

**COMPOSTABLE MATERIALS  
HANDLING FACILITY  
OPERATING AGREEMENT  
FOR  
OJAI VALLEY ORGANICS  
RECYCLING CENTER**

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**COUNTY OF VENTURA  
STATE OF CALIFORNIA  
AGREEMENT FOR THE OPERATION OF THE  
OJAI VALLEY ORGANICS RECYCLING CENTER,  
A COMPOSTABLE MATERIALS HANDLING FACILITY (CMHF)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between the **COUNTY OF VENTURA** (hereinafter "County") and **PROGRESSIVE ENVIRONMENTAL INDUSTRIES, INC.**

(hereinafter "Operator"), sometimes singularly referred to as the "party" and collectively referred to as the "parties" to this AGREEMENT.

**RECITALS**

**WHEREAS**, a Solid Waste facility may be operated within the Unincorporated Area of the County only upon the granting of a franchise or contract by the County or upon the Operator of a Solid Waste facility entering into an agreement with the Ventura County Board of Supervisors to operate such a facility as provided in Section 4760-1 of the Ventura County Ordinance Code; and

**WHEREAS**, for purposes of the Ventura County Ordinance Code, a Solid Waste facility includes any facility engaging in the commercial composting, chipping, grinding, or other processing of yard debris and green materials and the sale of products derived from these operations; and

**WHEREAS**, the County has determined the siting and operation of Compostable Materials Handling Facilities in the Unincorporated Area of the County require public agency control and supervision best accomplished through the use of an agreement between the County and the Compostable Materials Handling Facility Operator; and

**WHEREAS**, the County is the owner of that parcel of real property, described as Assessor's Parcel No. 032-0-070-070, located at the terminus of the Old Baldwin Road in the Ojai Valley, ("Property"); and

**WHEREAS**, Operator is the owner/operator of the OJAI VALLEY ORGANICS RECYCLING CENTER and has the exclusive right to occupy and operate the Compostable Materials Handling Facility on the Property subject to obtaining the necessary governmental approvals and permits and complying with applicable laws.

**NOW, THEREFORE**, the County and Operator, for, and in consideration of, the covenants and agreements as hereinafter set forth and for other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, do mutually agree as follows:

### **ARTICLE 1. DEFINITIONS**

Section 1.1 **AB 939 FEE**. A charge required by the County to ensure compliance of the Operator with the planning, reporting, and diversion requirements of the Act. The AB 939 Fee shall be chargeable for the acceptance and processing of Organic Materials. Regardless of the posted Gate Rates or other Rates charged or collected by the Operator for the acceptance and processing of Organic Materials at the Compostable Materials Handling Facility, the AB 939 Fee shall be collected in full and without discount or reduction for payment to the County pursuant to Section 4.3. The amount of the AB 939 Fee is established in accordance with Section 4.2 (Application of AB 939 Fee).

Section 1.2 **ACT**. "Act" means the California Integrated Waste Management Act of 1989 (commencing with Section 40000 of the Public Resources Code), as amended.

Section 1.3 **AGREEMENT**. "Agreement" means this Agreement. This Agreement supersedes all prior agreements and licenses between the parties governing the operation on the Property. This Agreement is in lieu of a franchise and nothing in this Agreement is to be construed as creating a franchise or deemed to be a franchise.

Section 1.4 **BOARD**. "Board" means the Ventura County Board of Supervisors.

Section 1.5 **COMMENCEMENT DATE**. "Commencement Date" means the date upon which the County executes this Agreement.

Section 1.6 **COMMERCIAL HAULERS**. "Commercial Haulers" means Solid Waste or Organic Materials haulers, including temporary haulers, operating under contract or franchise with the County, the cities, special districts, or other public agencies.

Section 1.7 **COMPOSTABLE MATERIAL**. "Compostable Material" means any Organic Material that when accumulated will become active compost as defined in Title 14 California Code of Regulations, Section 17852(a)(1), which states in part: "(that) 'Active Compost' means compost feedstock that is in the process of being rapidly decomposed and is unstable. Active compost is generating temperatures of at least 50 degrees Celsius (122 degrees Fahrenheit) during decomposition; or is releasing carbon dioxide at a rate of at least 15 milligrams per gram of compost per day, or the equivalent of oxygen uptake."

Section 1.8 **COMPOSTABLE MATERIALS HANDLING FACILITY (CMHF)**. "Compostable Materials Handling Facility" means the site where the delivery, acceptance, and processing of Organic Materials, and any other allowed or permitted use, occurs as described in the Permits for operation from Regulatory Agencies, including the Conditional Use Permit.

Section 1.9 CONDITIONAL USE PERMIT (CUP). "Conditional Use Permit" or "CUP" means Conditional Use Permit No. 4408, including all modifications thereof issued by the County under its regulatory authority.

Section 1.10 COUNTY. "County" means the County of Ventura, a political subdivision of the State of California.

Section 1.11 COUNTY'S CONTRACT HAULERS. "County's Contract Haulers" mean those haulers authorized to conduct operations within the Unincorporated Area and who have executed a residential, commercial, or temporary hauling agreement with the County.

Section 1.12 DELIVERY PRIVILEGES. "Delivery Privileges" means the privilege to deliver Organic Materials at the Compostable Materials Handling Facility in accordance with applicable laws, regulations, and Permits.

Section 1.13 DIRECTOR. "Director" means the Director of the County's Water and Sanitation Department or the Director's designee.

Section 1.14 EMERGENCY. "Emergency" means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geological movements, as well as such occurrences as riots, accident, and sabotage.

Section 1.15 GATE FEE COLLECTION SYSTEM. "Gate Fee Collection System" means all equipment, hardware, and accompanying software utilized for purposes of assessing, collecting, and accounting for tonnages received by, processed at, or shipped from, the Compostable Materials Handling Facility.

Section 1.16 GATE RATES. "Gate Rates" are synonymous with "tipping fees" or "processing charges" and mean the actual fee amounts posted at the Compostable Materials Handling Facility and chargeable for the acceptance and processing of Organic Materials as shown on the Schedule of Processing Charges (see Exhibit "A").

Section 1.17 HAZARDOUS WASTE. "Hazardous Waste" means waste that is deemed hazardous in accordance with federal, state, and local laws, regulations, and definitions.

Section 1.18 HOURS OF OPERATION. "Hours of Operation" are those times during which the use of processing equipment and other Compostable Materials Handling Facility related machinery necessary for operations of the CMHF in compliance with all Permits and this Agreement shall be allowed.

Section 1.19 HOURS OF PUBLIC ACCESS. "Hours of Public Access" means those times when the public may enter the Compostable Materials Handling Facility to deliver Organic Materials as are prescribed by the conditions of applicable Permits.

Section 1.20 MANDATED FEES. "Mandated Fees" means those monies required from the Operator by any Regulatory Agency for the purpose of funding federal, State, or regional programs. Mandated Fees shall not include any fines or noncompliance penalties imposed by Regulatory Agencies on the Operator for violations of any Permits, laws, or regulations.

Section 1.21 MUNICIPAL HAULERS. "Municipal Haulers" means those haulers authorized to conduct operations within the County for collection of municipal Solid Waste or Organic Materials within jurisdictional boundaries of a municipal entity and who have an executed residential or commercial hauling agreement.

Section 1.22 ORGANIC MATERIALS. "Organic Materials" means those items listed under Title 14 California Code of Regulations, Section 17852, as amended. For purposes of this Agreement, "Organic Materials" shall also include biomass allowed by applicable permits to be received and processed, when generated from public, private, commercial, or residential property.

Section 1.23 PERMANENT CAPITAL IMPROVEMENT EXPENSE. "Permanent Capital Improvement Expense" means the actual out-of-pocket expense including, but not limited to, in-house and subcontracted labor costs needed to acquire, transport, and permanently install equipment, or other improvements at the CMHF without mark-up by the Operator.

Section 1.24 PERMITS. "Permits" mean all governmental approvals, entitlements, clearances, or classifications, without limitation, necessary to allow the Operator to operate the CMHF after the Commencement Date.

Section 1.25 PROPERTY. "Property" means the 11.7 acre portion of a 112.23 acre parcel (Assessor's Parcel #032-0-070-070) located at 534 Old Baldwin Road, Ojai, California 93023, which is owned by the County and utilized by the Operator as a CMHF.

Section 1.26 PROPERTY CONDITION SURVEY. "Property Condition Survey" shall mean a documented inspection, completed by the County detailing the condition of the Property. "Property Condition Survey" shall include the initial Property Condition Survey conducted prior to the Commencement Date, the interim Property Condition Survey conducted in accordance with Section 2.4 (List of Property Repairs), and/or the final Property Condition Survey conducted in accordance with Section 2.5 (Activities Upon Expiration or Termination of the Agreement). At the time of each Property Condition Survey, the Operator shall be provided the opportunity to be present.

Section 1.27 PROPERTY RESTORATION. "Property Restoration" means all activities required to return the Property (including the CMHF) into a condition documented by the initial Property Condition Survey (including any updates required as a condition of a Permit).



Property Restoration includes but is not limited to:

- (1) The complete removal from the Property (including the CMHF) of all the Operator's equipment, personnel, and property;
- (2) The complete removal from the Property (including the CHMF) of all Organic Materials received for recycling, processed, or partially processed, Organic Materials and the products thereof;
- (3) The complete clean-up of the Property (including the CMHF) and repair and remediation of any damage thereto, including those repairs identified in Section 2.5 (Activities Upon Expiration or Termination of the Agreement), that occurred because of the Operator's activities under this Agreement, whether or not such damage was the fault of the Operator.

Section 1.28 REGULATORY AGENCY. "Regulatory Agency" means any federal, state, county, or local agency, and their successors delegated police power to enforce laws, statutes, and ordinances as they apply to CMHF's.

Section 1.29 SCHEDULE OF PROCESSING CHARGES. "Schedule of Processing Charges" means a list of the types of Organic Materials (refer to Title 14 California Code of Regulations, Section 17852) accepted for processing at the CMHF and the corresponding charges for acceptance and/or processing of each type of Organic Material (see Exhibit "A").

Section 1.30 SELF-HAULERS. "Self-Haulers" means all users of the CMHF other than Commercial and Municipal Haulers of Organic Materials.

Section 1.31 SOLID WASTE. "Solid Waste" means all putrescible and non-putrescible solid, semi-solid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded residential and industrial appliances, manure, vegetable (green waste) and animal solid and semi-solid wastes, other discarded solid and semi-solid wastes, and dewatered, treated or chemically fixed sewage sludge, but shall not mean or include any Hazardous or Universal Waste.

Section 1.32 UNIVERSAL WASTE. Federal and State Hazardous Waste regulations designate a category of lower risk Hazardous Wastes called "Universal Waste." This category includes many common items, such as fluorescent lamps, cathode ray tubes, batteries, mercury contained in manufactured articles, and other materials described in the Universal Waste Rule (California Code of Regulations, Title 22, Division 4.5, Chapter 23). In general, Universal Waste may not be discarded in Solid Waste landfills.

## **ARTICLE 2. TERM**

Section 2.1 **TERM**. The term of this Agreement shall start with the COMMENCEMENT DATE and shall expire five (5) years after the COMMENCEMENT DATE. Without further modification of this Agreement, the term may be extended for any period provided both the Director and the Operator agree in writing to extend the term. Furthermore, it is the intent of the County to establish a new standard operating agreement for all CMHF operating within the County of Ventura on or about June 30, 2024. The parties acknowledge that this Agreement may be superseded by a revised operating agreement upon the mutual consent of the parties.

Notwithstanding the provisions of this Section 2.1, either the Director or the Operator may terminate this Agreement at any time without cause by giving the other party ninety (90) days written notice in advance of such termination. If such notice is provided, the termination date shall be the ninetieth (90<sup>th</sup>) day after the termination notice is deposited in the mail, postage prepaid, or is delivered to the other party, whichever is earlier. Such termination would require the Operator to cease operation of the CMHF pursuant to Ventura County Ordinance Code, Section 4760-1.

### **Section 2.2 TERMINATION ON ACCOUNT OF MATERIAL BREACH.**

Notwithstanding the provisions in Section 2.1, if the Operator commits a material breach of this Agreement as defined in Section 5.2 (Material Breach), the Director may terminate this Agreement with thirty (30) days advanced written notice. If such notice is provided, the termination date shall be the thirtieth (30<sup>th</sup>) day after the termination notice is deposited in the mail or is delivered to the other party, whichever is earlier.

Section 2.3 **TERMINATION ON ACCOUNT OF UNAVAILABILITY OF THE PROPERTY OR REVOCATION OF CUP.** The parties acknowledge that the Property may be sold by the County at any time or may be subject to Regulatory Agency actions, and/or may be subject to remedial action because of conditions on the Property not related to activities under this Agreement. The Director may terminate this Agreement upon ninety (90) days advance written notice, without any liability to the Operator, if there is such a sale, Regulatory Agency action, or if any remedial action becomes necessary. If such notice is provided, the termination date shall be the ninetieth (90<sup>th</sup>) day after the termination notice is deposited in the mail or is delivered to the Operator. In addition, the Director may terminate this Agreement on thirty (30) days advance written notice if the CUP is revoked. If such notice is provided, the termination date shall be the thirtieth (30<sup>th</sup>) day after the termination notice is deposited in the mail or delivered to the Operator.

Section 2.4 **LIST OF PROPERTY REPAIRS.** Prior to termination or expiration of this Agreement, no later than eighty-five (85) days in advance of such expiration or termination date or, where termination occurs by thirty (30) days notice, no later than twenty-five (25) days in advance of such termination date, the County shall conduct an interim Property Condition Survey.

Based upon the interim Property Condition Survey, the Director shall prepare a list of repairs to be completed by the Operator to return the Property to the condition as

documented in the initial Property Condition Survey. The Operator, at its sole expense, shall correct identified repairs in accordance with Section 2.5 (Activities Upon Expiration or Termination of the Agreement).

**Section 2.5 ACTIVITIES UPON EXPIRATION OR TERMINATION OF THE AGREEMENT.** In the event of expiration or termination of this Agreement, no later than eighty (80) days in advance of such expiration or termination date or, where termination occurs by thirty (30) days notice, no later than twenty (20) days in advance of such termination date, the Operator shall commence all Property Restoration activities, or any part thereof, as directed by the Director in accordance with a schedule determined by the Director, to be completed no later than the expiration or termination date. All Property Restoration shall be at the sole expense of the Operator. In addition, the Director may provide written directions to the Operator regarding cessation of the Operator's activities under this Agreement. Such directions shall be determined solely by the Director. As directed, the Operator's activities shall be conducted at the Operator's expense. Such directions may include one or more of the following:

- (1) Continue to accept delivery of Organic Materials to the CMHF until a date certain, as determined by the Director, no later than the expiration or termination date.
- (2) Cease accepting delivery of Organic Materials to the CMHF as of a date certain, as determined by the Director, unless otherwise agreed by the parties, no earlier than thirty (30) days before the expiration or termination date.

Within five (5) working days before termination or expiration of this Agreement, the County and Operator shall conduct a final Property Condition Survey to determine whether the Operator has completed all Property Restoration. The Operator shall be liable for costs of such work and any resulting damages identified by County in the final Property Condition Survey.

### **ARTICLE 3. PERFORMANCE OF OPERATOR**

**Section 3.1 OPERATION OF COMPOSTABLE MATERIALS HANDLING FACILITY.** The Operator shall operate the CMHF in compliance with all federal, state, and local laws, all terms and conditions of this Agreement and all applicable Permits.

**Section 3.2 ORGANIC WASTE FLOW AND REVENUE STREAM.** This Agreement does not grant the Operator exclusivity with respect to the processing of Organic Materials generated, collected, or sorted in any area of the County. The County does not guarantee that the Operator will receive revenue in any amount. Nothing in this Agreement guarantees to the Operator the availability of Organic Materials to the CMHF.

Subject to the provisions of Section 3.7 (Non-Discriminatory Service) of this Agreement, nothing in this Agreement shall be construed as limiting any person or

company, the County, or any other local government agency from entering into Organic Waste flow control or rate agreements with the Operator.

Section 3.3 PERMITS. The Operator shall not operate the CMHF prior to obtaining and maintaining all necessary Permits from the appropriate Regulatory Agencies. Prior to the Commencement Date and annually thereafter, the Operator shall provide a copy of all required Permits and approvals to the Director.

Upon receipt of any notices of violation or revocation of any Permit relating to the CMHF, the Operator shall, within seventy-two (72) hours of receiving such notice, notify the Director in writing of such receipt. The Operator shall observe and comply with the Hours of Operation required as a condition of any Permit.

Section 3.4 GATE FACILITIES. The Operator shall furnish, construct, and thereafter maintain a "Gate Fee Collection System" to expedite the fee transactions. CMHF plans for the fee collection facilities shall be consistent with the Conditional Use Permit.

Section 3.4.1 WEIGHT SCALES. If reasonable and practical, the Operator shall supply, construct, and maintain weight scales as necessary to expedite the fee transactions, reporting requirements, prevent traffic back up, and allow for necessary preventive maintenance and occasional repairs. Weight scales shall be compatible with any computerized Gate Fee Collection System and with the County's reporting requirements.

The following is applicable to the maintenance and use of weight scales:

- (1) Weight scales are to be open and in working order during all Hours of Public Access at the CMHF, including during emergencies pursuant to Section 3.6 (Emergency Access).
- (2) All vehicles accessing the site must use the main entrance. All delivery vehicles transporting Organic Materials shall be recorded by the Gate Fee Collection System.
- (3) The Operator shall contract with a Registered Service Agent to perform regular maintenance for continuous operation of weight scales and to perform repairs as needed within forty-eight (48) hours to minimize downtime.
- (4) Only weight scales in compliance with all applicable state and local requirements for design, accuracy, and certification as legal for trade shall be used.
- (5) The Operator shall submit to weight scale inspections and checks for accuracy during Hours of Operation as required by the State of California and the County Division of Weights and Measures, and maintain required certifications from the state and the County.

- (6) The Operator shall supply, deliver, and maintain utilities to the CMHF and be responsible for all on-site and off-site costs and service charges in connection therewith.

Section 3.4.2 ALTERNATIVE WEIGHT MEASUREMENT. In the event no weight scale is available or operable at any given time and the condition cannot be avoided, the CMHF shall temporarily close or vehicles shall be charged based upon a flat fee as outlined per Exhibit "A".

Section 3.4.3 OPERATION OF GATE FEE COLLECTION SYSTEM. During all Hours of Public Access, the Operator shall operate the Gate Fee Collection System, including all labor and materials necessary with respect thereto, except as otherwise specifically provided in this Agreement.

Section 3.5 REPORTS AND PAYMENT OF FEES. At its own expense, the Operator shall provide the Director with written reports in a form or format prescribed by the Director while also including payment for all applicable fees. Such reports shall include, without limitation, the following:

Section 3.5.1 QUARTERLY REPORTS. The Operator shall, within thirty (30) days following the last day of each quarter (or no later than April 30, July 30, October 30, and January 30 of each calendar year, as applicable), furnish the County with quarterly reports with accurate information on the type of materials received, and include the identification of the hauler name and/or customer name, gross tonnages received, processed and/or shipped, together with the appropriate jurisdiction of origin, or an allocation by jurisdiction of origin for all tons either received, processed, and/or shipped.

For materials shipped from the site, the conversion table as shown under Exhibit "C" will be used to determine weights of processed materials if no weight scale is available or operable. Any residual waste disposed at a landfill must also be allocated in the same manner and proportion to the original jurisdiction of origin as the original gross weight received for processing. Such quarterly reports shall be in a format approved by the Director.

Section 3.5.2 PAYMENT OF FEES. Notwithstanding Section 4.3 (Application of Mandated Fees), the Director may waive up to two and one half percent (2.5%) of the quarterly AB 939 Fee provided the Operator meets the following two conditions, as applicable:

- (1) Unincorporated Area Self-Haul customers receive a minimum of a two and one half percent (2.5%) discount off the posted Gate Rates; and
- (2) The quarterly reports are accurate and complete pursuant to the reporting requirements of this Agreement and provided to the County pursuant to Section 3.5.1.

Failure to comply with these provisions shall nullify and void the partial waiving of the AB 939 Fee for the affected quarter. Except as otherwise provided in this

Agreement, the Operator shall charge the Rates in accordance with the posted Gate Rates for all Organic Materials tonnage received at the CMHF.

Concurrently with the quarterly reports provided pursuant to Section 3.5.1 (Quarterly Reports), Operator shall remit to the County the AB 939 Fee due pursuant to the applicable tonnage and/or loads accounted for during the preceding quarter by the Gate Fee Collection System as required by law, regulation, or this Agreement. For the purposes of this section, the post mark date shall be considered as the date of payment when properly endorsed by the United States Postal Service.

Section 3.6 EMERGENCY ACCESS. In addition to the Hours of Public Access specified by Permit, it may be necessary and appropriate to allow access to the site due to Emergencies as determined to exist by the County for the delivery of Organic Materials generated or created by such Emergencies. During such Emergencies, no additional charge or increase will occur in the posted Gate Rate.

Section 3.7 NON-DISCRIMINATORY SERVICE. Operator shall provide non-discriminatory service for all users of the CMHF, provided facility users and haulers abide by all rules and regulations. The Operator retains the right to refuse Delivery Privileges to any Commercial, Municipal, or Self-Hauler failing to abide by such rules and regulations or failing to pay the appropriate fees as shown on the Schedule of Processing Charges.

Section 3.8 DIVERSION AND MARKET DEVELOPMENT PROGRAMS, the Operator shall cooperate with the County and the City of Ojai by participating in programs designed to meet the diversion and reporting requirements of the Act and other applicable state and local laws and regulations. Such programs may include, without limitation, community cleanups, public education, Organic Materials market development, and the resolution of mandated reporting issues for the CMHF.

Section 3.9 RECORDS. The Operator shall maintain separate and accurate books, records, fee slips, documents, and other evidence for the CMHF necessary to implement all provisions of this Agreement. In accordance with Ventura County Ordinance Code, Section 4780-3, and Title 14 California Code of Regulations, Section 17869, the Operator shall retain all records for a period of five (5) years. Upon seven (7) days advance written notice, the County shall have the right to audit the records required herein at any time during Hours of Operation.

The cost of the audit shall be borne by the Operator when inaccuracies in the records result in a material difference in, without limitation, the following: Gate Rate charges, fee assessments, payments, or tonnages. For purposes of this Agreement, material difference shall mean a difference of ten percent (10%) or more by weight or volume of Organic Materials received or shipped, or of fees owed.

Section 3.10 PENALTIES. Fees required pursuant to Section 3.5.2 (Payment of Fees) received after the due dates specified in Section 3.5.1 (Quarterly Reports) shall incur a late charge penalty on the amount due, as adjusted if necessary, calculated at an annual rate of twelve percent (12%) for any reports received after thirty (30) days

from the end of the reporting period. For the purposes of this section, the post mark date shall be considered as the date of payment when properly endorsed by the United States Postal Service.

#### **ARTICLE 4. RATES**

Section 4.1 **GENERAL**. This Agreement sets forth the principles and procedures to be followed by the parties to establish and adjust the Rates. It is the intent of this Agreement to establish Rates at the CMHF reflective of the actual costs of providing Organic Materials processing services, generating a profit or return on investment mutually acceptable to both parties while ensuring a Rate structure comparable to other CMHF's operating within the County.

Section 4.2 **APPLICATION OF AB 939 FEE**. The County has the authority under the Ventura County Ordinance Code, Sections 4740 and 4760-2, and the California Public Resources Code, Sections 41901 - 41903 to impose the AB 939 Fee upon Organic Materials accepted by the CMHF. The application of the AB 939 Fee will become effective July 1, 2007. The initial AB 939 Fee is hereby set at a rate of five percent (5%) of the Operator's gross revenue which shall include only the **revenue earned from materials received for processing** during the applicable reporting period. This Rate may be adjusted with approval by the Board.

Section 4.3 **APPLICATION OF MANDATED FEES**. A Mandated Fee shall: (1) be applied to the Gate Rates on the date any legislation or regulation imposes the Mandated Fee upon the Operator; (2) be adjusted in the Gate Rates on the required date set forth in any legislation or regulation changing said Mandated or AB 939 Fees; or (3) be removed from the Gate Rates upon recapture of the Mandated Fee in the event of repeal of the legislation or regulation.

Section 4.4 **GATE RATES AND SCHEDULE OF PROCESSING CHARGES**. The Gate Rates for all haulers shall be calculated as follows:

$$\text{AB 939 Fee} + \text{Mandated Fees} + \text{Operator Charges} = \text{Gate Rate}$$

The Gate Rates, as established and adjusted by the provisions of this Agreement, shall be the rates appearing on Exhibit "A" to this Agreement.

These Gate Rates, which shall be delineated in the Schedule of Processing Charges and conspicuously posted at the CMHF, are the maximum allowable rates the Operator may charge or receive for accepting Organic Materials at the site. Gate Rates may include amortized Permanent Capital Improvement Expenses. The Operator shall not impose, offer, collect, or attempt to collect any rate or any other fee, charge, or benefit that is excess of the maximum Gate Rate set forth in Exhibit "A".

The posted Gate Rate shall not exceed the maximum Gate Rate as established by Exhibit "A" but nothing in this Agreement precludes the Operator from charging less than the Gate Rates, provided such reduced Rates are consistent with Section 3.2 (Organic Waste Flow and Revenue Stream), Section 3.7 (Non-Discriminatory Service), Section 4.2 (Application of AB 939 Fee), or Section 4.3 (Application of Mandated Fees), and

is otherwise permitted by law. If reduced Rates are made available to Commercial or Municipal Haulers operating under a franchise or agreement with a local jurisdiction, the County's Contract Haulers automatically qualify to receive such reduced Rates.

Section 4.5 RATE ADJUSTMENTS. The Operator may adjust the Gate Rates once per annum, effective January 1<sup>st</sup> of each year during the term of this Agreement. Increases shall not exceed the percentage change in the Consumer Price Index (CPI) for All Urban Consumers (CPI-U), Los Angeles – Long Beach – Anaheim, CA, not seasonally adjusted, for the Annual Average of the calendar year prior to the year in which the rate change will occur. Annual rate increase allowances must be determined by using the U.S. Bureau of Labor Statistics & Research CPI calculator at <https://data.bls.gov/PDQWeb/cu>. Notification for rate changes shall be submitted to the Director for approval no later than September 1<sup>st</sup> of each year prior to any rate adjustment. The calculation of the annual percentage change in CPI will be based upon the CPI published for September of the current period and September of the previous period.

Any change in Gate Rates shall be recalculated pursuant to Section 4.4 (Gate Rates and Schedule of Processing Charges) of this Agreement and reflected in a new Schedule of Processing Charges. The adjusted Gate Rates shall become effective following thirty (30) days advance written notice of the approved Rate adjustments by the Operator to CMHF customers. Such written notice requirement may also be fulfilled by posting the new Schedule of Processing Charges at, or near, the entrance to the CMHF for thirty (30) days prior to the effective date of Rate changes.

Rates shall be adjusted on January 1<sup>st</sup> and July 1<sup>st</sup> each calendar year to accommodate the imposition, change, or removal of Mandated Fees as such fees are adopted, amended, or repealed by Regulatory Agencies. The Operator shall give the County written notice of the adoption, amendment, or repeal of a Mandated Fee prior to any rate adjustment.

## **ARTICLE 5. DEFAULT AND REMEDIES**

In the event of a breach of this Agreement, the following provisions apply:

Section 5.1 GENERAL DEFAULT. If the Operator fails to perform in conformity with this Agreement, the Director will provide written notice to the Operator specifying in detail the defect or default in performance (the first notice) and the Operator shall diligently pursue and cure the same within ten (10) calendar days.

If, after the first notice, the Operator does not perform in accordance with this Agreement within the ten (10) calendar days time frame, the Director shall serve further notice (the second notice) upon the Operator as notification of the County's intention to take further action as provided by law. The Director shall make appropriate and detailed written findings of facts specifying the event of default. Thereafter, the County may declare the Operator in default of this Agreement under County Ordinance 4590 and shall have the power and ability to take such actions as provided in law for remedying the same, including termination of this Agreement and/or bringing suit in a court of appropriate jurisdiction for equitable relief.



Section 5.2 MATERIAL BREACH. Without limitation, the following acts by Operator shall each constitute a material breach of the Agreement for the purposes of termination under Section 2.2 (Termination on Account of Material Breach):

- (1) Material default or breach any of the terms or conditions of this Agreement.
- (2) Failure to submit to County within thirty (30) days after it is due any of the information requested by the County or required to be submitted by this Agreement.
- (3) Failure to implement diversion programs the Director determines are reasonable and economically feasible pursuant the diversion and reporting requirements of the Act and other applicable state and local laws and regulations.
- (4) Intentional submission to the County of any materially inaccurate information including financial data and/or information.
- (5) Commission of any of the following by the Operator, its parent or affiliates, or any of their directors, officers, or employees, the conduct of which relates directly or indirectly to this Agreement or performance hereunder: bribery, collusion, extortion, forgery, fraud, obstruction of justice, price fixing, proposal rigging, racketeering, or illegal disposal of Hazardous Waste (including Universal Waste), or Solid Waste.
- (6) Failure to maintain, in good standing, an agreement for the exclusive right to occupy the Property.

Section 5.3 FORCE MAJEURE. The Operator shall not be liable for a default if the failure to perform under the provisions of this Agreement arises out of causes beyond the control or without the fault or negligence of the Operator.

Such causes may include, but are not limited to, acts of God, acts of war or insurrection, acts of the County in its sovereign capacity, fires, floods, earthquakes, epidemics, quarantine, restrictions, suppliers' and vendors' strikes and all other labor disputes, freight embargoes, and unusually severe weather; but in every case the failure to perform must exceed the control, and occur without substantial default or negligence, of the Operator who shall make every reasonable effort to mitigate the effects of said causes.

Section 5.4 SPECIFIC PERFORMANCE. Notwithstanding any other available remedies at law or in equity, the obligations, and rights of each party under this Agreement shall be specifically enforceable by the other party.

Section 5.5 NON-EXCLUSIVE REMEDIES. The rights and remedies of either party to this Agreement as provided for in this Article 5 (Default, Remedies) are not

exclusive, and are in addition to any other rights and remedies provided by law or this Agreement.

## **ARTICLE 6. INSURANCE AND BONDS**

Section 6.1 **INSURANCE**. Throughout the term of this Agreement and any extensions thereof, the Operator, at its sole cost and expense, will obtain and maintain in full force and affect the following insurance coverages:

- (7) Commercial General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products / completed operations, broad form blanket contractual and \$50,000 fire legal liability.
- (8) Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 CSL bodily injury & property damage, including owned, non-owned and hired automobiles. Also, to include Uninsured/Underinsured Motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.
- (9) Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of Operator and Employer's Liability in the minimum amount of \$1,000,000.
- (10) Pollution Legal Liability insurance in the amount of \$1,000,000 per claim and \$2,000,000 annual aggregate.

All insurance required by this Article 6 will be primary coverage with respect to County and any insurance or self-insurance maintained by County will be in excess of Operator's insurance coverage and will not contribute to it.

County is to be notified within seventy-two (72) hours if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.

The County, its boards, agencies, departments, officers, employees, agents, and volunteers are to be named as additional insureds with respect to any work performed by Operator under the terms of this Agreement on all policies required (except Workers' Compensation).

Section 6.2 **OTHER INSURANCE PROVISIONS**. The Operator waives all rights of subrogation against the County of Ventura, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising directly or indirectly from the activities and/or work performed by the Operator under the terms of this Agreement.

Policies will not be canceled, allowed to lapse, or reduced in scope of coverage until after sixty (60) days advance written notice has been given to the Director.

The Operator shall provide the County with the following insurance documents on or before the Commencement Date:

- (1) Certificates of Insurance for all required coverages;
- (2) Additional insured endorsements;
- (3) Waiver of subrogation endorsements; and
- (4) Sixty (60) days notice cancellation clause endorsements.

The Operator shall confirm that any subcontractors retained for work at, or in connection with, the CMHF during the term of this Agreement shall comply with all terms and conditions of this Article 6 (Insurance and Bonds).

Section 6.3. FINANCIAL ASSURANCE. The Operator shall, prior to acceptance of Organic Materials at the CMHF under this Agreement, provide to the County irrevocable letter(s) of credit acceptable to the County, or certificate(s) of deposit in the face amount of \$50,000, which letters(s) of credit or certificate(s) must name the Operator and all Operator owned DBA's and guarantee the Operator's performance under all provisions of this Agreement. Because a Conditional Use Permit is required for the site, the County recognizes and agrees that the letter(s) of credit or certificate(s) of deposit are a condition of, and will also be utilized to meet, the security and performance requirements of said Conditional Use Permit, and/or returning the Property to a pre-operational condition.

## **ARTICLE 7. GENERAL PROVISIONS**

Section 7.1 RELATIONSHIP OF PARTIES. Neither the Operator nor any of its agents, subcontractors or employees are, or shall be, considered to be principals, agents or employees of the County in connection with the performance of the Operator's obligations under this Agreement.

Section 7.2 HOLD HARMLESS AGREEMENT. The Operator agrees to indemnify, defend and hold the County, its supervisors, directors, officers, employees, servants and agents, free and harmless from any and all claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever which may arise from operations and/or inspection carried on under this Agreement to the extent such claims are caused by the Operator's negligence or conduct.

The County agrees to indemnify and hold the Operator, its supervisors, directors, officers, employees, servants and agents, free and harmless from any and all claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever which may arise from inspections conducted under this Agreement to the extent such claims are caused by the County's negligence or misconduct. Each party will exonerate, indemnify, and hold harmless the other from and against, and shall assume full responsibility for payment for, all federal, state, and

local taxes or contributions imposed or required under employment insurance, social security, and income tax laws, with respect to that party and its employees engaged in performance under this Agreement.

Section 7.3 ASSIGNMENT. The Operator shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement without the prior written consent of the County. Any such assignment made without the consent of the County, which consent shall not be unreasonably withheld, will be void and the attempted assignment will constitute a material breach of this Agreement.

"Assignment" includes, but is not limited to, any of the following:

- (1) A sale, exchange, or other transfer to a third party of at least twenty-five percent (25%) of the assets of the Operator which are dedicated to the CMHF.
- (2) A sale, exchange, or other transfer to a third party, including other shareholders, of outstanding common stock of the Operator which may result in a change of control of the Operator.
- (3) Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, polling agreement, escrow arrangement, liquidation, or other transaction with which the Operator or any of its shareholders are a party, and which results in a change of ownership or control of the Operator.
- (4) Any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of the Operator's property; and
- (5) Any combination of the foregoing whether or not in related or contemporaneous transactions, which has the effect of any such transfer or change of ownership, or change of control of the Operator.

The granting of any assignments of this contract shall be at the sole discretion of the County, and shall be based upon an assessment of the assignee's qualifications including, without limitation, organizational and fiscal administration, Solid Waste management experience, environmental practices, compliance with laws, and service performance record.

Section 7.3.1 CONTINUING LIABILITY AFTER ASSIGNMENT. In the event of any approved assignment, sale, subcontract, or transfer, said approval does not relieve the Operator of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

Section 7.4 COMPLETE AGREEMENT. No verbal agreement with any officer, agency, or employee of the County, or any agreement either before or during the execution of this Agreement shall affect or modify any of the rights granted or obligations assumed herein.

Section 7.5 AMENDMENTS. This Agreement may not be amended except by a written agreement, signed by both parties, specifically providing that same is an amendment to this Agreement. To the extent of any inconsistency with this Agreement, conditions imposed on Permits, other governmental entitlements, laws, rules, or regulations of Regulatory Agencies having jurisdiction over the matters covered by this Agreement shall control and supersede the applicable provisions of this Agreement.

Section 7.6 SEVERABILITY. If any term, provision, covenant, or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and will in no way be affected, impaired or invalidated.

Section 7.7 NO THIRD-PARTY BENEFICIARY ENFORCEMENT. While this Agreement benefits the public interest throughout the County, it is an Agreement between only the Operator and the County and, accordingly, only the Operator and the County may enforce the Agreement. No claims, demands, or causes of action by any entity, party, or person claiming to be a third-party beneficiary hereunder are enforceable.

Section 7.8 ARBITRATION. Except as provided herein, any controversy or claim arising out of, or relating to, this Agreement, or the breach thereof, may be settled by arbitration in accordance with the rules of JAMS/ENDISPUTE or the American Arbitration Association, as the parties may agree. California judicial rules of evidence shall apply to the arbitration proceedings. The arbitration decision will be decided under, and in accordance with, California law, supported by the preponderance of evidence and in writing in the form of a statement of decision pursuant to Code of Civil Procedure Section 632.

This Section 7.8 does not constitute a remedy or procedure for remedying any disputes between the parties arising out of the issuance or terms and conditions of the Conditional Use Permit or any extensions thereof, or for determinations made by a third party, such as the California Integrated Waste Management Board.

Section 7.9 CAPTIONS. The captions and headings used in this Agreement are for convenience and reference only and are not to be construed as controlling over the text of this Agreement.

Section 7.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 7.11 NOTICES. All notices or other communications to be given pursuant to this Agreement shall be in writing and will be deemed given when mailed by

registered or certified United States mail. A change in address or a change in the person or title to which notice is to be given will be effectuated by giving notice to all parties as follows:

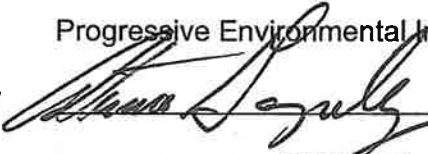
To County: County of Ventura  
800 South Victoria Avenue  
Ventura, California 93009-1650  
Attention: Director, Water and Sanitation Department


To Operator: Arturo Gonzalez, President  
Progressive Environmental Industries  
P.O. Box 4395  
Santa Barbara, CA 93101

Section 7.12 TAXES AND ASSESSMENTS. A taxable possessory interest may be created by this Agreement or by the agreement for the possession of the Property, and Operator may be subject to the payment of property taxes levied on such interest. Operator shall pay, before delinquent, any and all taxes and assessments levied upon the Property or against Operator by reason of Operator's use and occupancy of the Property.

Section 7.13 INTERPRETATION. The parties hereto agree that this agreement was the product of collaboration between the parties who all had adequate time to confer with their respective counsel. Accordingly, this agreement shall not be construed against the drafter.

**IN WITNESS WHEREOF**, this Agreement is effective on the date first provided on page one hereof.

Progressive Environmental Industries  
By  3-8-2023  
Arturo Gonzalez, President, Secretary, and Treasurer

COUNTY OF VENTURA  
By   
Chair, Board of Supervisors

ATTEST: DR. SEVET JOHNSON  
Clerk of the Board of Supervisors,  
County of Ventura, State of California

By   
Deputy Clerk of the Board



## EXHIBIT "A"

SCHEDULE OF PROCESSING CHARGES

**The Maximum Initial Gate Rate is \$ 70.00 per ton.**

Initial Base Rate for Residential Green Waste Curbside Collection: The Operator may not charge more than \$ 700.00 per load for residential curbside trucks, if no scale is available pursuant to Section 3.4.2 (Alternative Weight Measurement).

**\* Maximum Initial Rates for Self-Haul Vehicles**

Description	Unit	Rate
*Mixed Green Waste and Lumber: Small Pick Up or Trailer - (Up to ½ ton capacity)	Load	Up to \$50.00
*Mixed Green Waste and Lumber: Standard Pick Up or Trailer (>1/2 ton - 1 ton capacity)	Load	Up to \$70.00
**Special Handling Charge: (Roots, Balls, Stumps - Greater than 12 inches in diameter, or Moderately to highly contaminated loads)	Load	\$25.00 - \$170.00
Pull-Off	Each	\$25.00
Reloading of Refused Load:	Each	\$ 100.00

\*Self-Haul Vehicle Rates based on No to Light Contamination (< 0.1% by weight). A \*\*Special Handling Charge may be applied to loads with Moderate Contamination (between 0.1% - 0.5% by weight) to High Contamination (between 0.5% - 1.0% by weight). Contaminants include, but are not limited to, plastic, paper, dirt, rocks, and general trash not included in the commodity description. This charge is in addition to the maximum initial rate per load.

**Commercial Loads from Non-Residential Sources**

Description	Unit	Rate
***Special Handling Charge: (Hard to Handle Material, Special Services, and/or Moderately to Highly Contaminated Material)	Ton	\$20.00 - \$120.00

A \*\*\*Special Handling Charge may be applied to commercial loads from non-residential sources which require additional handling or staff to manage, for special services not customarily provided by the Operator, or for material containing Moderate Contamination (between 0.1% - 0.5% by weight) to High Contamination (between 0.5% - 1.0% by weight). Contaminants include, but are not limited to, plastic, paper, dirt, rocks, and general trash not included in the commodity description. This charge is in addition to the maximum initial Gate Rate of \$70.00 per ton.



## EXHIBIT "B"

SCHEDULE OF COMPOSTABLE MATERIALS HANDLING FACILITYVOLUME-BASED WEIGHT CONVERSION RATES FOR ALL HAULERS

Material Received for Processing	Unit	Weight (tons)
Mixed Green Waste and Lumber: Small Pick Up or Trailer - (Up to ½ ton capacity)	Load	.35 - .50
Mixed Green Waste and Lumber: Standard Pick Up or Trailer (> 1/2 ton - 1 ton capacity)	Load	.51 - 1.0
Roots, Balls, Stumps: Small Pick Up or Trailer - (Up to ½ ton capacity)	Load	.35 - .50
Roots, Balls, Stumps: Standard Pick Up or Trailer (> 1/2 ton - 1 ton capacity)	Load	.51 - 1.0
Mixed Green Waste and Lumber: Residential Curbside Truck (Maximum Load Weight)	Load	10.0
Mixed Green Waste and Lumber: 40 Cubic Yard Roll-Off Bin (Maximum Load Weight)	Each	10.0

## EXHIBIT "C"

DATA STANDARDS – QUARTERLY REPORTING FORMAT

## Conversion Table for Material Shipped from Compostable Materials Handling Facility

Material Shipped Out	Unit	Weight (tons)
Agricultural Compost	Cubic Yard	.25 Tons*
Landscaping Mulch	Cubic Yard	.25 Tons*

\*All weight determinations are based on the "California Integrated Waste Management Board 'Diversion Guide for California Jurisdictions', adopted April 2001; Study Guide-Attachment 1, Weight Conversion Factors-Organics".