

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of All Claims ("Agreement") is made and entered into by and between Allied Waste Services of North America, LLC. and International Disposal Corp. of California. (collectively "Allied"), Zero Waste Energy Development Company LLC and GreenWaste Recovery, Inc. (collectively "ZWED"), and the City of San José ("City") (hereinafter referred to collectively as "the Parties"). This Agreement shall become effective as of March 1, 2020 (the "Effective Date").

RECITALS

WHEREAS, Allied Waste Services of North America, LLC, dba Allied Waste Services of Santa Clara County, on the one hand, and the City of San José, on the other hand, entered into that certain Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement, dated September 16, 2011, as such has been amended from time to time ("Franchises Agreement"); and

WHEREAS, Zero Waste Energy Development Company LLC, on the one hand, and the City of San José, on the other hand, entered into that certain Organics Processing Services Agreement, dated October 18, 2011, as such has been amended from time to time ("Processing Agreement") and together with the Franchises Agreement referred to as the "Original Agreements"; and

WHEREAS, International Disposal Corporation, Inc., an Allied affiliate, on the one hand, and the City of San José, on the other hand, entered into that certain Municipal Solid Waste Disposal and Water Pollution Control Plant Disposal and Reuse Agreement, dated August 9, 1985, as such has been amended from time to time ("Disposal Agreement"); and

WHEREAS, GreenWaste Recovery, Inc., an affiliate of ZWED, on the one hand, and the City of San José, on the other hand, entered into that certain Solid Waste Services Agreement, dated May 28, 2011, as such has been amended from time to time ("Solid Waste Agreement"); and

WHEREAS, Zero Waste Energy Development Company LLC, on the one hand, and the City of San José, on the other hand, entered into that certain Settlement Agreement and Release, dated December 19, 2016 ("Settlement Agreement"); and

WHEREAS, the term “Parties” as released herein expressly includes direct and indirect parent companies, affiliates, subsidiaries and other related parties including their respective insurers, heirs, executors, administrators, successors, successors-in-interest, affiliates, assignors, agents, employees, officers, directors, members, shareholders, partners, owners or alter egos of any of the Parties to this Agreement; and .

WHEREAS, disputes have arisen by and between the Parties related to and/or arising from the Original Agreements and the respective performances by and duties of the Parties that were discussed leading up to and during confidential mediation on October 18, 2019 and November 21, 2019 (“Mediation”); and

WHEREAS, the disputes between the Parties for periods prior to the Effective Date of this Agreement included: claims by the City against Allied for liquidated damages alleged to arise under the Franchises Agreement; claims by ZWED against the City and Allied relating to the quality and quantity of organic waste, other waste materials and alleged contaminants therein delivered or not delivered to ZWED; claims by the City against Allied relating to the quality and quantity of organic waste, other waste materials and alleged contaminants therein delivered or not delivered to ZWED; claims by the City against Allied that Allied was allegedly not processing or diverting from disposal all waste required to be processed and diverted from disposal pursuant to the Franchises Agreement; and other claims; and

WHEREAS, during discussions of such disputes, a peripherally related dispute was discussed by and between the Parties related to and/or arising from claims by Allied related to the alleged obligation of the City and Green Waste Recovery, Inc. to deliver waste previously collected by Green Waste Recovery, Inc. and/or its affiliates in the City of San Jose to the Newby Island Landfill for disposal pursuant to the Disposal Agreement and/or Solid Waste Agreement (together with disputes arising from the Original Agreements, as described in the preceding paragraph, are collectively hereinafter referred to as the “Disputes”); and

WHEREAS, the Parties desire to resolve the claims asserted by, between, and/or against the Parties that arose from the Original Agreements; and

WHEREAS, the Parties also desire to resolve claims asserted by, between, and/or against the Parties arising from the past alleged non-delivery of waste collected in the City of San Jose to the Newby Island Landfill pursuant to the Disposal Agreement and Solid Waste Agreement covering time periods prior to the Effective Date of this Settlement Agreement; and

WHEREAS, the Settlement Agreement reached between the City of San José and ZWED becomes moot by this Agreement; and

WHEREAS, the Parties desire to fully and completely resolve all claims arising from the Original Agreements on the terms and conditions set forth herein that include the termination of the Original Agreements that shall be superseded, and replaced in their entirety by an amended and restated Franchises Agreement and an amended and restated Processing Agreement (the "New Agreements") to be executed concurrent with this Agreement; and

WHEREAS, the Parties agreed to certain material terms that would resolve the claims that gave rise to the Disputes through Mediation that were agreed to by, among, and between the Parties (the "Terms"), subject to a definitive agreement to be negotiated and executed by the parties ; and

WHEREAS, the Parties deny any and all claims and/or allegations of wrongdoing asserted by, between and/or against the Parties that comprise the Disputes to be resolved herein and in order to avoid the substantial expense and inconvenience of litigation, the Parties now desire to fully and completely settle all claims ("Claims"); and

WHEREAS, the resolution of all such Claims, known and unknown shall be given full effect by this Agreement. However, this Agreement in no way resolves, settles, or waives any claims, known or unknown, that the City may have against either party in its capacity as a property owner or regulatory capacity or otherwise unrelated to the Disputes.

AGREEMENT

NOW THEREFORE, in consideration of the agreements and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

- 1) Amended & Restated Agreements. Following the execution of this Agreement, the following shall also occur and no one action shall be deemed effective until all such actions have been executed:
 - a. The City and Allied shall execute an Amended and Restated Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement . A copy of the Amended and Restated Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement is attached hereto as **EXHIBIT A**.
 - b. The City of San José and ZWED shall execute an Amended and Restated Organics Processing Service Agreement. A copy of the Amended and Restated Organics Processing Service Agreement is attached hereto as **EXHIBIT B**.
 - c. The Amended and Restated Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement and Amended and Restated Organics Processing Service Agreement shall be the consideration for the mutual releases and covenants in this Settlement Agreement.
- 2) Releases of All Claims.
 - a. Franchises Agreement and Processing Agreement. The City, Allied and ZWED shall fully, completely, and forever release each other from any and all claims demands, liabilities, controversies, causes of action, damages, costs, expenses, and attorneys' fees of any kind or nature, whether legal or equitable, in tort or in contract, actual or contingent, latent or patent, known or unknown, asserted or unasserted, or related to any amounts owed or claimed to be owed to and/or any actions performed or not performed that arose under or relate in any way to any Parties' performance of the Franchises Agreement and/or Processing Agreement that exist as of or prior to the Effective Date of this Agreement.

- b. The Disposal Agreement. The City, Allied and ZWED shall fully, completely, and forever release each other from any and all claims demands, liabilities, controversies, causes of action, damages, costs, expenses, and attorneys' fees of any kind or nature, whether legal or equitable, in tort or in contract, actual or contingent, latent or patent, known or unknown, asserted or unasserted, or related to any amounts owed or claimed to be owed to and/or any actions performed or not performed that arose under the Disposal Agreement that exist as of or prior to the date of this Agreement; provided, however, that nothing herein is intended to affect, amend or modify any obligations of the City or Allied under the Disposal Agreement arising under that agreement from and after the Effective Date.
- c. The Solid Waste Agreement. The City and Allied shall fully, completely and forever release each other and ZWED from any and all claims, disputes, demands, liabilities, controversies, causes of action, damages, costs, expenses, and attorneys' fees of any kind or nature, whether legal or equitable, in tort or in contract, actual or contingent, latent or patent, known or unknown, asserted or unasserted, or related to any amounts owed or claimed to be owed to the City and/or Allied by ZWED under the Disposal Agreement or any actions performed or not performed by ZWED under the Solid Waste Agreement that relate to the Disposal Agreement, that exist as of or prior to the date of this Agreement; provided, however, that nothing herein is intended to affect, amend or modify any obligations of the City or ZWED under the Solid Waste Agreement arising under that agreement from and after the Effective Date, including that ZWED deliver all residue to Allied for which the City has provided vouchers.
- d. The Settlement Agreement. The City and ZWED shall terminate the Settlement Agreement upon execution of this Agreement and the City and ZWED shall fully, completely and forever release each other from any and all liability of any kind arising from that Settlement Agreement.
- e. Outstanding Invoices for Current Services. Notwithstanding the release language above, this Agreement is not intended to release any Party from its obligation to pay invoices for services rendered under the Original Agreements within one (1) day prior to the Effective Date that have not yet been paid in full by the Party obligated to pay

such invoices. Such invoices will be paid in the normal course of business pursuant to the terms of the Original Agreements.

- 3) Mutual Release of Claims Known and Unknown. It is agreed and understood that the Parties unconditionally, irrevocably and absolutely release and discharge each other, as well as any other present or former employees, officers, agents, attorneys, affiliates, successors, assigns and all other representatives of the Parties, from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that the Parties may now or hereafter have against each other arising from incidents or events alleged to occur prior to the Effective Date, whether in law or in equity, as described above (hereafter collectively, "Released Claims"). It is further agreed and understood that Released Claims shall remain in effect as full and complete releases, notwithstanding the existence or subsequent discovery of any presently unknown, different or additional facts or claims related to the Released Claims. The Parties expressly waive any rights and benefits they may have under California Civil Code section 1542 (or any other statute or legal doctrine or precedent similar to California Civil Code section 1542), which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor or released party.

- 4) Limitation on Release of Claims. This Agreement in no way resolves, settles, or waives any claim, cause of action, lawsuit, or remedy, whether in law or in equity, known or unknown, that the City may have against any party in its capacity as a property owner or regulatory capacity or with matters otherwise unrelated to the Disputes including seeking recovery of fees or taxes and administrative fines or penalties, and from pursuing any an all appropriate remedies with respect to the collection of those fees and taxes or administrative fines or penalties.
- 5) No Admission. It is further understood and agreed that this Agreement affects the compromise and settlement of disputed and contested claims set forth in the Recitals, and nothing contained herein shall ever be construed as an admission by any Party hereto of

any liability of any kind to any other Party. Each Party expressly denies all allegations of wrongdoing asserted against it and intends merely to avoid litigation and expense by entering into this Agreement.

- 6) Independent Advice of Counsel. The Parties respectively represent and certify that they secured independent legal advice and consultation in connection with this Agreement and any rights they may be relinquishing hereby and that they have not relied upon any representations or statements made by any other Party or by any other Party's counsel or representatives in executing this Agreement other than as stated herein expressly.
- 7) Voluntary Agreement and Execution. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto with the full intent of releasing all Claims relating to the Disputes at issue herein. Each undersigned acknowledges that: (i) he/she has read this Agreement; (ii) he/she understands the terms and consequences of this Agreement and the releases it contains; (iii) he/she is fully aware of the legal and binding effect of this Agreement; and (iv) he/she signs the same freely, voluntarily and as their own free act.
- 8) Benefit and Burden. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, executors, administrators, representatives, successors, and assigns.
- 9) Non-Assignment. The Parties represent, warrant, and certify that there has been no transfer or assignment, or attempted transfer or assignment, of any right, title, or interest in or to any claim, action, or cause of action that is being released and discharged pursuant to the Released Claims provided above.
- 10) Attorneys' Fees and Costs. The Parties hereby agree that each Party is to bear their own costs and attorneys' fees in connection with the Released Claims that exist as of or prior to the Effective Date of this Agreement.

- 11) Entire Agreement. All agreements, covenants, representations and warranties, expressed and implied, oral and written, of the Parties concerning the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party thereto to any other Party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein. This is an integrated Agreement. The terms of this Agreement may not be modified except by written instrument duly signed by all Parties.
- 12) Waiver and Amendment. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. Nothing in this Agreement shall operate as a waiver or release of any party's rights, obligations or duties under the restated and/or amended agreements entered into as consideration for the releases, promises and covenants contained in this Agreement.

In addition to all other rights reserved to the City not otherwise waived or released by this Agreement, the City reserves every right and power, and exercise thereof, which is reserved or authorized by any provision of any lawful ordinance or resolution or permit of the City, whether enacted before or after the Effective Date of this Agreement. The City expressly reserves its lawful regulatory authority or police powers it may have over either Party.

- 13) Construction. Each Party hereto and his, her, or its respective counsel or representatives have had an opportunity to review and revise this Agreement and agree that the normal rules of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.
- 14) Captions. Paragraphs, titles, or captions contained in this Agreement are used for convenience or reference only and are not intended to and shall not in any way enlarge, define, limit, extend or describe the rights or obligations of the Parties or affect the meaning or construction of this Agreement or any provision hereof.

- 15) Provisions Severable. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provisions of this Agreement, or the application thereof to any person or circumstances, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to the unaffected persons or circumstances, shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.
- 16) Counterparts. This Agreement shall be executed in counterparts, each of which shall be deemed an original. Such counterparts, when taken together, shall constitute but one Agreement. Facsimile and PDF signatures shall be binding and effective and shall have the same force and effect as original signatures.
- 17) Warranty of Authority. Each signatory to this Agreement expressly warrants to the other Parties that he, she or it has the authority to compromise and settle the claims at issue in the action and to execute this Agreement on behalf of the Party or Parties to be bound by his, her, or its signature, and on behalf of each and every principal or other owner of a legal, equitable, or beneficial interest in such Party or Parties.
- 18) Governing Law. This Agreement shall be governed by the laws of the State of California applicable to agreements made, and to be performed, therein and without resort to that State's conflict of law provisions or rules. The Parties agree that the forum for any action arising out of or relating to this Agreement shall be Santa Clara County Superior Court, and hereby consent to the jurisdiction of the Court.

***[Remainder of page intentionally left blank;
Signature page follows.]***

IN WITNESS THE EXECUTION HEREOF, each of the Parties hereto has executed this Settlement Agreement and Mutual Release of all Claims known and unknown on the on the date written below each Party's signature.

"CITY"

APPROVED AS TO FORM & SUBSTANCE

CITY OF SAN JOSE, a municipal corporation

By: _____
MARK VANNI, Deputy City Attorney

By: _____
RICHARD DOYLE, City Attorney

Date: _____

Date: _____

"ALLIED"

APPROVED AS TO FORM & SUBSTANCE:
LAW OFFICES OF THOMAS M. BRUEN, P.C.

ALLIED WASTE SERVICES OF NORTH
AMERICA, INC, a Delaware limited liability
company

By: _____
THOMAS M. BRUEN, President

By: _____
MICHAEL A. CAPRIO, Area President

Date: _____

Date: _____

INTERNATIONAL DISPOSAL
CORPORATION, INC., a California
Corporation

By: _____
MICHAEL A. CAPRIO, Area President

Date: _____

APPROVED AS TO FORM & SUBSTANCE:
HOGE FENTON JONES AND APPEL

By: _____
EUGENE ASHLEY, Shareholder

Date: _____

“ZWED”

ZERO WASTE ENERGY DEVELOPMENT
COMPANY LLC, a California Limited Liability
Company

By: _____
FRANK C. WEIGEL, Director

Date: _____

GREENWASTE RECOVERY, INC.,
a California Corporation

By: _____
RICHARD A. CRISTINA, Director

Date: _____

EXHIBIT A

TO BE INCLUDED UPON EXECUTION BY ALL PARTIES

EXHIBIT B

TO BE INCLUDED UPON EXECUTION BY ALL PARTIES