The parties hereby accept the terms here and above and execute the Agreement as authorized by the City Council and Sanitary District Board of Directors, respectively.

Lianne Marshall,
Interim City Manager

Jason J. Warner,
General Manager

Approved as to form:

Approved as to form:

Jayne W. Williams,
City Attorney

Jennifer E. Faught,
District Counsel

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