

**SOLID WASTE FRANCHISE AGREEMENT  
BETWEEN  
THE COUNTY OF TULARE, CALIFORNIA  
AND  
SOUTH TULARE RICHGROVE REFUSE INC.**

**June 16, 2015**

# TABLE OF CONTENTS

<b>ARTICLE 1: GRANT AND ACCEPTANCE OF FRANCHISE .....</b>	<b>7</b>
Section 1.1: Grant and Limitations of Exclusive Franchise .....	7
<b>ARTICLE 2: REPRESENTATIONS AND WARRANTIES OF THE PARTIES.....</b>	<b>9</b>
Section 2.1: Representations and Warranties.....	9
Section 2.2: County Code .....	10
<b>ARTICLE 3: TERM OF AGREEMENT.....</b>	<b>11</b>
Section 3.1: Term of Agreement .....	11
Section 3.2: Option to Extend .....	11
Section 3.3: Termination for Failure to Implement Services.....	11
<b>ARTICLE 4: SCOPE OF SERVICES.....</b>	<b>12</b>
Section 4.1: Residential Services.....	12
Section 4.2: Commercial Services .....	13
Section 4.3: Collection Service Operating Requirements .....	15
Section 4.4: Other Services .....	16
Section 4.5: Standard of Performance .....	18
Section 4.6: Collection Locations .....	20
Section 4.7: Other Wastes .....	21
Section 4.8: Changes in Scope of Collection Services .....	21
Section 4.9: Billing .....	21
Section 4.10: Transition to Next Contractor at End of Agreement .....	22
<b>ARTICLE 5: PROCESSING AND TRANSFER .....</b>	<b>23</b>
Section 5.1: Processing and Transfer Arrangements.....	23
Section 5.2: Recyclable Materials Marketing .....	23
Section 5.3: Title to Recovered Materials .....	23
<b>ARTICLE 6: SOLID WASTE DISPOSAL .....</b>	<b>24</b>
Section 6.1: Solid Waste Disposal .....	24
Section 6.2: Excluded Waste Inspection, Handling and Responsibility.....	25
Section 6.3: County's Covenant Not to Sue.....	25
Section 6.4: Cooperative Defense Related to Designated Disposal Facility .....	26
<b>ARTICLE 7: RECYCLING PROGRAMS .....</b>	<b>27</b>
Section 7.1: The Contractor's Responsibility for Implementation .....	27
Section 7.2: Recycling Plan .....	27
Section 7.3: Public Awareness .....	27
<b>ARTICLE 8: OPERATING ASSETS.....</b>	<b>28</b>
Section 8.1: Operating Assets .....	28
Section 8.2: Operation and Maintenance of the Operating Assets .....	28
Section 8.3: Containers.....	29
Section 8.4: Vehicle Requirements .....	30

<b>ARTICLE 9: GENERAL REQUIREMENTS .....</b>	<b>31</b>
Section 9.1: Public Access to the Contractor .....	31
Section 9.2: Service Complaints .....	31
Section 9.3: Accounting and Records .....	31
Section 9.4: Reporting .....	32
Section 9.5: Integrated Waste Management Act (AB 939) Compliance .....	33
Section 9.6: Personnel and Subcontractors .....	33
Section 9.7: County Contract Manager .....	34
<b>ARTICLE 10: COUNTY FEES .....</b>	<b>35</b>
Section 10.1: County Fees.....	35
Section 10.2: Adjustment to Fees .....	35
Section 10.3: Payment Schedule and Late Fees .....	35
<b>ARTICLE 11: CONTRACTOR’S COMPENSATION AND RATE SETTING.....</b>	<b>37</b>
Section 11.1: General .....	37
Section 11.2: Rates and Annual Adjustments.....	37
Section 11.3: Special Circumstances Rate Adjustments .....	38
Section 11.4: Publication of Rates .....	39
<b>ARTICLE 12: INDEMNITY, INSURANCE, AND PERFORMANCE BOND .....</b>	<b>40</b>
Section 12.1: Indemnification .....	40
Section 12.2: Insurance .....	42
Section 12.3: Performance Bond .....	44
<b>ARTICLE 13: DEFAULT, REMEDIES AND TERMINATION.....</b>	<b>45</b>
Section 13.1: Default and Remedies.....	45
Section 13.2: Liquidated Damages .....	47
Section 13.3: Uncontrollable Circumstances .....	48
Section 13.4: Right to Demand Assurances of Performance .....	50
<b>ARTICLE 14: RESOLUTION OF DISPUTES .....</b>	<b>51</b>
<b>ARTICLE 15: MISCELLANEOUS PROVISIONS .....</b>	<b>52</b>
Section 15.1: Relationship of the Parties .....	52
Section 15.2: Notice to Parties.....	52
Section 15.3: Actions of the County in its Governmental Capacity .....	53
Section 15.4: Binding Effect.....	53
Section 15.5: Amendments .....	53
Section 15.6: Further Assurance.....	53
Section 15.7: Assignment and Transfer of Agreement.....	53
Section 15.8: Interpretation .....	55
Section 15.9 Jurisdiction .....	56
Section 15.10 Assurances of Non-Discrimination .....	56
Section 15.11 Conflict of Interest .....	56
Section 15.12: Compliance with Applicable Laws .....	57
Section 15.13: Waivers .....	57

| Section 15.14: Entire Agreement ..... 57

## **List of Exhibits**

---

- A. Definitions**
- B. Rate Adjustment Methodology**
- C. Initial Rates**
- D. Reporting Requirements**
- E. Form of Performance Bond**
- F. Map of Franchise Service Area**

1 **SOLID WASTE FRANCHISE AGREEMENT**

2 This Solid Waste Franchise Agreement (the "Agreement") is entered into on the 16th day of  
3 June, 2016, by and between the County of Tulare (hereinafter, the "County"), and South Tulare  
4 Richgrove Refuse Inc. (hereinafter, the "Contractor") (together, the "Parties"), with reference to the  
5 following:

6 **RECITALS**

7 WHEREAS, the Legislature of the State of California, by enactment of the California Integrated  
8 Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid  
9 Waste management process which requires cities and other local jurisdictions to implement source  
10 reduction, reuse and Recycling as integrated waste management practices; and

11 WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for Solid  
12 Waste handling within their jurisdictions; and

13 WHEREAS, Section 40059 of the State Public Resources Code provides that the County may  
14 determine aspects of Solid Waste handling which are of local concern, including, but not limited to,  
15 frequency of Collection, means of Collection and Transportation, level of services, charges and fees and  
16 nature, location, and extent of providing Solid Waste handling services and whether the services are to  
17 be provided by means of partially exclusive or wholly exclusive Agreements, contracts, licenses, permits  
18 or otherwise; and

19 WHEREAS, the County is obligated to protect the public health and safety of the residents of the  
20 County and arrangements by waste haulers for the Collection of Solid Waste should be made in a  
21 manner consistent with the protection of public health and safety; and

22 WHEREAS, the County and the Contractor are mindful of the provisions of the laws governing  
23 the safe Collection, Transport, Recycling, and Disposal of Solid Waste, including AB 939 and the Resource  
24 Conservation and Recovery Act 42 U.S.C. 9601 et seq.; and

25 WHEREAS, the County Board of Supervisors determines and finds that the public interest,  
26 health, safety and well being would be served if the Contractor performs these services for Residential  
27 and Commercial Customers within Franchise Service Area J; and

28 WHEREAS, Contractor has provided similar services as a non-exclusive licensee within the  
29 Franchise Service Area covered by this Agreement; and

30 WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the County  
31 Board of Supervisors is empowered to enter into agreements with any Person or corporation and to  
32 prescribe the terms and conditions of such agreements; and

33 WHEREAS, neither the County nor Contractor could anticipate all of the possible needs,  
34 considerations, or eventualities that may arise during the Term of this Agreement and the Parties agree  
35 that they will work together in a spirit of mutual cooperation to resolve any such issues as and when  
36 they arise;

37           WHEREAS, pursuant to California Public Resources Code Section 40059 (a), the Board of  
38 Supervisors has determined that that the public health, safety, and well-being require that an exclusive  
39 franchise be awarded to a qualified Solid Waste enterprise for the collection and recovery of solid waste  
40 from certain residential, industrial and commercial areas in Tulare County (the "County");

41           ACCORDINGLY, it is agreed:

## ARTICLE 1: GRANT AND ACCEPTANCE OF FRANCHISE

### Section 1.1: Grant and Limitations of Exclusive Franchise

By the signing of this Agreement, the County grants to Contractor and Contractor accepts an exclusive franchise within the limits of Franchise Service Area J. Subject to the limitations described in the County Code, the franchise granted to Contractor shall be the exclusive right to collect, transport, handle, process, recycle, and, dispose of all Franchised Materials generated by Residential and Commercial Premises in Franchise Service Area J, as more particularly set out in the scope of services described in Article 4 of this Agreement and subject to the limitations described below in Section 1.1.A and except where otherwise precluded by Federal, State, and local laws and regulations.

A. **Limitations to Exclusivity.** The award of this Agreement shall not preclude the materials listed below from being delivered to and Collected and Transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the County which is otherwise required by law:

1. **Recyclable Materials.** Recyclable Materials that are either donated or sold, by the generator of the materials, to a party other than Contractor. A mere discount or reduction in price of Contractor's charges for the handling of such materials is not a sale or donation within the meaning of this Agreement. The materials shall be deemed "solid waste" within the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such, whether or not they may be potentially recyclable, in either of the following instances: (a) the material is mixed or commingled with other types of solid waste, or (b) the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the generator by any person or combination of persons in exchange for collection, removal, transportation, storage, processing, handling, consulting, container rental or disposal services ("fee for service" recycling), whether or not arranged by or through a subcontractor, broker, agent, consultant, or affiliate of the provider of such service;
2. **Self-Hauled Materials.** A Commercial business Owner or Resident may Dispose of materials generated in or on their own Premises using their own vehicles and equipment, and, with respect to a commercial business, its own employees;
3. **Donated Materials.** Any items which are donated by the Generator to youth, civic, or charitable organizations;
4. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code;
5. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Solid Waste and/or Recyclable Materials removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out service), using its own employees, vehicles and equipment as an incidental part of the service being performed and such contractor is providing a service which is not included in the scope of this Agreement;



- 82           6.    Animal, Grease Waste, and Used Cooking Oil.  Animal waste and remains from  
83           slaughterhouse or butcher shops, grease, or used cooking oil;
- 84           7.    Sewage Treatment By-Product.  By-products of sewage treatment, including sludge, sludge  
85           ash, grit, and screenings;
- 86           8.    Excluded Waste.  Excluded Waste regardless of its source;
- 87           9.    Materials Generated by State Facilities.  Materials generated by State facilities located in the  
88           County; and,
- 89           10.  Construction and Demolition Debris.  C&D hauled by any Person or company licensed,  
90           permitted, franchised, or otherwise authorized by the County to perform such activity.

91   Contractor acknowledges and agrees that the County may permit other Persons besides the Contractor  
92   to Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,  
93   without seeking or obtaining approval of Contractor.  If Contractor can produce evidence that other  
94   Persons are servicing Collection Containers or are Collecting and Transporting Franchised Materials in a  
95   manner that is not consistent with this Agreement or the County Code, it shall report the location, the  
96   name and phone number of the Person or company to the County Contract Manager along with  
97   Contractor's evidence.  In such case, the County may notify the Generator and Person providing service  
98   of Contractor's rights under this Agreement.

99   This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,  
100  now and during the Term of the Agreement.  If future judicial interpretations of current law or new laws,  
101  regulations, or judicial interpretations limit the ability of the County to lawfully contract for the scope of  
102  services in the manner and consistent with all provisions as specifically set forth herein, Contractor  
103  agrees that the scope of the Agreement will be limited to those services and materials which may be  
104  lawfully included herein.  To the extent that Contractor can demonstrate lost profits or losses arising out  
105  of such future limitations to the scope or provisions of the Agreement set forth herein, Contractor may  
106  request a Rate adjustment in accordance with Sections 11.3 and 12.1.C.

107 **ARTICLE 2: REPRESENTATIONS AND WARRANTIES**  
108 **OF THE PARTIES**

109 **Section 2.1: Representations and Warranties**

110 The Parties, by acceptance of this Agreement, represent and warrant that:

- 111 A. **Existence and Powers.** The Parties are duly organized and validly existing under the laws of the  
112 State of California, with full legal right, power, and authority to enter into and perform their  
113 obligations under this Agreement.
- 114 B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and  
115 delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes  
116 the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance  
117 with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency,  
118 moratorium, and other laws affecting creditors' rights generally.
- 119 C. **No Conflict.** Neither the execution, nor the performance by the Parties of their obligations under  
120 this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental  
121 regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any  
122 term or condition of any judgment, decree, franchise, agreement (including, without limitation,  
123 the certificate of incorporation of the Contractor), or instrument to which the Contractor or any  
124 Affiliate is a party or by which the Contractor or any Affiliate or any of their properties or assets  
125 are bound, or constitutes a default under any such judgment, decree, agreement, or instrument.  
126 The Parties have read and are aware of the provisions of Section 1090 et seq. and Section 87100  
127 et seq. of the California Government Code relating to conflicts of interest for public officers and  
128 employees. Contractor represents it is unaware of any financial or economic interest of any public  
129 officer or employee of the County relating to this Agreement.
- 130 D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in  
131 equity, before or by any court or governmental authority, pending, or to the Parties' best  
132 knowledge, threatened against the either Party which is likely to result in an unfavorable decision,  
133 ruling, or finding which would materially and adversely affect the validity or enforceability of this  
134 Agreement or any such agreement or instrument entered into by either Party in connection with  
135 the transactions contemplated hereby, or which would materially and adversely affect the  
136 performance by that Party of its obligations hereunder or by the Contractor under any such other  
137 agreement or instrument.
- 138 E. **No Legal Prohibition.** The Parties have no knowledge of any Applicable Law in effect on the  
139 Agreement Date which would prohibit the performance by either Party of this Agreement and the  
140 transactions contemplated hereby.
- 141 F. **Contractor's Statements.** The Contractor's statements and any other supplementary information  
142 submitted to the County, which the County has relied on in awarding and entering this  
143 Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a  
144 material fact that is necessary in order to make the statements made, in light of the circumstances  
145 in which they were made, not misleading.

- 146 G. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it)  
147 of the conditions and circumstances surrounding the Agreement and the work to be performed  
148 hereunder as of the date of Contractor's execution of this Agreement. Contractor has taken such  
149 matters into consideration in entering this Agreement to provide services in exchange for the  
150 compensation provided for under the terms of this Agreement.
- 151 H. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to  
152 manage, Collect, Transport, Process, and Dispose of the Franchised Materials; and Contractor  
153 possesses the equipment, facility, and employee resources required to perform this Agreement.
- 154 I. **Voluntary Use of Designated Disposal Facility.** The Contractor, without constraint and as a free-  
155 market business decision in accepting this Agreement, agrees to use the Designated Disposal  
156 Facility for the purposes of Disposing of all Solid Waste Collected in the County. Contractor further  
157 agrees to use the Designated Disposal Facility for the purposes of Disposing of all Residual Waste  
158 resulting from Processing activities performed by Contractor under this Agreement and/or at  
159 Processing Facility(ies) within the County. Such decision by Contractor in no way constitutes a  
160 restraint of trade notwithstanding any Change in Law regarding flow control limitations or any  
161 definition thereof.

## 162 **Section 2.2: County Code**

163 Contractor's performance of its obligations hereunder shall conform to the requirements of the Tulare  
164 County Code, which is incorporated herein by reference. Notwithstanding the above, the parties  
165 acknowledge and agree that this Agreement was the result of arms length negotiations, based on the  
166 County Code as it exists as of the Effective Date or as it may be amended as agreed to by the parties in  
167 connection with entering into the Agreement. If the County Code is further amended in the future,  
168 Contractor would be entitled to additional compensation in the event that the scope of services or  
169 Contractor's operations would be modified to comply with such future amendments.

170

171

## **ARTICLE 3: TERM OF AGREEMENT**

172

### **Section 3.1: Term of Agreement**

173

This Agreement shall become effective as of July 1, 2015 and shall expire at 11:59 PM on June 30, 2030

174

unless terminated as provided in this Agreement. The Agreement may be extended in accordance with

175

this Section or terminated pursuant to Article 13.

176

### **Section 3.2: Option to Extend**

177

This Agreement may be extended one or more times by the parties, evidenced by a mutually-executed

178

written amendment for a period of no less than one (1) year and no more than five (5) additional years

179

for a total Term that does not exceed twenty (20) years. If either party desires to extend the Agreement,

180

that party shall provide the other with written notice of its desire to extend the Agreement at least one

181

hundred eighty (180) days before the expiration of the Term.

182

### **Section 3.3: Termination for Failure to Implement Services**

183

The Contractor has agreed herein, through either its own labor, equipment, and facilities or facilities

184

provided by others, to implement various programs in order provide service to Customers under this

185

Agreement. Failure to implement the services described in this Agreement upon the commencement of

186

this Agreement for any reason, shall constitute an Event of Default in accordance with Section 13.1

187

hereof.

188

## ARTICLE 4: SCOPE OF SERVICES

189 Contractor shall perform the Services described in this Article 4. This Article 4 describes the  
190 requirements for the services to be provided including the types and sizes of Containers to be provided  
191 by Contractor, available Service Levels and frequencies, acceptable and prohibited materials, and any  
192 additional services to be provided to Customers who subscribe to that program. Failure to specifically  
193 require an act necessary to perform the service does not relieve Contractor of its obligation to perform  
194 such act.

### 195 Section 4.1: Residential Services

196 Contractor shall provide the services described in this Section 4.1 to any Residential Customer within the  
197 County who subscribes with Contractor for such service. The Residential sector includes Multiple-Unit  
198 Dwellings with four (4) or less units.

199 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided Carts from  
200 Residential Customers and Transport all Solid Waste to the Approved Mixed Waste Processing  
201 Facility for Processing and/or Designated Disposal Facility for Disposal. Contractor shall deliver all  
202 Solid Waste collected in "foothill" areas to the Approved Mixed Waste Processing Facility.

- 203 **Containers:** Carts
- 204 **Container Sizes:** 95-gallons (or similar size) and 65-gallons (or similar size)
- 205 **Service Frequency:** One (1) time per week
- 206 **Service Location:** Curbside
- 207 **Acceptable Materials:** Solid Waste
- 208 **Prohibited Materials:** Recyclable Materials, Greenwaste, Excluded Waste
- 209 **Additional Service:** Contractor shall provide additional Solid Waste Carts to Residential  
210 Customers upon request and may charge the "Additional Solid Waste  
211 Cart" Rate approved by the County.

212 B. **Recyclable Materials Collection.** Contractor shall Collect Recyclable Materials in Contractor-  
213 provided Containers from Residential Customers in "urban" and "rural" areas and Transport all  
214 Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

- 215 **Containers:** Carts
- 216 **Container Sizes:** 95-gallons (or similar size)
- 217 **Service Frequency:** One (1) time per week in "urban" areas and one (1) time every other  
218 week in "rural" areas; on the same day as Solid Waste Collection
- 219 **Service Location:** Curbside
- 220 **Acceptable Materials:** Recyclable Materials
- 221 **Prohibited Materials:** Solid Waste, Greenwaste, Food Waste, Excluded Waste
- 222 **Additional Service:** Contractor shall provide one (1) additional Recyclable Materials Cart to  
223 "rural" Residential Customers upon request at no additional charge, and  
224 to "urban" Residential Customers at the "Additional Recyclable  
225 Materials Cart" Rate approved by the County.  
226 During the first two (2) Collection Days of each year for each Residential  
227 Customer, Contractor shall Collect up to an additional five (5) bags of

228 Recyclables set out curbside at no additional cost to the Customer to  
229 accommodate additional Recyclables generated during the Holidays.

230 C. **Greenwaste Collection.** Contractor shall Collect Greenwaste in Contractor-provided Containers  
231 from Residential Customers and Transport all Greenwaste to the Approved Greenwaste Processing  
232 Facility for Processing.

233 **Containers:** Carts  
234 **Container Sizes:** 95-gallons (or similar size)  
235 **Service Frequency:** One (1) time per week in "urban" areas and one (1) time every other  
236 week in "rural" and "foothill" areas; on the same day as Solid Waste  
237 Collection  
238 **Service Location:** Curbside  
239 **Acceptable Materials:** Greenwaste  
240 **Prohibited Materials:** Solid Waste, Recyclable Materials, Excluded Waste  
241 **Additional Service:** Contractor shall provide one (1) additional Recyclable Materials Cart to  
242 "rural" and "foothill" Residential Customers upon request at no  
243 additional charge, and to "urban" Residential Customers at the  
244 "Additional Greenwaste Cart" Rate approved by the County.

## 245 **Section 4.2: Commercial Services**

246 Contractor shall provide the services described in this Section 4.2 to any Commercial Customer within  
247 the County who subscribes with Contractor for such service. The Commercial sector includes Multiple-  
248 Unit Dwellings where one Customer subscribes to communal service for more than one dwelling unit.

249 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided Containers not  
250 less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the  
251 Approved Mixed Waste Processing Facility for Processing and/or Designated Disposal Facility for  
252 Disposal. Contractor shall deliver any and all Solid Waste collected from any Commercial Customer  
253 who is not participating in a source separated Recycling program to the Approved Mixed Waste  
254 Processing Facility for Processing.

255 **Containers:** Carts, Bins, Drop Boxes, Compactors  
256 **Container Sizes:** 95-gallon Carts;  
257 1-, 1.5-, 2-, 3-, 4-, and 6- cubic yard Bins; and,  
258 Drop Boxes or Compactors (as requested by Customer)  
259 **Service Frequency:** Customers in "foothill" areas may be limited to three (3) service days  
260 per week, all other Customers may receive service up to six (6) days per  
261 week. All service shall be provided at the frequency requested by the  
262 Customer.  
263 **Service Location:** Curbside; or other Customer-selected service location at the  
264 Commercial Premises.  
265 **Acceptable Materials:** Solid Waste  
266 **Prohibited Materials:** Recyclable Materials, Excluded Waste  
267 **Additional Service:** Upon Customer request and to accommodate periodic additional  
268 service needs, Contractor shall provide Collection service at a greater  
269 frequency than the Customer's regularly scheduled service, up to the

270 maximum Service Frequency and Contractor may charge the  
271 appropriate Rate for the higher Service Frequency.  
272 Contractor shall provide a Bin exchange to any Commercial Customer  
273 for cleaning and maintenance once (1) each year, upon Customer  
274 request.

275 **Other Requirements:** Contractor shall, at Customer's request and for an additional charge,  
276 open and close gates, push and/or pull Containers, lock and unlock  
277 Containers, or perform other services as reasonably necessary to access  
278 and empty Containers.

279 B. **Recyclable Materials Collection.** No later than October 1, 2015, Contractor shall distribute  
280 Recyclable Materials Containers and educational brochures or flyers informing Customers about  
281 the proper use of such Containers to all Commercial and Multi-Family Customers subscribing to  
282 Solid Waste Collection service with Contractor. Contractor's default Container size shall be one (1)  
283 96-gallon Cart for Customers subscribing to less than four (4) cubic yards of weekly Solid Waste  
284 service and one (1) 3-cubic yard bin for Customers subscribing to four (4) cubic yards or more of  
285 weekly Solid Waste. Contractor may substitute one type of default Container for another where it  
286 best serves Customer needs, after consideration of factors such as amount of Recyclable Materials  
287 generated, space constraints or logistics. Contractor shall Collect Recyclable Materials in  
288 Contractor-provided Containers not less than one (1) time per week from Commercial Customers  
289 and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for  
290 Processing.

291 **Containers:** Carts, Bins, Drop Boxes, Compactors  
292 **Container Sizes:** 96-gallon Carts; 3-- cubic yard Bins; and,  
293 Drop Boxes or Compactors (as requested by Customer)  
294 **Service Frequency:** Up to three (3) times per week but not less than one (1) time every  
295 week, as requested by Customer  
296 **Service Location:** Curbside or other Customer-selected service location at the Premises  
297 **Acceptable Materials:** Recyclable Materials  
298 **Prohibited Materials:** Solid Waste, Greenwaste, Food Waste, Excluded Waste  
299 **Additional Service:** Upon request from Customer or County, Contractor shall provide  
300 Recyclable Materials Collection service to Customers up to the  
301 equivalent volume of Solid Waste Collection service subscribed by  
302 Customer at no additional charge to Customer. In the event a Customer  
303 requests Recyclable Materials Collection service in excess of their  
304 subscribed level of Solid Waste Collection service, Contractor may  
305 charge Customer up to fifty percent (50%) of the Rate for the equivalent  
306 level of Solid Waste Collection service approved under this Agreement  
307 after adjusting the service level to allow for the amount of service that  
308 must be provided at no charge.

309 **Other Requirements:** Contractor shall, at Customer's request and for an additional charge,  
310 open and close gates, push and/or pull Containers, lock and unlock  
311 Containers, or perform other services as reasonably necessary to access  
312 and empty Containers.  
313

314 C. **Organic Materials Collection.** On or before the effective date of mandatory Organic Materials  
315 recycling requirements as set forth under AB 1826, Contractor shall develop and implement

316 Organic Materials Collection programs for Commercial and Multi-Family Customers. Those  
317 programs must comply with the requirements of AB 1826 to the satisfaction of the County  
318 Contract Manager. Prior to implementation of the program, Contractor and County shall meet and  
319 confer to establish Rates for the services. The Rate for service shall be sixty five percent (65%) of  
320 the service portion of the Rate for the equivalent level of Solid Waste Collection service plus an  
321 amount to compensate Contractor for the cost of Processing Organic Materials, which shall be  
322 based on the tipping fee at the agreed-upon Processing Facility. Contractor shall Collect Organic  
323 Materials in Contractor-provided Containers not less than one (1) time per week from Commercial  
324 Customers and Transport all Organic Materials to an Organic Materials Processing Facility mutually  
325 agreed-upon by the Contractor and County for Processing.

326 **Containers:** Carts, Bins, Compactors  
327 **Container Sizes:** 96-gallon Carts; 3-- cubic yard Bins; and,  
328 Drop Boxes or Compactors (as requested by Customer)  
329 **Service Frequency:** Up to three (3) times per week but not less than one (1) time every  
330 week, as requested by Customer  
331 **Service Location:** Curbside or other Customer-selected service location at the Premises  
332 **Acceptable Materials:** Greenwaste, Food Waste  
333 **Prohibited Materials:** Solid Waste, Recyclable Materials, Excluded Waste  
334 **Additional Service:** Upon Customer request and to accommodate periodic additional  
335 service needs, Contractor shall provide Collection service at a greater  
336 frequency than the Customer's regularly scheduled service, up to the  
337 maximum Service Frequency and Contractor may charge the  
338 appropriate Rate for the higher Service Frequency.  
339 Contractor shall provide a Bin exchange to any Commercial Customer  
340 for cleaning and maintenance once (1) each year, upon Customer  
341 request.

342 **Other Requirements: Contractor shall, at Customer's request and for an**  
343 **additional charge, open and close gates, push and/or pull Containers, lock**  
344 **and unlock Containers, or perform other services as reasonably necessary to**  
345 **access and empty Containers. Section 4.3: Collection Service Operating**  
346 **Requirements**

347 A. **Regular Hours of Service.** The Contractor shall schedule no Collections from any Premises on  
348 any day earlier than 5:00 a.m. or later than 6:00 p.m. provided, however, that the County may,  
349 at its sole discretion, change the Collection time as required by the needs of the Customers or  
350 the Contractor.

351 B. **Emergency Service.** Collections of Solid Waste necessitated by an emergency, which the County  
352 Contract Manager determines threatens the public health and safety within the County will be  
353 made by the Contractor at the direction of the County Contract Manager. Such Emergency  
354 Services may be required outside of the regular Collection hours and schedule. If the County  
355 requests the Contractor to provide Emergency Services, the Contractor will use the Contractor's  
356 good faith best efforts to respond to such a request. The County shall reimburse the Contractor  
357 for all documented and reasonable actual costs incurred in order to comply with the provisions of  
358 this Section.



- 359 C. **Noise Levels.** The Contractor shall perform the Collection Services in a manner that minimizes the  
 360 noise resulting from its equipment and personnel and shall ensure that it is in compliance with  
 361 Applicable Law and the County Code.
- 362 D. **Holidays.** Collection of Solid Waste and Recyclable Materials shall not be required on the following  
 363 legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day  
 364 and Christmas Day, except in case of emergency or as otherwise required by the County Contract  
 365 Manager. Whenever a regular Collection falls on such a holiday, the Collection shall be made on  
 366 the following working day, and Collections throughout the County shall become current within  
 367 one (1) week thereafter. Written notice of this policy shall be provided to Customers no more than  
 368 thirty (30) days prior to such alternative service day. Collection shall not be rescheduled when the  
 369 holiday falls on a Saturday or Sunday, unless otherwise agreed to by the County and the  
 370 Contractor.
- 371 E. **Preservation of Public Health and Safety.** The Contractor shall at all times operate in such a  
 372 manner as to protect the public health and safety. The Contractor agrees to establish procedures  
 373 and educate its employees regarding proper methods for the protection of the general public,  
 374 including, but not limited to, reporting observed or suspected criminal activities and arranging for  
 375 the proper and legal Disposal of hazardous substances encountered during its performance under  
 376 this Agreement.

377 **Section 4.4: Other Services**

- 378 A. **Clean-up Events.** Contractor shall offer Bulky Waste drop-off events to Residential and Multiple-  
 379 Unit Dwelling Customers two (2) times per year at no additional charge to Customers.  
 380 Contractor shall make reasonable efforts to schedule the events during the County's half-price  
 381 disposal week and to rotate events annually throughout Contractor's service area. Contractor  
 382 shall Collect Bulky Waste from Customers and may Transport the Bulky Waste to a charitable or  
 383 thrift organization for re-use, otherwise all Bulky Waste shall be delivered to the Designated  
 384 Disposal Facility.

- 385 **Containers:** Up to two (2) 40 cu. yd. Roll-Off boxes per event or equivalent volume  
 386 of Bins, provided that accommodations are made by Contractor for  
 387 either separate collection or post-collection sorting of each acceptable  
 388 material type.
- 389 **Service Level:** Up to three (3) cubic yards of Solid Waste, Greenwaste, Recyclable  
 390 Materials, and E-Waste OR up to one (1) Appliance or Bulky Waste Item  
 391 per Customer
- 392 **Service Frequency:** Two (2) times per year (additional events may be provided by  
 393 Contractor in its discretion)
- 394 **Service Location:** Location within service area selected by Contractor and approved by  
 395 County Contract Manager
- 396 **Acceptable Materials:** Solid Waste, Recyclable Materials, Greenwaste, Bulky Waste, E-Waste,  
 397 and U-Waste
- 398 **Prohibited Materials:** Excluded Waste or any single item that exceeds two hundred (200) lbs.  
 399 in weight

400 **Additional Service:** Contractor shall Collect additional items that exceed the above  
401 described service level and may charge the "Additional Bulky Waste  
402 Item" Rate approved by the County (as requested by Customer).

403 B. **County Facilities and Events.** Contractor shall Collect Solid Waste and Recyclable Materials from  
404 County facilities in the same manner as those services are provided to Commercial Customers.  
405 Contractor shall provide service to all County facilities located within Franchise Service Area J as  
406 well as any future facilities owned and operated by the County. Provision of such services to  
407 County facilities specifically excludes any County-owned Solid Waste transfer station(s) within  
408 Service Area J. Contractor shall provide Solid Waste and Recyclable Materials services to County-  
409 sponsored public event held within Franchise Service Area J to include, at a minimum, Carts for  
410 the collection of both Solid Waste and Recyclable Materials and staffing sufficient to ensure that  
411 such Carts are serviced frequently enough to prevent overflowing or spillage. Contractor shall  
412 provide these services at no cost to the County or Customers.

413 C. **Christmas Trees.** The Contractor shall Collect all Christmas trees properly placed curbside by  
414 Residential (including Multiple-Unit Dwelling) Premises on the first two (2) regularly scheduled  
415 Collection days after Christmas Day, or such other days as agreed by the County Contract Manager  
416 and the Contractor, free of any additional charge to any Customer.

417 D. **Public Education and Outreach.** The Contractor shall perform all public education and outreach  
418 activities appropriate to: inform Customers about their proper participation in the programs and  
419 services described in this Agreement; encourage Customers' maximum participation in waste  
420 reduction, recycling, and Diversion programs; and, comply, on behalf of the County, with all local  
421 government requirements for education and outreach as required by AB 341 and AB 1826. At a  
422 minimum, Contractor shall provide:

423 i) A quarterly mailer to all Residential Customers focused on increasing Diversion by educating  
424 Customers about the available services (e.g. Bulky Items, Christmas Trees, Accepted/Prohibited  
425 Recyclable Materials, etc.);

426 ii) A semi-annual mailer to all Multiple-Unit Dwelling property owners and/or managers focused  
427 on ensuring their awareness of and compliance with the requirements of AB 341 and notifying  
428 them of the availability of Contractor's staff to assist in developing or improving their recycling  
429 programs;

430 iii) A semi-annual mailer to all Commercial Customers focused on ensuring their awareness of and  
431 compliance with the requirements of AB 341 (mandatory commercial recycling) and AB 1826  
432 (mandatory commercial organics) and notifying them of the availability of Contractor's staff to  
433 assist in developing or improving their recycling programs;

434 iv) Graphically-oriented flyers, brochures, adhesive labels, and posters for use in and around Solid  
435 Waste and Recyclable Materials Containers and interior receptacles to educate users about the  
436 acceptable and prohibited materials for each program;

437 v) A website including a comprehensive listing of Contractor's services and Maximum Rates,  
438 acceptable and prohibited materials for each program, and the ability for Customers to contact  
439 Contractor; and,

440 vi) An annual visit to each and every Commercial and Multiple-Unit Dwelling Customer to assess  
441 their recycling programs, offer suggestions for improvement, adjust service levels, provide  
442 collateral educational materials, and inform them of their obligations under AB 341.

443 vii) Beginning three (3) months prior to the commencement of Collection services under this  
444 Contract, Contractor shall distribute, once per month, educational information about the proper  
445 disposal of Excluded Waste to all Collection Customers. Upon commencement of services,  
446 Contractor shall then continue such distribution biannually throughout the Term of this Contract.

#### 447 **Section 4.5: Standard of Performance**

448 Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to  
449 the public and the Contractor's employees. Except to the extent that a higher performance standard is  
450 specified in this Agreement, Contractor shall perform services in accordance with management practices  
451 common to the solid waste and recycling industry in California.

452 A. **Clean Up: Avoiding Damage to Property.** The Contractor shall use due care to prevent spills or  
453 leaks of material placed for Collection. If any materials are spilled or leaked during Collection or  
454 Transportation, the Contractor shall clean up all spills or leaks before leaving the site of the spill.  
455 The Contractor shall close all gates after making Collections and shall not do damage to or trespass  
456 upon private or public property.

457 B. **Hazardous Waste.** The Contractor acknowledges its obligation to arrange for the Disposal of  
458 Hazardous Waste that inadvertently comes into its possession or control. Contractor shall develop  
459 a load inspection program to be implemented during Collection. The purpose of the load  
460 inspection program is to prevent the Collection of Excluded Waste before it is delivered to the  
461 Designated Disposal Facility. The load inspection program shall operate as follows:

462 1. If Contractor determines that Solid Waste placed in any Container for Collection contains  
463 Excluded Waste or presents a danger to Contractor's employees, Contractor shall refuse to  
464 Collect such Excluded Waste. Contractor shall immediately contact the Generator regarding  
465 the presence of Excluded Waste in the Container(s) and the need to arrange for proper  
466 Disposal. If the Generator cannot be reached immediately, Contractor shall, before leaving  
467 the Premises, leave a notice tag at least two (2) inches by six (6) inches in size, which  
468 indicates the reason for refusing to Collect the material and lists the phone numbers of  
469 Hazardous Waste facilities that accept Excluded Waste.

470 2. Under no circumstances shall Contractor's employees knowingly Collect Excluded Waste or  
471 remove unsafe or poorly containerized Excluded Waste from a Collection Container.

472 3. If Contractor finds Excluded Waste in a Container or Collection area and believes it could  
473 possible result in imminent danger to people or property, Contractor shall immediately  
474 notify the Fire Department.

#### 475 C. **Employees:**

476 1. **Uniform.** The Contractor shall take all steps necessary to ensure that its employees  
477 performing Collection Services conduct themselves in a safe, proper, and workmanlike

478 manner, and that they work as quietly as possible. All such employees shall at all times of  
479 employment be dressed in uniforms with suitable identification.

480 2. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,  
481 issued by the California Department of Motor Vehicles. Contractor shall use the Class II  
482 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its  
483 drivers for safety.

484 3. **Safety Training.** Contractor shall provide suitable operational and safety training for all of  
485 its employees who operate Collection Vehicles or equipment. Contractor shall train its  
486 employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the  
487 County Contract Manager's request, Contractor shall provide a copy of its safety policy and  
488 safety training program, the name of its safety officer, and the frequency of its trainings.

489 4. Contractor's Collection vehicle drivers and route supervisors shall be trained in: (i) the  
490 effects of Hazardous Waste on human health and the environment; (ii) identification of  
491 Excluded Waste; (iii) proper management of Excluded Waste; and (iv) emergency  
492 notification and response procedures.

493 D. **Improper Loading of Containers.** The Contractor may decline to Collect any Franchised Materials  
494 that have been loaded or left for Collection in any manner which would prohibit its safe Collection.

495 E. **Record of Non-Collection.** When any Franchised Materials placed for Collection are not Collected  
496 by the Contractor, the Contractor shall leave a tag listing the reasons for such non-Collection and a  
497 telephone number at which the Customer may contact the Contractor. This information shall  
498 either be in writing or by means of a checked box on a form. The Contractor shall maintain, at its  
499 place of business, a log book listing all such circumstances in which Collection is denied. The log  
500 book shall contain the names and/or addresses of the Collection Premises involved, the date of  
501 such tagging, the reason for non-Collection, and the date and manner of disposition of each case.  
502 The log book shall be kept so that it may be conveniently inspected by the County Contract  
503 Manager upon request. The log relating to any particular tagging shall be retained for a period of  
504 one (1) year following such tagging.

505 F. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or  
506 Subcontractor employed by it, to request, solicit, or demand either directly or indirectly, any  
507 compensation for the Collection of Franchised Materials or other Collection Services, except such  
508 compensation as is specifically provided for herein as approved by the County. Contractor shall  
509 instruct all such parties that they may not accept any such compensation.

510 G. **Compliance with Applicable Law.** Contractor shall provide services in accordance with applicable  
511 Federal, State, and local laws, regulations and directives. With respect to Contractor's employees,  
512 Contractor shall comply with all laws and regulations pertaining to wages and hours, state and  
513 federal income tax, unemployment insurance, Social Security, disability insurance, workers'  
514 compensation insurance, and discrimination in employment. The Contractor shall keep all records  
515 indicating compliance required by the Federal Immigration and Control Act of 1986 and shall make  
516 such records available for inspection by the County Contract Manager upon request.

517 H. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in  
518 respect of the Operating Assets or the Collection Services, or upon any part thereof or upon any

519 revenues of the Contractor therefrom, and shall provide and pay the cost of all utilities necessary  
520 for the operation of the Operating Assets and the provision of the Collection Services, when the  
521 same shall become due.

522 I. **Customer Service.** The Contractor shall, at all times during the term of this Agreement, be  
523 available to Customers between the hours of 9:00 a.m. and 5:00 p.m. no less than five (5) days per  
524 week to receive service requests, provide education regarding acceptable and prohibited items for  
525 each Collection service provided, and to receive Customer complaints and requests for corrective  
526 service. At a minimum, Contractor shall provide a local or toll-free telephone number to all  
527 Customers. Contractor shall provide for a telephone system and customer service staffing capable  
528 of ensuring that any caller may reach a live person to provide service within two (2) minutes.  
529 Contractor shall also provide an after-hours voicemail system on the same telephone number and  
530 reply to Customers regarding any after-hours requests by noon the next Business Day.

531 Where reasonably practicable, Contractor shall resolve any service complaint including, without  
532 limitation, missed Collections, vehicle fluid spills, and failure to clean up litter created during  
533 Collection, within one (1) Business Day of receiving such complaint. County understands that it is  
534 not always possible to resolve every service complaint in one day. It may not be possible to reach  
535 the customer or it may be impractical to physically fix the problem in that time frame. Contractor,  
536 however, will make best efforts to resolve the issue in one day and will reach out to the customer  
537 as soon as possible.

#### 538 **Section 4.6: Collection Locations**

539 A. **General.** The Contractor shall be responsible for the Collection of all Franchised Materials placed  
540 for Collection in a legal manner. The Contractor shall immediately notify the County Contract  
541 Manager of any condition at or near any Designated Collection Location which creates a safety  
542 hazard or accessibility problem. Upon authorization by the County Contract Manager, the  
543 Contractor shall discontinue Collection for any such location until the safety hazard or accessibility  
544 problem is corrected.

545 B. **Enclosures.** Where the Designated Collection Location is within an enclosure constructed pursuant  
546 to the requirements of any public agency having jurisdiction over the design, construction, and  
547 location of such enclosures, the Contractor shall be responsible for the removal and replacement  
548 of all Containers placed therein. The Contractor shall use sufficient care in the handling of such  
549 Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent  
550 facilities or improvements. The Contractor shall promptly repair, at its own expense, any such  
551 enclosure or adjacent facilities or improvements damaged by the Contractor. The County shall  
552 resolve any disputes relating to such damage, and the Contractor agrees to abide by such decision.

553 C. **Overfilling of Containers.** Where Contractor identifies instances of overfilling of containers by  
554 Multi-Family or Commercial Customers receiving Bin service, it will document the overfilling  
555 through the use of film or digital photography. Contractor may charge an overage fee approved  
556 by the County for cleaning up the container area and placing overfilled material into the collection  
557 vehicle. In addition, Contractor will present evidence of the overfilling to both the County and the  
558 Customer. Where such evidence was presented to the Customer, and Contractor documents  
559 another instance of overfilling within three (3) months of such presentation, Contractor is  
560 authorized to charge an overage fee, deliver the next larger-sized container to the Customer, and

561 adjust the service rate to the rate then in effect for the next larger-sized container. Contractor will  
562 provide the County Contract Manager or with verbal notification prior to delivering the next  
563 larger-sized container and adjusting the service rate.

#### 564 **Section 4.7: Other Wastes**

565 The Parties acknowledge that this Agreement is granted only with respect to the Collection Services and  
566 does not include the Collection, Transportation, Processing, or Disposal of Hazardous Waste, Medical  
567 Waste, and Liquid Waste. If the Contractor elects to provide any such services with respect to Hazardous  
568 Waste, Infectious Waste, or any other waste regulated by the Department of Toxic Substances Control,  
569 such services shall be performed by a separate legal entity separately insured and liable, and according  
570 to Applicable Law unless otherwise approved in writing by the County's Risk Manager. The Parties  
571 further acknowledge that the provision by the Contractor of any services not specifically included within  
572 the Agreement are excluded from the protection of this Agreement and may be the subject of  
573 competition among any and all legally authorized haulers.

#### 574 **Section 4.8: Changes in Scope of Collection Services**

575 Pursuant to the County Code, the County may modify the scope of services performed by the Contractor  
576 pursuant to this Agreement.

577 The County shall provide written notice of any requested modification to the scope of services provided  
578 by Contractor pursuant to this Agreement, and the Contractor shall provide the County with any  
579 information requested by the County in connection with the proposed changes. The County reserves the  
580 right to withdraw its request for a change in scope for any reason prior to a written agreement of the  
581 parties to implement such change. The Contractor shall, within sixty (60) days after receipt of such  
582 notice by the County, respond to the County's request.

#### 583 **Section 4.9: Billing**

584 Contractor shall bill all Customers and be solely responsible for collecting billings at or below Maximum  
585 Rates set in accordance with Article 11. Billing shall be performed on the basis of services rendered and  
586 this Agreement shall create no obligation on the part of any Person on the sole basis of the ownership of  
587 property.

588 Contractor's website shall provide Customers with the ability to pay their bills through an electronic  
589 check or credit card and include the ability for Customer billings to be automatically charged on a  
590 recurring basis. Contractor shall prepare, mail, and collect bills from Customers who decline to use such  
591 internet-based billing system. Contractor shall make arrangements to allow Customers to pay bills by  
592 cash, check, electronic check, money order, and credit card at a location within the County which shall  
593 be available to Customers from 8:00 a.m. to 5:00 p.m. Monday through Friday.

594 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of  
595 this Agreement, for inspection and verification by the County Contract Manager at any reasonable time  
596 but in no case more than ten (10) Business Days after receiving a request to do so.

597 Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad  
598 debt"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through

599 issuance of late payment notices, telephone requests for payments, and assistance from collection  
600 agencies.

601 Invoices are due thirty (30) days following the date of the invoice. The date of the invoice shall not be  
602 prior to the first day of the service period for the billing. Contractor shall bill Residential Customers on a  
603 quarterly basis and Commercial Customers on a monthly basis. In the event that any account becomes  
604 more than thirty (30) calendar days past due, Contractor shall notify such Customer of the delinquency  
605 via written correspondence and telephone contact. Should any account become more than sixty (60)  
606 calendar days past due, Contractor shall provide notice to the Customer via written correspondence,  
607 with a copy to the County Contract Manager, that service may be discontinued if the account becomes  
608 more than ninety (90) calendar days past due. Should any account become more than ninety (90)  
609 calendar days past due, Contractor may discontinue providing service to the Customer. No less than  
610 seven (7) calendar days prior to discontinuing service to a Customer, Contractor shall notify the County  
611 Contract Manager of the address, Service Level, service frequency, and delinquent billing amount.  
612 Contractor may withhold service from a delinquent account until past delinquencies are paid in full.  
613 Upon restoring service to a previously delinquent account, Contractor may require a deposit from the  
614 Customer not to exceed one (1) month's billings at the Customer's Service Level and a reactivation fee  
615 approved by the County. Contractor may charge interest at a rate of one and one-half percent (1 ½%), or  
616 the highest rate of interest allowable under law, whichever is less, and non-sufficient funds (NSF)  
617 charges, where appropriate, on account balances that are more than thirty (30) calendar days past due.

#### 618 **Section 4.10: Transition to Next Contractor at End of Agreement**

619 If applicable, before expiration or earlier termination of this Agreement, Contractor will take direction  
620 from the County and subsequent contractor to assist in a timely and orderly transition of services from  
621 Contractor to subsequent contractor. In response to the County's direction, Contractor shall provide  
622 then-current route lists, which identify each Customer on the route, its service level (number of  
623 Containers, Container sizes, frequency of Collection, scheduled Collection day), and any special  
624 Collection notes, and detailed then-current Customer account and billing information. Contractor may,  
625 but shall not be obliged to, sell Collection vehicles, equipment, or facilities to the next contractor. Failure  
626 to fully comply with this provision, including both errors in fact and of omission, but excluding minor or  
627 clerical errors, may result in Liquidated Damages of twenty-five thousand dollars (\$25,000).

## ARTICLE 5: PROCESSING AND TRANSFER

628

### 629 **Section 5.1: Processing and Transfer Arrangements**

630 The Contractor shall make its own Processing and Transfer arrangements, so long as such arrangements  
631 are in full compliance with Applicable Law. The County may order the Contractor to modify or terminate  
632 its Processing and/or Transfer arrangements if:

- 633 A. The County determines that such arrangements threaten public health or safety;
- 634 B. The County determines that the County is not adequately protected from liability for the activities  
635 of the Processing or Transfer entities;
- 636 C. The County determines that the diversion levels of the particular facility causes the County to be  
637 substantially out of compliance with AB 939 or any other regulations regarding Solid Waste and  
638 Recyclable Materials management, as determined, for example and not by way of limitation, by a  
639 CalRecycle compliance order or failure to achieve minimum standards established by a regulatory  
640 agency, following notice and reasonable opportunity to cure where such opportunity to cure may  
641 include providing replacement programs which would result in compliance; and/or,
- 642 D. The Contractor is Disposing of Recovered Materials.

### 643 **Section 5.2: Recyclable Materials Marketing**

644 The Contractor or their subcontractor shall be responsible for marketing Recyclable Materials Collected  
645 in the County. Contractor's marketing strategy shall make reasonable business efforts to promote the  
646 highest and best use of materials presented in the waste management hierarchy established by AB 939.  
647 Where practical and cost-effective, the marketing strategy should include use of local, regional, and  
648 domestic markets for Recyclable Materials. Contractor shall make available to the County Contract  
649 Manager any and all documentation of the final disposition of marketed Recyclable Materials as well as  
650 certification that such materials have not been landfilled or incinerated.

### 651 **Section 5.3: Title to Recovered Materials**

652 As between the Parties, the Contractor has title to and liability for all Recovered Materials, and shall  
653 indemnify, defend, and hold harmless the County from any property damage, personal injury, or  
654 consequential damages suffered by any Person from exposure to or as a result of Processing any  
655 Recovered Materials or subsequent product made from Recovered Materials based on any theory of  
656 liability. The Contractor shall promptly notify the County of any claim by any Person arising out of the  
657 marketing, Disposal, or reuse of Recovered Materials.



## ARTICLE 6: SOLID WASTE DISPOSAL

658

### 659 Section 6.1: Solid Waste Disposal

660 A. **Disposal Generally.** The Contractor shall Transport and Dispose of all Franchised Materials,  
661 including Solid Waste and Residual Waste, which it Collects pursuant to this Agreement, but does  
662 not divert from landfill Disposal at the Designated Disposal Facility, in accordance with the  
663 requirements of Applicable Law. Contractor shall comply with the requirements, rules and  
664 regulations of the Owner or operator of the Designated Disposal Facility. Contractor further agrees  
665 to ensure the delivery any Residual Waste from any Approved Processing Facility which is owned  
666 or operated by Contractor or its Affiliates and located within the County to the Designated  
667 Disposal Facility, regardless of the origin of that Residual Waste.

668 B. **Designated Disposal Facilities.** The County shall have the right during the Term of the Agreement  
669 to designate the Designated Disposal Facility, or multiple concurrent Designated Disposal  
670 Facilities, in its sole and absolute discretion. The initial Designated Disposal Facilities shall be any  
671 of the Tulare County landfills as approved by the County. The County shall notify the Contractor in  
672 writing of any changes in or additions to the Designated Disposal Facility. County acknowledges  
673 that the Contractor shall nonetheless be entitled to recover, through the Maximum Rates to be  
674 charged and authorized to be imposed hereunder, the reasonable costs of the Contractor incurred  
675 as the result of a change in the Designated Disposal Facility, if such facility is located outside of the  
676 County. Additionally, Contractor shall be entitled to recover if there are not two operating  
677 landfills in the County at all times, except for temporary emergency closure lasting less than 30  
678 days.

679 C. **Disposal Records.** The Contractor shall keep and maintain such logs, records, manifest, bills of  
680 lading or other documents as the County may deem to be necessary or appropriate to confirm  
681 compliance by the Contractor with this Agreement and shall retain all weight slips or other call  
682 information provided to the Contractor's drivers by the Owner or operator of the Designated  
683 Disposal Facility.

684 D. **Failure to Transport to Designated Disposal Facility.** The Contractor's failure to properly  
685 Transport, or cause to be Transported, Franchised Materials to a Designated Disposal Facility as  
686 described herein is an Event of Default, as described in Section 13.1.A of this Agreement, unless  
687 the failure to Transport such Franchised Materials to the Designated Disposal Facility is the result  
688 of an Uncontrollable Circumstance or such waste has been diverted by means of alternative  
689 technology allowing AB 939 diversion credit to the County; provided however, that any Residual  
690 Waste from Processing or diversion activities occurring within the County at any Approved Facility  
691 owned or operated by Contract or an Affiliate shall be Disposed at the Designated Disposal  
692 Facility.

693 E. **Flow Control Covenant.** The Contractor hereby waives any right which it may possess under  
694 Applicable Law to contest on any ground, constitutional, statutory, case law, administrative or  
695 otherwise: (i) the right, power, or authority of the County to engage in the practice of legal Solid  
696 Waste "flow control" under the terms of this Agreement. ; or, (ii) the right, power, or authority of  
697 the County to deliver or cause the delivery of all Solid Waste Collected within the County to the  
698 Designated Disposal Facility in accordance with this Agreement. Contractor acknowledges that  
699 the County is acting through the Agreement as a market participant.

700 **Section 6.2: Excluded Waste Inspection, Handling and Responsibility**

701 A. **Load Acceptance Program.** The County shall develop a load acceptance program to be  
702 implemented at the Designated Disposal Facility. The purpose of the load acceptance program is  
703 to prevent the Disposal of Excluded Waste at the Designated Disposal Facility. The load  
704 acceptance program shall operate as follows:

705 1. Prior to accepting Collected Materials for Disposal at the Designated Disposal Facility, the  
706 Designated Disposal Facility operator shall inspect each load for the presence of Excluded  
707 Waste. Such inspection procedure shall not directly conflict with any Permit requirements  
708 or Applicable Law. If Excluded Waste is detected, then the Designated Disposal Facility  
709 operator shall immediately notify Contractor and reject that portion of materials  
710 contaminated with Excluded Waste.

711 2. County personnel in charge of inspecting and accepting loads for Disposal shall be trained in:  
712 (i) the effects of Hazardous Waste on human health and the environment; (ii) identification  
713 of Excluded Waste; (iii) proper management of Excluded Waste; and (iv) emergency  
714 notification and response procedures.

715 B. **Responsibility for Excluded Waste.**

716 1. If the Designated Disposal Facility operator rejects the load due to the presence of Excluded  
717 Waste, then Contractor shall assume all liabilities for such Excluded Waste. In this  
718 circumstance, Contractor agrees to indemnify the County, its elected officials, officers,  
719 employees, agents, successors, and assigns, from any claims, liabilities, actions, demands,  
720 orders, damages, penalties, expenses, and costs (including, but not limited to, the costs of  
721 proper handling or remediation of the Excluded Waste), arising from or in connection with  
722 the Excluded Waste that was rejected.

723 2. If the Designated Disposal Facility operator accepts the load for Disposal and later identifies  
724 materials contaminated with Excluded Waste at the Designated Disposal Facility, then the  
725 County shall assume all liabilities for such Excluded Waste, only to the extent such failure to  
726 identify the contaminated load was due to the negligence or willful misconduct or omission  
727 of the County, its officers, employees, and/or agents. In the event such failure was due to  
728 the foregoing negligence or willful misconduct, then the County agrees to indemnify  
729 Contractor, its officers, directors, employees, agents, successors, and assigns, from any  
730 claims, liabilities, actions, demands, orders, damages, penalties, expenses, and costs  
731 (including, but not limited to, the costs of proper handling or remediation of the Excluded  
732 Waste), arising from or in connection with the Excluded Waste that was accepted.

733 **Section 6.3: County's Covenant Not to Sue**

734 A. **Covenant Not to Sue.** The County hereby covenants not to sue Contractor, its officers,  
735 directors, employees, agents, successors, and assigns, for any liabilities arising from or in  
736 connection with any Solid Waste that Contractor delivers to the Designated Disposal Facility  
737 owned or operated by County and delivered pursuant to this Contract, or as required to be  
738 delivered at any time in accordance with any County ordinance or resolution, except as provided  
739 below.

- 740 1. Notwithstanding the foregoing, the County’s covenant not to sue excludes and does not  
741 apply to claims, enforcement actions, suits, whether injunctive, or cost recovery or for  
742 damages, for any solid waste or other waste delivered by Contractor to the Designated  
743 Disposal Facility that is not delivered pursuant to this Contract; and
- 744 2. Furthermore, the County’s covenant not to sue shall become void in the event any  
745 complaint, cross-complaint, cross-claim, or counter-claim for cost recovery, contribution, or  
746 indemnity is brought by or on behalf of Contractor against the County related to closure,  
747 post-closure, or other environmental liability arising from the Designated Disposal Facility  
748 that was used by Contractor pursuant to this Contract.

749 **B. Allocation of Tonnages.**

- 750 1. In the event the County’s covenant not to sue does not apply under Section 6.3(A) and the  
751 County files a complaint, cross-complaint, cross-claim, or counter-claim for cost recovery,  
752 contribution, or indemnity against Contractor related to closure, post-closure, or other  
753 environmental liability arising from the Designated Disposal Facility, County agrees to  
754 forbear from claiming or arguing that Contractor should be allocated liability for the  
755 tonnages of Solid Waste that Contractor delivered to the Designated Disposal Facility  
756 pursuant to this Contract.

757 **Section 6.4: Cooperative Defense Related to Designated Disposal Facility**

758 In the event of any Third Party Action including but not limited to Third Party Actions brought under the  
759 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et  
760 seq., then the Contractor and County, subject to the County’s covenant not to sue, shall meet and  
761 confer to potentially consider some manner of cooperative defense, including but not limited to  
762 entering into a joint defense agreement, sharing of defense costs, waiving or tolling of cross claims, or  
763 other cooperative efforts. However, nothing in this paragraph shall abrogate the County’s covenant and  
764 rights under Section 6.3.

## ARTICLE 7: RECYCLING PROGRAMS

765

### 766 **Section 7.1: The Contractor's Responsibility for Implementation**

767 Contractor shall develop a Recycling Plan to be reviewed and, subject to changes required by the County  
768 Contract Manager, approved by the County Contract Manager. In the event that the State of California  
769 diversion, recycling or disposal reduction requirements or goals in existence at the time this Agreement  
770 is effective are increased, revised, or the methods for obtaining or measuring compliance with existing  
771 requirements or goals are changed, the Contractor will be obligated to amend the Recycling Plan to the  
772 extent necessary to comply with diversion requirements, including estimated costs of implementation  
773 and targeted diversion rates by program. In the event the County's SRRE is revised in response to the  
774 increased requirements, the Contractor will, at the request of the County Contract Manager, develop  
775 and submit for the County's approval suggested revisions to the Recycling Plan designed to enable the  
776 County to meet the revised requirements, including estimated costs of implementation and targeted  
777 diversion rates. After approval by the County, the Recycling Plan will be revised and the Contractor will  
778 implement such revised Recycling Plan. County acknowledges that the Contractor shall nonetheless be  
779 entitled to recover, through the Maximum Rates to be charged and authorized to be imposed  
780 hereunder, the reasonable costs of the Contractor incurred as the result of implementation of the  
781 revised Recycling Plan plus ten percent (10%) pre-tax profit, whether prepared by Contractor to address  
782 increased diversion goals or changes in methodologies or methods of measurement, or in response to a  
783 revision to the County's SRRE.

### 784 **Section 7.2: Recycling Plan**

785 The Contractor is responsible for developing and implementing Residential and Commercial source  
786 reduction, Recycling, education, and outreach programs to all Customers in the County. The Contractor's  
787 initial Recycling Plan shall be submitted to the County Contract Manager within ninety (90) days of the  
788 effective date of this Agreement. Any amendment to the Recycling Plan must be approved by the  
789 County Contract Manager.

### 790 **Section 7.3: Public Awareness**

791 The Contractor agrees, at its own expense, to provide information to Customers as required by Section  
792 4.4.D. All printed or digitally distributed materials produced for Customers must be approved in advance  
793 by the County Contract Manager. To the extent reasonably possible, the Contractor shall accommodate  
794 the inclusion of any County-directed information on its regular billing statements upon the request of  
795 the County Contract Manager without cost to the County. If the County requests the distribution of  
796 information on a topic other than that required for compliance with the Recycling Plan in a form that  
797 cannot be printed or included with the Contractor's regular bill, the County and Contractor will share in  
798 the cost of printing and distribution.

799 At least thirty (30) calendar days prior to an adjustment in rates, Contractor shall notify all of its then-  
800 current Customers of the change including the current and proposed rates for all Service Levels available  
801 to that Customer Type.

## ARTICLE 8: OPERATING ASSETS

### Section 8.1: Operating Assets

- 804 A. **Obligation to Provide.** The Contractor shall acquire and maintain at its own cost and expense,  
805 Operating Assets which in number, nature, and capacity shall be sufficient to enable the  
806 Contractor to provide the Collection Services in accordance with the terms hereof and such assets  
807 shall be subject to inspection upon two (2) Business Days' notice by the County Contract Manager.
- 808 B. **Vehicle and Equipment Identification.** The Contractor's name, phone number, and Vehicle or  
809 equipment number shall be visibly displayed in letters not less than three (3) inches in height on  
810 both sides of its Vehicles or other Collection equipment used by the Contractor.
- 811 C. **Vehicle Specifications, Maintenance, and Appearance.** All Vehicles shall be properly registered  
812 with the Department of Motor Vehicles of the State of California, shall be properly insured, shall  
813 be of a type approved by the County, shall be kept clean and in good repair, and shall be  
814 continuously maintained in a watertight condition. Vehicles used to Collect or Transport Solid  
815 Waste shall be kept covered at all times except when such material is actually being loaded or  
816 unloaded, or when the Vehicles are moving along a Collection route in the course of Collection. All  
817 Vehicles shall carry a broom, shovel, and operable fire extinguisher. Solid Waste Collection  
818 Vehicles shall be washed at least once every seven (7) days and cleaned and painted as required  
819 to maintain a clean appearance. All Vehicles must be made available for inspection upon two (2)  
820 Business Days' notice by the County Contract Manager.
- 821 D. **Spillage.** Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall,  
822 or leak out of the Vehicle onto the street. In the event of a spill, leak, or loss of payload during  
823 transit, the Contractor shall immediately arrange for the clean up and Transportation of the  
824 payload to the appropriate facility at the Contractor's sole cost and expense, shall pay any  
825 resulting fines, assessments, penalties, or damages resulting therefrom, and shall indemnify and  
826 hold harmless the County in accordance with the procedures provided in Section 12.1 hereof from  
827 all loss-and-expense resulting therefrom.
- 828 E. **Computer System Compatibility.** The Contractor shall maintain records and data in an electronic  
829 format compatible with the versions of Microsoft Word and Excel currently in use by the County  
830 as of the date of execution of this Agreement. The Contractor will, at its cost and expense, if  
831 requested by the County Contract Manager, provide any reports or data required by this  
832 Agreement via email, on computer disc, or through other electronic format. Raw or printed data  
833 may not be submitted as a substitute to the Contractor's obligation to provide various reports  
834 under this Agreement.

### Section 8.2: Operation and Maintenance of the Operating Assets

836 The Contractor, at its cost and expense, shall at all times: 1) operate the Operating Assets properly and  
837 in a safe, sound, and economical manner; 2) shall maintain, preserve, and keep the Operating Assets in  
838 good repair, working order, and condition; 3) shall staff the Operating Assets with the appropriate  
839 number of licensed employees consistent with good management practice; and, 4) shall make all  
840 necessary and proper repairs, replacements, and renewals, so that at all times the operation of the  
841 Operating Assets may be properly and advantageously conducted. The Contractor shall maintain the

842 safety of the Operating Assets at a level consistent with Applicable Law, the Insurance Requirements,  
843 and prudent Solid Waste management practices.

### 844 **Section 8.3: Containers**

845 A. **County Regulations.** The County shall approve the number, type, size, and other specific physical  
846 requirements for Containers. The Contractor shall not be required to Collect Franchised Materials  
847 from Containers which have not been approved by the County.

848 B. **General Requirements.** Unless already provided by Customers, the Contractor shall supply the  
849 Containers for each Customer free of charge upon inception of Collection Services. After emptying  
850 any Container, the Contractor shall replace the Container in an upright position at the place where  
851 such Container was placed for Collection. The Contractor shall handle Containers in a manner so  
852 as to prevent damage or spillage, and shall not throw, drop, or otherwise mishandle Containers  
853 during or after emptying them. The Contractor shall repair or replace, at its own expense and  
854 within five (5) days, any Container which is damaged by the Contractor and which is no longer  
855 serviceable (e.g. broken wheels, cracked lid, broken axle, cracked or leaking body, etc.).

856 C. **Containers for Residential Customers.** The Contractor shall supply all Containers required for the  
857 services provided under this Agreement. The Containers shall be sturdy, water tight, and equipped  
858 with heavy-duty wheels and closeable lids. The Contractor shall maintain the Containers in good  
859 repair, shall bear the cost of normal wear and tear, and shall replace the Containers as needed.  
860 The Contractor may charge a fee to Customers that have Containers that must be repaired or  
861 replaced due to other than normal wear and tear and will notify the County Contract Manager if  
862 such fee has been charged. If repairs require removal of the Container from a Customer's  
863 Premises, the Contractor shall supply the Customer with a replacement Container or "loaner"  
864 Container. The Contractor shall, within seven (7) days, repair or replace damaged or dilapidated  
865 Containers. The Contractor shall provide the Containers required pursuant to this Section at its  
866 own cost and expense and any such Containers shall constitute Operating Assets. The Contractor  
867 shall promptly replace stolen Containers, provided that the Contractor shall only bear the cost of  
868 replacement of such Container the first time it is stolen; and, thereafter such cost of replacement  
869 shall be borne by the Customer.

870 D. **Containers for Commercial Customers.** The Contractor shall provide, as an Operating Asset the  
871 Containers required pursuant to Section 8.3 at its own cost and expense. Each such Container shall  
872 be identified with the Contractor's name and phone number, and be equipped with heavy-duty  
873 casters and closeable lids. Each such Container shall be watertight. The Contractor shall be  
874 responsible for the general maintenance and repair of Containers so provided, and shall provide  
875 an equivalent Container as replacement during repairs and maintenance. If repairing,  
876 maintenance, steam cleaning, and/or repainting is required as a result of abuse, neglect, or misuse  
877 on the part of any Customer, the Contractor may charge the Customer a fee, to compensate for  
878 the cost thereof. The Contractor shall, within seven (7) days, repair or replace any stolen,  
879 damaged or dilapidated Container, provided that the Contractor shall only bear the cost of  
880 replacement of such Container the first time it is stolen and thereafter such cost of replacement  
881 shall be borne by the Customer.

882 **Section 8.4: Vehicle Requirements**

883 Contractor shall provide a fleet of Collection Vehicles sufficient in number and capacity to efficiently  
884 perform the work required by the Agreement in strict accordance with its terms. Contractor shall have  
885 available sufficient back-up Vehicles for each type of Collection Vehicle used to respond to scheduled  
886 and unscheduled maintenance, service requests, complaints, and emergencies. All such Vehicles shall  
887 have watertight bodies designed to prevent leakage, spillage, or overflow. Contractor specifically  
888 acknowledges that the County is within an "Extreme Non-Attainment Area" for criteria pollutants that  
889 are associated with, among other things, the operation of heavy duty vehicle fleets. All such Vehicles  
890 shall comply with all Federal, State, and local laws and regulations including, without limitation, safety  
891 and emissions. Contractor has represented to the County that Contractor's fleet is compliant with all  
892 such Applicable Laws at the date of the execution of this Agreement. Contractor may not seek any  
893 compensation from County or through the Rates charged to Customers to come into compliance with  
894 any Applicable Law in effect as of the date of the execution of this Agreement.

895 Collection Vehicles shall present a clean appearance while providing service under this Agreement.  
896 Contractor shall inspect each Vehicle daily to ensure that all equipment is operating properly. Vehicles  
897 that are not operating properly shall be taken out of service until they are repaired and operate  
898 properly. Contractor shall repair, or arrange for the repair of, all of its Vehicles and equipment for which  
899 repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment  
900 in a safe and operable condition.

901 **ARTICLE 9: GENERAL REQUIREMENTS**

902 **Section 9.1: Public Access to the Contractor**

- 903 A. **Office Facilities.** The Contractor shall establish and maintain an office accessible by means of a  
904 toll-free telephone number through which the Contractor's representatives may be contacted,  
905 and where customers can obtain customer services (e.g. change services, missed pickups, etc).
- 906 B. **Office Hours.** The Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m.  
907 daily except Saturdays, Sundays, and holidays. These hours may be altered with the approval of  
908 the County Contract Manager.
- 909 C. **Emergency Telephone Number.** The Contractor shall provide the County with an emergency  
910 telephone number for use by the County Contract Manager outside normal business hours. The  
911 Contractor shall have a representative, or an answering service to contact such representative,  
912 available at the emergency telephone number during all hours other than normal office hours.

913 **Section 9.2: Service Complaints**

- 914 A. **Complaints to Contractor.** The Contractor shall maintain during office hours a complaint service  
915 and telephone answering system having an answering capacity satisfactory to the County Contract  
916 Manager. All service complaints and billing complaints will be directed to the Contractor. The  
917 Contractor shall record all complaints in a log, including date, complainant name and address, and  
918 nature and resolution of complaint. This log shall be available for inspection by the County  
919 Contract Manager during the Contractor's regular office hours. Copies thereof shall be furnished  
920 to the County Contract Manager upon request.
- 921 B. **Required Response to Complaints.** The Contractor, within one (1) Business Day of its receipt of  
922 notice from a Customer or the County Contract Manager of a failure to provide any service(s) as  
923 required by the terms of this Agreement, shall provide such service in a manner consistent with  
924 the requirements of this Agreement.

925 **Section 9.3: Accounting and Records**

- 926 A. **Maintenance and Audit of Records.** The Contractor shall maintain in its principal office in the  
927 County full and complete financial statements, accounting records, and other records related to  
928 operations under this Agreement. Contractor shall account for revenues received and expenses  
929 incurred as a result of this Agreement separate from the accounting for other operations  
930 performed by Contractor or its affiliates. Contractor shall maintain complete and accurate  
931 records with respect to any payments to employees or subcontractors. All such records shall be  
932 prepared in accordance with generally accepted accounting procedures, shall be clearly  
933 identified, and shall be kept readily accessible. Upon request, Contractor shall make such  
934 records available within Tulare County to the County Contract Manager and to his agents and  
935 representatives, for the sole purpose of verifying the performance of Contractor's obligations  
936 hereunder, for a period of five (5) years from the date of final payment under this Agreement.



937 The Gross Receipts derived from the Collection Services under this Agreement, whether such  
938 services are performed by the Contractor or by a Subcontractor, shall be recorded as revenues in  
939 the accounts of the Contractor. Upon demand, the Contractor shall permit the County Contract  
940 Manager to examine and audit the books of account of the Contractor at any and all reasonable  
941 times for the purpose of verifying Contractor's performance under this Agreement. Upon request,  
942 the Contractor shall allow the County Contract Manager to examine the reports of Gross Receipts  
943 and the invoices pertaining to any maximum fee or charge approved by the County Board of  
944 Supervisors for Services provided under this Agreement. Such request shall be made at reasonable  
945 times and with reasonable notice.

946 In the event that a Special Circumstance Rate adjustment is requested, such records shall be  
947 subject to review in accordance with appropriate professional standards, and inspection, for the  
948 primary purpose of reviewing changes in costs to the Contractor attributable to the Special  
949 Circumstance request, at any reasonable time by an independent third party. The selection of the  
950 independent third party as well as the scope of work for such review shall be approved in advance  
951 by the County Contract Manager. The independent reviewer shall provide any and all drafts of its  
952 review to the County and the Contractor. The Party requesting the Special Circumstance Rate  
953 review shall bear the cost of the review.

954 The Contractor shall maintain and preserve all cash, billing, and Disposal records throughout the  
955 Term of this Agreement and for a period of not less than three (3) years following expiration or  
956 early termination of the Agreement. The Contractor shall obtain, within one hundred twenty (120)  
957 days of a request by the County Contract Manager, complete independently audited financial  
958 statements for the prior calendar year for itself, or where applicable, its parent entity, including its  
959 balance sheet, statement of revenues and expenses, and statement of changes in cash position,  
960 and provide such financial statements to the County Contract Manager.

961 B. **Confidentiality.** Contractor understands that although all materials received by the County in  
962 connection with this Agreement are intended for the use of the County, they are potentially  
963 subject to disclosure under the provisions of the Public Records Act. The County agrees to hold  
964 financial statements delivered pursuant to this Section as confidential and shall not disclose the  
965 same unless and to the extent disclosure is required pursuant to Applicable Law. In the event such  
966 financial statements are requested by any party, County shall notify Contractor of the request and  
967 shall thereafter disclose the requested information unless Contractor, within five (5) Business Days  
968 of receiving notice of the disclosure request: a) requests nondisclosure; b) provides County a  
969 legally sound basis for the nondisclosure; and, c) agrees to indemnify, defend, and hold the County  
970 harmless in any/all actions brought to require disclosure. The County shall not be liable to the  
971 Contractor in the event County fails to notify Contractor of any such disclosure request. This  
972 provision shall not be construed to create any legal right or claim that does not exist under the  
973 operation of state law.

## 974 **Section 9.4: Reporting**

975 The Contractor shall maintain on file at its business premises documentation setting forth its Routing  
976 and Collection System, a list of all Collection Premises in the County, organized alphabetically or by  
977 address, and the identification of all services each receives. This information shall be updated and  
978 provided at no additional cost to the County along with Contractor's annual report (as required in  
979 Exhibit D) to the County and any time upon request of the County Contract Manager. The Contractor

980 shall cooperate with the County to periodically monitor the average volume of each type of Franchised  
981 Materials generated from each Collection Premises. Customer-specific records are subject to inspection,  
982 and copying by the County during regular business hours with reasonable advance notice. Contractor  
983 agrees that by virtue of the exclusive rights conferred herein, Customer-specific information does not  
984 represent proprietary information or a trade secret.

### 985 **Section 9.5: Integrated Waste Management Act (AB 939) Compliance**

986 The Contractor shall provide, upon request, all necessary reporting data requested by the County  
987 relating to the County's compliance requirements pertaining to AB 939, SB 1016, AB 341, or AB 1826 as  
988 it affects the County's Integrated Waste Management Plan and the County's SRRE. Such report shall be  
989 provided to the County within thirty (30) days of such a request. The Contractor shall cooperate in  
990 activities requested by the County to measure diversion of Solid Waste from landfills including, but not  
991 limited to, providing a location for conducting waste sorting at the Contractor's facility, re-routing trucks  
992 on a temporary basis to facilitate composition analysis. Such report shall include throughput, recovery  
993 rates per material type, residue, costs, Recyclable Material commodity values, and final disposition of  
994 Recyclable Materials. The Contractor shall also supply any other information reasonably requested by  
995 the County to meet State or Federal regulatory requirements and the reporting requirements of the  
996 County's SRRE, as those requirements may be amended from time to time.

### 997 **Section 9.6: Personnel and Subcontractors**

- 998 A. **Employment Practices.** The Contractor shall at all times maintain and follow employment  
999 practices in accordance with all state and federal laws and regulations, and shall indemnify the  
1000 County for any Legal Proceeding relating to its noncompliance with such laws or regulations.
- 1001 B. **Non-Discrimination.** In the performance of the terms of this Agreement, the Contractor agrees  
1002 that it will not engage in nor permit such Subcontractors as it may employ to engage in  
1003 discrimination against any employee or applicant for employment on the basis of race, sex, color,  
1004 religion, ancestry, national origin, marital status, age or as a qualified individual with a disability.  
1005 This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment  
1006 advertising; layoff or termination; rates of pay and other forms of compensation; selection for  
1007 training, including apprenticeship, and any other action or inaction pertaining to employment  
1008 matters.
- 1009 C. **Personnel.** The Contractor shall employ personnel sufficient in number, training, experience, and  
1010 capability to ensure that the Collection Services required to be performed under this Agreement  
1011 are properly carried out.
- 1012 D. **Subcontractors.** The Contractor shall not utilize any Affiliates or Subcontractors for the  
1013 performance of the Collection Services except with the consent of the County Contract Manager,  
1014 which may be withheld or delayed if the County Contract Manager determines, in their sole  
1015 discretion, that such consent is not in the best interest of the public health, safety, or general  
1016 welfare. In the event Subcontractors are utilized, the Contractor shall provide the County with  
1017 direct access to a designated representative from the Subcontractor, such designation not to be  
1018 changed without prior approval of the County Contract Manager, except in cases of termination of  
1019 the employee. The Parties acknowledge the County's direct contact with any Subcontractors in no  
1020 way eliminates the Contractor's responsibility to fulfill its obligations under this Agreement.

1021 **Section 9.7: County Contract Manager**

1022 The County has designated the County Contract Manager to be responsible for the monitoring and  
1023 administration of this Agreement. Contractor shall meet and confer with the County Contract Manager  
1024 to resolve differences of interpretation and implement and execute the requirements of this Agreement  
1025 in an efficient and effective manner that is consistent with the stated objectives of this Agreement.

1026 From time to time the County Contract Manager may designate other employees or agents of the  
1027 County to work with Contractor on specific matters. In such cases, those individuals should be  
1028 considered designates of the County Contract Manager for those matters to which they have been  
1029 engaged. Such designates shall be afforded all of the rights and access granted thereto. In the event of a  
1030 dispute between the County Contract Manager's designate and Contractor, the County Contract  
1031 Manager's determination shall be conclusive.

1032 In the event of dispute between the County Contract Manager and the Contractor regarding the  
1033 interpretation of or the performance of services under this Agreement, the County Contract Manager's  
1034 determination shall be conclusive except where each such determination results in a material impact to  
1035 the Contractor's revenue and/or cost of operations. In the event of a dispute between the County  
1036 Contract Manager and the Contractor that results in such material impact to the Contractor, Contractor  
1037 may contest the determination of the County Contract Manager, subject to the dispute resolution  
1038 procedures described in Article 14. For the purposes of this definition, "material impact" is an amount  
1039 equal to or greater than one (1) percent of Contractor's annual Gross Receipts under this Agreement,  
1040 which includes the cumulative impact of all such determinations within a consecutive twenty four (24)  
1041 month period.

1042 County Contract Manager or their designate shall have the right to observe and review Contractor  
1043 operations and Processing Facilities and enter Premises for the purposes of such observation and  
1044 review, including review of Contractor's records, during reasonable hours with reasonable notice. In no  
1045 event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days  
1046 after receiving such a request.

1047 The County Contract Manager is authorized and empowered to adjust, settle, or compromise any  
1048 controversy or charge arising from the operations under this Agreement, either on behalf of the County,  
1049 contractor, or the public.

1050 **ARTICLE 10: COUNTY FEES**

1051 **Section 10.1: County Fees**

1052 A. **Franchise Fees.** In consideration of the exclusive rights provided Contractor herein, Contractor  
1053 agrees to pay the negotiated amount of Franchise Fees to the County each quarter equal to five  
1054 percent (5%) of Gross Receipts for all services performed under this Agreement. Contractor and  
1055 County agree that this is a fair and appropriate sum for the commercial entitlements provided to  
1056 Contractor herein.

1057 B. **Other Fees.** The County shall reserve the right to set other fees as it deems necessary, subject to  
1058 County Board of Supervisors approval. The time and method of payment shall be consistent with  
1059 those for the Franchise Fee, and the fee adjustment process shall be consistent with that specified  
1060 in Section 10.2.

1061 **Section 10.2: Adjustment to Fees**

1062 The County may adjust the fees established in this Article from time-to-time during the Term of this  
1063 Agreement and such adjustments shall be included in the adjustment of Maximum Rates as described in  
1064 Section 11.2 and Exhibit B. The County acknowledges that the Contractor shall be entitled to recover,  
1065 through the Maximum Rates to be charged and authorized to be imposed hereunder, the reasonable  
1066 costs of the Contractor incurred due to the adjustment in the fees.

1067 The amounts of the fees described in Section 10.1 for subsequent Rate Periods shall be adjusted  
1068 annually in accordance with the adjustment method described in Exhibit B, or shall be the amount  
1069 specified by the County. The County acknowledges that the Contractor shall be entitled to recover,  
1070 through the Maximum Rates to be charged and authorized to be imposed hereunder, the reasonable  
1071 costs of the Contractor incurred due to the adjustment in the fees.

1072 **Section 10.3: Payment Schedule and Late Fees**

1073 Within thirty (30) days of the end of each calendar quarter, during the Term of this Agreement and  
1074 including the final calendar quarter or portions thereof at the end of the Term of this Agreement,  
1075 Contractor shall remit to County all fees as described in this Article. Such fees shall be payable to County  
1076 and sent or delivered to the County Contract Manager.

1077 If such remittance is not paid to County on or before the thirtieth (30<sup>th</sup>) day following the end of a  
1078 calendar quarter, all fees dues shall be subject to a delinquency penalty of three percent (3%), which  
1079 attaches on the first day of delinquency. The delinquency penalty shall be increased an additional three  
1080 percent (3%) and applied to both the original amount due as well as any delinquency penalties  
1081 previously applied for each additional month the payment remains delinquent. For example, if the  
1082 amount of the original fees owed equals one hundred thousand dollars (\$100,000) the initial  
1083 delinquency amount applied on the first day of delinquency will be three thousand dollars (\$3,000)  
1084 bringing the total amount to one hundred three thousand dollars (\$103,000). If that amount becomes  
1085 past due for an additional month, the additional delinquency penalty shall be applied to the one  
1086 hundred three thousand dollars (\$103,000) therefore, the new total amount due would be one hundred  
1087 six thousand ninety dollars (\$106,090).

1088 Each quarterly remittance to the County shall be accompanied by a statement listing the amount of each  
1089 fee paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period  
1090 Collected from all operations conducted or permitted by this Agreement. The County Contract Manager  
1091 may, at any time during the Term, request a detailed calculation of Gross Receipts which may include,  
1092 but is not necessarily limited to, the number of Customers charged at each Service Level and Rate for  
1093 each billing period.

1094 The County Contract Manager may, at any time during the Term or within three years following the  
1095 expiration or early termination of this Agreement, perform an audit of Contractor's billings and payment  
1096 of fees. Contractor shall fully cooperate with the County Contract Manager in any such audit. Should the  
1097 County or its agent perform this review and identify billing errors or other errors in payment of fees  
1098 resulting in an overbilling to customers or an underpayment of fees of: i) fifty thousand dollars  
1099 (\$50,000); or, ii) two (2%) percent or more of Gross Receipts, Contractor shall, in addition to  
1100 compensating the County for lost fees and applicable delinquency penalties, reimburse the County's  
1101 cost of the review within one hundred eighty (180) days of Contractor's receipt of an invoice from  
1102 County.

1103 In the event the audit discloses an overpayment of fees by Contractor, Contractor may use the amount  
1104 of the overpayment as a credit against future payment of franchise fees. However, if the remaining  
1105 term of this Agreement is insufficient to fully reimburse Contractor through use of the credit, County  
1106 and Contractor shall meet and confer to develop an estimate of the unreimbursed overpayment as of  
1107 the end of the term, and County shall directly reimburse Contractor for the mutually agreed-upon  
1108 unreimbursed overpayment of fees within one hundred eighty (180) days of County's receipt of an  
1109 invoice from Contractor. Thereafter, within sixty (60) days following the end of the term, the parties will  
1110 undertake a final reconciliation of franchise fee amounts due and amounts paid (which shall consider  
1111 the County's payment of the unreimbursed overpayment), and County or Contractor shall reimburse the  
1112 other, as the case may be. Contractor's claim for such an overpayment shall be limited to no more than  
1113 twenty four (24) months.

1114 **ARTICLE 11: CONTRACTOR’S COMPENSATION AND RATE SETTING**

1115 **Section 11.1: General**

1116 The Contractor’s compensation for performance of all its obligations under this Agreement shall be  
1117 Gross Receipts. Contractor’s compensation provided for in this Article shall be the full, entire and  
1118 complete compensation due to Contractor pursuant to this Agreement for all labor, equipment,  
1119 materials and supplies, Processing and Disposal fees, fees due to the County, taxes, insurance, bonds,  
1120 overhead, operations, profit, and all other things necessary to perform all the services required by this  
1121 Agreement in the manner and at the times prescribed. Nothing herein shall obligate the County to  
1122 provide any compensation to Contractor beyond Gross Receipts.

1123 If Contractor’s actual costs, including fees due to the County, are more than Gross Receipts, Contractor  
1124 shall not be compensated for the difference in actual costs and actual Gross Receipts, except in the  
1125 events considered under Section 11.3 of this Agreement. If Contractor’s actual costs, including fees due  
1126 to the County, are less than the actual Gross Receipts, Contractor shall retain the difference.

1127 Under this Agreement, Contractor shall have the right and obligation to charge and collect from  
1128 Customers, Maximum Rates that are authorized by the County pursuant to the County Code for  
1129 provision of services to Customers. The Maximum Rates for Rate Period One are presented in Exhibit C1.  
1130 The rates authorized by the County are maximum Rates and Contractor may, in its sole discretion,  
1131 charge Customers any amount up to and including the approved maximum Rate for a given level of  
1132 service.

1133 Revenues received for the sale of Recyclable Materials including California Redemption Value revenues  
1134 have been considered in the establishment of Maximum Rates for services provided under this  
1135 Agreement. Neither Contractor nor the Approved Recyclable Materials Processing Facility are entitled  
1136 to grant funds available from CalRecycle through its "County/County Payment Program" pursuant to  
1137 Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction Act.

1138 **Section 11.2: Rates and Annual Adjustments**

1139 **A. General.** The County Board of Supervisors, through a resolution, shall be responsible for  
1140 approving adjustments to the Maximum Rates as described in this Article. If at any time during  
1141 the Term of the Agreement, the Contractor determines the need for a Rate that does not appear  
1142 on the County-approved Rate schedule in Exhibit C1, Contractor shall immediately notify the  
1143 County Contract Manager and request establishment of such Rate. For example, if a Customer  
1144 requires Collection of Recyclable Materials in a fifteen (15) cubic yard Compactor five (5) times  
1145 per week and the County-approved Rate schedule does not include this level of service, the  
1146 Contractor must request that the County Board of Supervisors approve a Rate for this level of  
1147 service. Contractor may provide services to the public which are not within Contractor’s  
1148 exclusive rights under this Agreement and Contractor’s charges or rates for those services shall  
1149 not require approval by the County.

1150 **B. Maximum Rates for Rate Period One.** Maximum Rates for Rate Period One, which are  
1151 presented in Exhibit C1, were determined by Contractor and were approved by the County with  
1152 the execution of this Agreement. The maximum Rates for Rate Period One shall be effective  
1153 from the Commencement Date of this Agreement through June 30, 2015.

1154 C. **Rates for Subsequent Rate Periods.** Maximum Rates for subsequent Rate Periods shall be  
1155 adjusted annually in accordance with this Section 11.2 and Exhibit B.

1156 The multi-index based adjustment, which is described in Exhibit B, involves use of various cost  
1157 adjustment factors (such as the percentage change in the Consumer Price Index, the percentage  
1158 change in the Fuel Index, and percentage change in the Designated Disposal Facility Tipping  
1159 Fees) to calculate adjusted Rates. Such rate adjustment calculations shall be performed in strict  
1160 conformance to the procedures described in Exhibit B.

1161 D. **Rate Structure.** The County and Contractor shall meet and confer to change the relationship of  
1162 individual rates in comparison with other rates. Any such changes would occur in conjunction  
1163 with the annual Maximum Rate adjustment process described in Section 11.2.C or in  
1164 conjunction with a Maximum Rate adjustment resulting from an extraordinary rate adjustment  
1165 in accordance with Section 11.3. Changes to the rates charged under the new structure shall be  
1166 calculated in such a way that the revised Maximum Rate structure generates at least the same  
1167 amount of total revenue when the number of accounts at each Service Level are multiplied by  
1168 the rates charged for each Service Level and the resulting revenue for all Service Levels are  
1169 summed.

### 1170 **Section 11.3: Special Circumstances Rate Adjustments**

1171 It is understood that the Contractor accepts the risk for changes in cost of providing services and the  
1172 Service Levels requested by Customers and therefore the Special Circumstance adjustments to  
1173 Maximum Rates shall be limited to:

- 1174 (i) a Change in Law (as defined in Exhibit A);
- 1175 (ii) an increase or decrease in a direct per ton surcharge assessed on the collection,  
1176 transportation, processing or disposal of Franchised Materials by Federal, State or local  
1177 regulatory agencies after the Effective Date of the Agreement (Surcharge);
- 1178 (iii) Acts of God as described in the definition of Uncontrollable Circumstances; or,
- 1179 (iv) a positive or negative change in the market value of Recyclable Materials of more than  
1180 twenty five percent (25%) on the average annual market value as demonstrated by a  
1181 recognized third party index tracking such values where such percentage change is  
1182 calculated from either the date of execution of this Agreement or the date of a prior  
1183 adjustment for the same reason (Change in Market Value).

1184 If a Change in Law, Surcharge, Change in Market Value, or a County-directed change in scope occurs, the  
1185 Contractor or County Contract Manager may petition the County Board of Supervisors for an adjustment  
1186 to the Maximum Rates (either increasing or decreasing the rates) calculated in accordance with Section  
1187 11.2. The request shall be prepared in a form acceptable to the County Contract Manager with support  
1188 for all assumptions made by Contractor in preparing the estimate. Notwithstanding the foregoing, with  
1189 respect to a request by Contractor for a rate adjustment arising from a County-directed change in scope  
1190 (Section 4.8) or a County-directed change to an out of County Designated Disposal Facility (Section  
1191 6.1.B) or in the event that there is only one operating County Disposal Facility at any given time (Section  
1192 6.1.B), the rates shall be increased (or decreased) to fully reflect the increase (or decrease) or

1193 incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on  
1194 any direct or indirect cost, whether fixed or variable) associated with the County's directive.

1195 Contractor shall prepare an application for the Special Circumstance Rate adjustment calculating the net  
1196 financial effect on its operations (both increases and decreases of costs and revenues) resulting from the  
1197 Change in Law, Surcharge, Change in Market Value, or County Directed Change in Scope (but not  
1198 resulting from unrelated changes in costs and revenues), clearly identifying all assumptions related to  
1199 such calculations and providing the underlying documentation supporting the assumptions. County  
1200 Contract Manager shall evaluate the application for reasonableness. As part of that review, the County  
1201 Contract Manager may request access to the financial statements and accounting records required to be  
1202 maintained by the Contractor (pursuant to Section 9.3) in order to determine the reasonableness of the  
1203 Contractor's application. Should the Contractor not grant such access, then the County may rely on  
1204 other information available to it as the basis for making reasonable assumptions regarding the  
1205 reasonableness of the Contractor's application. In the event that Contractor requests the Special  
1206 Circumstance Rate adjustment, Contractor shall pay all reasonable costs incurred by the County,  
1207 including the costs of outside accountants, attorneys, and/or consultants, in order to make a  
1208 determination of the reasonableness of the requested Rate adjustment. In the event of such an  
1209 application for Special Circumstances Rate adjustment, it is understood that the Party requesting the  
1210 adjustment, shall have the burden of demonstrating the reasonableness of the requested adjustment

1211 With respect to a Special Circumstance Rate adjustment the County Board of Supervisors shall make the  
1212 final determination as to whether an adjustment to the Maximum Rates will be made, and if a rate  
1213 adjustment is permitted, the amount of the rate adjustment. The approval of an adjustment to the  
1214 Maximum Rates shall not be unreasonably withheld if the adjustment is a result of a request relating to  
1215 items (i), (ii), and/or (iii) above.

1216 **Section 11.4: Publication of Rates**

1217 The Contractor shall provide written notice to Customers of proposed rate changes no less than thirty  
1218 (30) days prior to implementing such changes. Such written notice shall be delivered to all Customers as  
1219 part of the normal billing statement which Contractor sends to Customers. Contractor shall also publish  
1220 such Rates in a convenient and easily found location on its website.



1221 **ARTICLE 12: INDEMNITY, INSURANCE, AND PERFORMANCE**  
1222 **BOND**

1223 **Section 12.1: Indemnification**

1224 **A. General.** Contractor shall indemnify, defend with counsel acceptable to County, and hold  
1225 harmless (to the full extent permitted by law) County and its officers, officials, employees,  
1226 volunteers, and agents from and against any and all claims, liability, loss, injuries, damage,  
1227 expense, and costs (including without limitation costs and fees of litigation, including attorneys'  
1228 and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection  
1229 with Contractor's performance under this Agreement, or its failure to comply with any of its  
1230 obligations contained in the Agreement, except to the extent such loss or damage was caused  
1231 by the active negligence or willful misconduct of the County.

1232 **B. Excluded Waste.** Contractor shall not store, Transport, use, or Dispose of any Excluded Waste  
1233 except in strict compliance with all Applicable Laws.

1234 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of  
1235 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly  
1236 take all investigatory and/or remedial action reasonably required for the remediation of such  
1237 environmental contamination. Prior to undertaking any investigatory or remedial action,  
1238 however, Contractor shall first obtain the County Contract Manager's approval of any proposed  
1239 investigatory or remedial action. Should Contractor fail at any time to promptly take such action,  
1240 the County may undertake such action at Contractor's sole cost and expense, and Contractor  
1241 shall reimburse the County for all such expenses within thirty (30) calendar days of being billed  
1242 for those expenses, and any amount not paid within that thirty (30) calendar day period shall  
1243 thereafter be deemed delinquent and subject to the delinquent fee payment provision of  
1244 Section 10.3. These obligations are in addition to any defense and indemnity obligations that  
1245 Contractor may have under this Agreement. The provisions of this Section shall survive the  
1246 termination or expiration of this Agreement.

1247 Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any  
1248 claims arising from the Disposal of Solid Waste at the Designated Disposal Facility, including, but  
1249 not limited to, claims arising under Comprehensive Environmental Response, Compensation and  
1250 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful  
1251 misconduct.

1252 **C. Obligation to Provide Service and Allocation of Risk**

1253 County and Contractor agree, as more fully set forth in the Recitals to this Agreement, that  
1254 proper collection, processing, diversion, and Disposal of Franchised Materials is fundamental to  
1255 the protection of the public health, safety and the well-being of County's residents, businesses.  
1256 County's responsibility for ensuring the adequacy of these services in part provides the  
1257 justification for the granting of a Franchise to Contractor. This Franchise creates an obligation  
1258 that such services continue to be provided even under difficult, adverse, or unforeseeable  
1259 circumstances, such as but not limited to any period where legal actions, future judicial  
1260 interpretations of current law, or new laws or regulations impact the effectiveness of portions of

1261 this Agreement.

1262 While County reserves all powers afforded to counties generally under the provisions of  
1263 applicable law, this Agreement, including the rate adjustment elements hereof, has been agreed  
1264 to by the parties following arms-length negotiations and upon advice of counsel, for the dual  
1265 purposes of safeguarding public health and facilitating the performance of obligations  
1266 undertaken by Contractor on County's behalf and for its benefit. Accordingly, the County will  
1267 exercise its powers reasonably and in good faith, and shall favorably consider and shall approve  
1268 a rate adjustment proposal if accompanied by substantial supporting evidence. In addition, and  
1269 notwithstanding the above, the County shall not be in default of this Agreement nor bear any  
1270 liability to Contractor for any damages suffered by Contractor as a result of the failure to  
1271 implement any rate adjustment authorized pursuant to this Agreement, any other adjustment  
1272 to the overall fees and charges to Customers, or the imposition and collection of the Franchise  
1273 Fee or other fees, due to one or more of the events set forth below.

1274 In such events, it shall be the responsibility of County and Contractor to mitigate any potential  
1275 damages as much as possible. For example:

1276 1. Should a court of competent jurisdiction or other regulatory agency set aside, invalidate  
1277 or stay all or a portion of the Maximum Rates approved by County, Contractor agrees to  
1278 continue to perform its obligations as otherwise set forth herein, and County and/or  
1279 Contractor may take such urgency actions necessary to facilitate Contractor's  
1280 continuation of Collection Services.

1281 2. Should there be a Change in Law or a new judicial interpretation of Applicable Law,  
1282 including, but not limited to, Articles XIII C and D of the California Constitution which  
1283 impacts the Maximum Rates for the Collection Services established in accordance with  
1284 this Agreement, Contractor agrees to meet and confer with County to discuss the  
1285 impact of such Change in Law on either Party's ability to perform under this Agreement.

1286 3. If, as a result of a legal action, Contractor is unable to include Franchise Fees, other  
1287 County fees or expenses, governmental fees or charges in the rates it charges  
1288 Customers for its services, then Contractor agrees, upon direction from County, to  
1289 reduce its rates in an amount corresponding to the disallowed fee or charge, and shall  
1290 thereafter not be required to remit the amount of the disallowed fee or charge,  
1291 provided it is not collected from Customers.

1292 a. Nothing herein is intended to imply that California Constitution Articles XIII(C) or  
1293 (D) apply to the Maximum Rates established for services provided under this  
1294 Agreement. The foregoing paragraphs are merely intended as a contractual  
1295 allocation of risks between the Parties.

1296 b. This Section shall survive the expiration or earlier termination of this Agreement  
1297 and shall not be construed as a waiver of rights by County to contribution or  
1298 indemnity from third parties.

1299 c. This provision is intended to be consistent with and limited by California Public  
1300 Resources Code Section 40059.2.

1301 4. If an adjustment to the rates is not approved as requested by Contractor, for any  
1302 reason, Contractor shall have the right, within sixty (60) days after the disapproval, to  
1303 request, in writing, the County negotiate in good faith regarding reductions in programs,  
1304 services, or fees to compensate for any financial impact on Contractor's business  
1305 operations. If the parties are unable within sixty (60) consecutive days of County's  
1306 receipt of notice to, in good faith, negotiate changes in terms and conditions to  
1307 compensate Contractor for any financial impact, then Contractor may terminate this  
1308 Agreement no earlier than one hundred eighty (180) days following written notice to  
1309 County.

1310 5. Subject to the process set forth in subsection 4 above, neither County nor Contractor  
1311 shall have the right to obtain payment from the other Party for losses either may sustain  
1312 due to a court of competent jurisdiction or other regulatory agency invalidating, setting  
1313 aside, or staying the collection of all or a portion of the Maximum Rates authorized  
1314 hereunder.

1315 **D. Survival.** This Section 12.1 will survive the expiration or earlier termination of this Agreement  
1316 and shall not be construed as a waiver of rights by the County to contribution or indemnity from  
1317 third parties. Litigation of this nature shall not constitute an Uncontrollable Circumstance or  
1318 force majeure and shall not excuse Contractor's performance under this Agreement.

## 1319 **Section 12.2: Insurance**

1320 **General Requirements.** Contractor shall, without additional charge to County or Customers, maintain in  
1321 effect at all times during the Term of this Agreement not less than the following coverage and limits of  
1322 insurance:

1323 **A. Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times  
1324 maintain, at its expense, the following coverages and requirements. The comprehensive general  
1325 liability insurance shall include broad form property damage insurance.

1326 1. Insurance coverage shall be with limits not less than the following:

1327 **Comprehensive General Liability** – \$2,000,000 combined single limit per occurrence for  
1328 bodily injury, personal injury, and property damage.

1329 **Automobile Liability** – \$2,000,000 combined single limit per accident for bodily injury  
1330 and property damage (include coverage for Hired and Non-owned Vehicles).

1331 **Workers' Compensation – Statutory Limits/Employers' Liability** - \$1,000,000/accident  
1332 for bodily injury or disease.

1333 **Employee Blanket Fidelity Bond** – \$500,000 per employee covering dishonesty, forgery,  
1334 alteration, theft, disappearance, and destruction (inside or outside).

1335 **Pollution Legal Liability** - \$1,000,000 per claim/occurrence and \$2,000,000 aggregate  
1336 for bodily injury, property damage, and remediation of contaminated site.

1337 2. The County, its officers, agents, employees, and volunteers shall be named as additional

- 1338 insured on all but the workers' compensation and pollution liability coverages.
- 1339 3. Said policies shall remain in force through the life of this Agreement and, with the  
1340 exception of pollution liability coverage, shall be payable on a "per occurrence" basis  
1341 unless the County's Risk Manager specifically consents in writing to a "claims made"  
1342 basis. For all "claims made" coverage, in the event that the Contractor changes  
1343 insurance carriers Contractor shall purchase "tail" coverage or otherwise provide for  
1344 continuous coverage covering the Term of this Agreement and not less than three (3)  
1345 years thereafter. Proof of such "tail" or other continuous coverage shall be required at  
1346 any time that the Contractor changes to a new carrier prior to receipt of any payments  
1347 due.
- 1348 4. The Contractor shall declare all aggregate limits on the coverage before commencing  
1349 performance of this Agreement, and the County's Risk Manager reserves the right to  
1350 require higher aggregate limits to ensure that the coverage limits required for this  
1351 Agreement as set forth above are available throughout the performance of this  
1352 Agreement.
- 1353 5. The deductibles or self-insured retentions are for the account of Contractor and shall be  
1354 the sole responsibility of the Contractor.
- 1355 6. Contractor shall notify County Contract Manager in writing within thirty (30) calendar  
1356 days of any planned nonpayment of premium or planned reduction in coverage.
- 1357 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than  
1358 A-VII, unless otherwise approved by the County Risk Manager.
- 1359 8. The policies shall cover all activities of Contractor, its officers, employees, agents and  
1360 volunteers arising out of or in connection with this Agreement.
- 1361 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be  
1362 primary, including as respects the County, its officers, agents, employees, and  
1363 volunteers. Any insurance maintained by the County shall apply in excess of, and not  
1364 contribute with, insurance provided by Contractor's liability insurance policy.
- 1365 10. The Contractor shall waive all rights of subrogation against the County, its officers,  
1366 employees, agents, and volunteers related to the performance of services under this  
1367 Agreement.
- 1368 **B. Endorsements.** Prior to the effective date pursuant to this Agreement, Contractor shall furnish  
1369 the County Contract Manager with certificates or original endorsements reflecting coverage  
1370 required by this Agreement. The certificates or endorsements are to be signed by a Person  
1371 authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to  
1372 be received by, and are subject to the approval of, the County Risk Manager before work  
1373 commences.
- 1374 **C. Renewals.** During the Term of this Agreement, Contractor shall furnish the County Contract  
1375 Manager with certificates or original endorsements reflecting renewals, changes in insurance  
1376 companies, and any other documents reflecting the maintenance of the required coverage

1377 throughout the entire Term of this Agreement. The certificates or endorsements are to be  
1378 signed by a Person authorized by that insurer to bind coverage on its behalf.

1379 **D. Workers' Compensation.** Contractor shall provide workers' compensation coverage as required  
1380 by State law, and prior to the effective date pursuant to this Agreement, Contractor shall file the  
1381 following statement with the County.

1382 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer  
1383 to be insured against liability for workers' compensation or to undertake self-insurance in  
1384 accordance with the provisions of that code, and I will comply with such provisions before  
1385 commencing any services required by this Agreement.

1386 The Person executing this Certificate on behalf of Contractor affirmatively represents that  
1387 she/he has the requisite legal authority to do so on behalf of Contractor, and both the Person  
1388 executing this Agreement on behalf of Contractor and Contractor understand that the County is  
1389 relying on this representation in entering into this Agreement."

### 1390 **Section 12.3: Performance Bond**

1391 Within seven (7) calendar days of the County's notification to Contractor that the County has executed  
1392 this Agreement, Contractor shall file with the County a bond, payable to the County, securing the  
1393 Contractor's performance of its obligations under this Agreement and such bond shall be renewed  
1394 annually if necessary so that the performance bond is maintained at all times during the Term. The  
1395 principal sum of the bond shall be the lesser of fifty thousand dollars (\$50,000) or twenty five percent  
1396 (25%) of Contractor's annual Gross Receipts under this Agreement. The bond shall be executed as surety  
1397 by a corporation authorized to issue surety bonds in the State of California that has a rating of A or  
1398 better in the most recent edition of Best's Key Rating Guide, and that has a record of service and  
1399 financial condition satisfactory to the County. The bond shall be in the form attached as Exhibit E. The  
1400 County shall accept an alternative form of surety, in a form approved by the County's Risk Manager, if  
1401 desired by the Contractor (e.g. a letter of credit or certificate of deposit) and may require a higher surety  
1402 amount in such case.

## ARTICLE 13: DEFAULT, REMEDIES AND TERMINATION

### Section 13.1: Default and Remedies

A. **Events of Default.** Each of the following shall constitute an Event of Default:

1. Any transaction, without any requirement of notice or cure opportunity, not complying with the requirements of Section 15.7 hereof.
2. The failure by the Contractor, unless specifically excused in writing by the County Contract Manager, to deliver to the Designated Disposal Facility: i) Solid Waste Collected by the Contractor; and/or, ii) Residual Waste from in-County Processing facilities or other Processing facilities receiving Franchised Materials.
3. Failure or refusal of the Contractor to perform any material term, covenant, obligation or condition in this Agreement other than a failure or refusal described in items (1) or (2) above, except that no such failure or refusal shall give the County the right to terminate this Agreement under this Section unless:
  - (i) The County has given prior written notice to the Contractor, stating the existence of a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Contractor and which will, in the County's opinion, give the County a right to terminate this Agreement for cause under this Section unless such default is corrected within fifteen (15) days, and
  - (ii) The Contractor has neither challenged in an appropriate forum the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within such fifteen (15) day period from receipt of the notice given pursuant to the clause (i) of this subsection (but if the Contractor shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Contractor is continuing to take such steps to correct such default in a timely manner).
4. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor or either Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Contractor or either Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Contractor's property or business, where such events cause a disruption in service.
5. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by the Contractor nor until the order of the adjudication is no longer appealable.

- 1441 6. The failure of the Contractor to provide or maintain the Performance Bond required  
1442 pursuant to Section 12.3 hereof. Note: Or LOC.
- 1443 7. Any failure by the Contractor to comply with Applicable Law so as to materially prevent  
1444 Contractor's performance of its obligations hereunder, where the time period for remedying  
1445 non-compliance established by the agency is not achieved, without any requirement of  
1446 notice or cure opportunity.
- 1447 8. Failure of the Contractor to timely implement the operational changes and adjusted  
1448 maximum Rates resulting from the Change of Law or County-directed Change in Scope. The  
1449 Contractor shall have 30 days after notice of breach from the County to implement the  
1450 operational changes. Should the Contractor thereafter not implement the operational  
1451 changes it shall be in default of the Agreement. In addition to being liable for all damages  
1452 and penalties to the County resulting from such default, the County may terminate the  
1453 Agreement in accordance with Section 13.1.B.
- 1454 B. **Right to Terminate Upon Default.** Upon a determination by the County Contract Manager that an  
1455 Event of Default has occurred, the County Board of Supervisors shall conduct a hearing upon no  
1456 less than ten (10) days notice to the Contractor to determine if an Event of Default has occurred,  
1457 and if so, if termination of the Agreement is in the best interests of the public health, safety, and  
1458 general welfare of the citizens of the County. If the County Board of Supervisors makes such a  
1459 determination, the Contractor shall be deemed to have waived any right it may have under  
1460 Applicable Law to notice of termination in excess of those notice provisions explicitly set forth  
1461 herein.
- 1462 C. **County's Remedies Cumulative: Specific Performance.** The County's right to terminate this  
1463 Agreement under this Section 13.1 is not exclusive, and the County's termination of the  
1464 Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any  
1465 and all other legal and equitable rights and remedies which the County may have, including but  
1466 not limited to specific performance, and fees and expenses incurred by or on behalf of the County  
1467 in enforcing payment or performance of the Contractor's obligations hereunder if such non-  
1468 performance results in a judicially determined Event of Default by the Contractor.
- 1469 D. **Possession of Property upon Termination or Suspension.** In the event of termination or  
1470 suspension for default, the County shall have the right to take possession of any and all of  
1471 Contractor's equipment and other property used or useful in the Collection, Transportation,  
1472 Processing, and Disposal of Solid Waste or Recyclable Materials and the billing and collection of  
1473 fees for these services and to use such property. The County shall have the right to retain the  
1474 possession of such property until such time as Contractor remedies the default or substitute  
1475 services can be provided by another contractor. If the County retains possession of Contractor's  
1476 equipment or other property after the period of time for which Contractor has already been paid  
1477 by means of bills issued in advance of providing service for the service involved, the Contractor  
1478 shall be entitled to the reasonable rental value of such property (which shall be offset against any  
1479 damages due the County for the Contractor's default). Contractor shall furnish the County with  
1480 immediate access to all of its business records related to its Customers and billing of accounts for  
1481 Collection services.}

1482 **Section 13.2: Liquidated Damages**

1483 In addition to any other remedies provided for in this Agreement, the County Contract Manager may  
1484 levy a charge in the amounts listed below for the Contractor's failure to meet the requirements  
1485 enumerated below that constitute a breach of the terms and conditions of this Agreement. The County  
1486 Contract Manager's decision to levy such a charge shall not be deemed an election of remedies, but shall  
1487 be cumulative with any other remedies provided for in this Agreement. The County Contract Manager's  
1488 decision not to levy any such charge shall not be deemed a waiver of any breach by Contractor under  
1489 this Agreement. The Parties agree that the following Liquidated Damages represent a reasonable  
1490 estimate of the amount of such damages, considering all of the circumstances existing on the date of the  
1491 Agreement, including the relationship of the sums to the range of harm to the County that reasonably  
1492 could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In  
1493 signing this Agreement, each Party specifically confirms the accuracy of the statements made above and  
1494 the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation  
1495 of this Liquidated Damage provision at the time that this Agreement was entered into.

1496 Initials: \_\_\_\_\_

1497 A. Excessive complaints. When Contractor or the County Contract Manager receives complaints from  
1498 more than one percent (1%) of its client base within a six (6) month period, Contractor will be  
1499 assessed twenty-five (\$25) per complaint per occurrence during that period; and an additional  
1500 twenty-five (\$25) each twenty-four (24) hours until the complaint is reasonably resolved. For  
1501 purposes of this section, "complaints" shall mean substantive and credible Customer notifications  
1502 to the Contractor or the County Contract Manager of missed pick-ups, property damage, missed  
1503 commitments, employee misconduct or poor quality of service (e.g. litter on property or public  
1504 right-of-way or misplacement of Containers).

1505 B. Failure to remit the County Fees, or file required reports in an accurate and complete manner by  
1506 the fifth working day following the due date of such fees or reports: fifty dollars (\$50) per day for  
1507 the first five (5) days, then five hundred dollars (\$500) per day for each day after the first five (5)  
1508 days.

1509 C. Failure to provide access to Operating Assets or any other documents or information within  
1510 fourteen (14) days of a request by the County Contract Manager: one hundred dollars (\$100) per  
1511 day per occurrence.

1512 D. Failure to charge a Customer at or below the maximum approved Rate, where not refunded on  
1513 the next invoice: fifty dollars (\$50) per occurrence per Customer where the number of Customers  
1514 overcharged is less than twenty-five (25); five hundred dollars (\$500) per occurrence per  
1515 Customer where the number of Customers overcharged is twenty-five (25) or more. In addition,  
1516 Contractor shall be responsible for refunding any amount overcharged to each Customer  
1517 determined to be overcharged. Contractor shall not be entitled to any refund from the County for  
1518 Franchise Fees or other fees paid on overcharged amounts.

1519 E. Failure to implement any one of the strategies listed in the Recycling Plan: fifty dollars (\$50) per  
1520 day for each day in excess of fifteen (15) days following Contractor's receipt of written notice from  
1521 County.

1522 F. Collection outside permitted hours: one hundred dollars (\$100) per occurrence.



1523 G. Failure to provide Collection services on the scheduled service day to 99% of Customers: ten  
1524 dollars (\$10) per Container not served.

1525 H. Failure to Collect a Container in response to a Customer complaint regarding a missed pick-up  
1526 within one (1) Business Day: ten dollars (\$10) per Container.

1527 In the event the Liquidated Damages permitted to be imposed under this Section exceed two thousand  
1528 five hundred dollars (\$2,500) during any three hundred sixty five (365) day period or the Contractor has  
1529 violated the requirements for a particular service indicator more than four (4) times in an Agreement  
1530 Year, the County Contract Manager may impose an additional penalty of twenty-five percent (25%) of  
1531 the original amount of Liquidated Damages. For example, if the original amount of the Liquidated  
1532 Damages totals one thousand dollars (\$1,000) the penalty amount would be two hundred fifty dollars  
1533 (\$250).

1534 The County Contract Manager shall give the Contractor written notice of charges levied pursuant to this  
1535 Section. Any such damages shall be paid directly to the County, and may not be included by the  
1536 Contractor as justification for an upward adjustment in the Rate schedule or offset against any fees.

1537 The decision of the County Contract Manager shall be final and binding on the Contractor unless the  
1538 Contractor files with the Clerk of the County Board of Supervisors a Notice of Appeal within fifteen (15)  
1539 days of receipt of the County Contract Manager's decision. The Notice of Appeal shall be in writing and  
1540 shall contain a detailed statement of the basis for the appeal. Upon receipt of the Notice of Appeal, the  
1541 matter shall be mediated consistent with the provisions of Article 14 (Resolution of Disputes). Failing  
1542 resolution through the mediation process, the County Contract Manager shall set the matter for a public  
1543 hearing within sixty (60) days. The County Contract Manager shall give the Contractor and any  
1544 interested Person requesting the same, ten (10) days written notice of the time and place of the  
1545 hearing. At the hearing, the County Board of Supervisors shall determine, based on the record, the  
1546 appropriate action to be taken. The decision of the County Board of Supervisors shall be final and  
1547 conclusive.

### 1548 **Section 13.3: Uncontrollable Circumstances**

1549 A. **Excuse from Performance.** In the event that a Party is prevented from performing its obligations  
1550 under this Agreement by an Uncontrollable Circumstance, it shall not constitute a default of this  
1551 Agreement, so long as the Party in good faith has used its best efforts to perform its respective  
1552 obligations.

1553 The Party claiming excuse from performance shall, within five (5) days after such Party has notice  
1554 of the effect of such cause, give the other Party notice of the facts constituting such cause and  
1555 asserting its claim to excuse under this Section. Specifically, such information shall include the  
1556 following:

- 1557 1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- 1558 2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated  
1559 duration" the estimated time during which the performance of such Party's obligations  
1560 hereunder will be delayed;
- 1561 3. Its estimated impact on the other obligations of such Party under this Agreement; and

1562 4. Potential mitigating actions which might be taken by the Contractor or County and any areas  
1563 where costs might be reduced and the approximate amount of such cost reductions.

1564 While the delay continues, the Contractor or County shall give daily notice to the other Party  
1565 updating the information previously submitted.

1566 In the event that either Party validly exercises its rights under this Section 13.3.A, the Parties  
1567 hereby waive any claim against each other for any damages sustained thereby.

1568 B. **County's Right to Terminate.** The partial or complete interruption or discontinuance of the  
1569 Contractor's services caused by one (1) or more of the events described in this Section 13.3 shall  
1570 not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing,  
1571 however, if the Contractor is excused from performing its obligations hereunder because of any  
1572 Uncontrollable Circumstance for a period of thirty (30) days or more, the County shall  
1573 nevertheless have the right, in its sole discretion, to terminate this Agreement by giving sixty (60)  
1574 days notice. Such notice shall be revoked by County if, prior to the expiration of the sixty (60) day  
1575 period, Contractor performs or causes the performance of the subject services.

1576 C. **Work Stoppages Resulting in Failure to Perform.** Notwithstanding anything in this Agreement to  
1577 the contrary, any strikes, work stoppages, lock-outs, or other labor disputes or disturbances  
1578 occurring with respect to an activity performed or to be performed by the Contractor or any of the  
1579 Contractor's Subcontractors in connection with the Operating Assets or the Collection Services  
1580 and which last beyond fifteen (15) Business Days and result in any failure to perform shall  
1581 constitute an Event of Default under Section 13.1.A and may result in termination. In the event of  
1582 any such failure to perform during a labor disturbance, the County Contract Manager shall notify  
1583 Contractor of the potential Default and provide Contractor up to five (5) Business Days to perform  
1584 or cause the performance of services under this Agreement prior to the County Board of  
1585 Supervisors finding the Agreement in Default and terminating the Agreement. Contractor may  
1586 request and the County Contract Manager or Board of Supervisors may, in their sole discretion,  
1587 grant up to one or more extensions not to exceed a total of fifteen (15) days to the cure period  
1588 considered in this Section 13.3.C.

1589 However, in the event of such occurrence which prevents or diminishes the ability of Contractor to  
1590 Collect, Transport and Dispose of any or all the Franchised Materials which it is obligated under  
1591 this Agreement to Collect, Transport or Dispose of for a period of more than seventy-two (72)  
1592 hours and the County Contract Manager, in their sole discretion, should find that such  
1593 accumulation endangers or menaces the public health, safety or welfare, then County shall have  
1594 the right, upon twenty-four (24) hours notice to Contractor, to find the Contractor in Default and  
1595 to contract with any other third parties to Collect and Transport any and all Franchised Materials  
1596 which Contractor would otherwise be obligated to Collect and Transport pursuant to this  
1597 Agreement. Contractor agrees that in such event, it will fully cooperate with County and its third-  
1598 party contractor to affect such transfer of operations in as smooth and efficient a fashion as is  
1599 practicable during the pendency of the event causing the work stoppage. All costs, fees, rates or  
1600 other expenses incurred by County and/or its third-party contractor that exceed those that would  
1601 have been incurred by County had no such emergency arisen shall be the responsibility of the  
1602 Contractor and shall be paid to County within thirty (30) days of receipt of written notice to pay.  
1603 This is intended to serve as a temporary service during the pendency of the event and not as a  
1604 long-term replacement for Contractor's service.

1605 **Section 13.4: Right to Demand Assurances of Performance**

1606 If the County believes in good faith that the Contractor's ability to perform under the Agreement has  
1607 been placed in substantial jeopardy by one (1) of the events enumerated below, the County Contract  
1608 Manager may, at his option and in addition to all other remedies the County may have, require that  
1609 Contractor provide County Contract Manager with a financial surety instrument exceeding the  
1610 performance bond amount provided under Section 12.3 and/or sufficient proof that none of the events  
1611 enumerated below will in fact impair Contractor from performing its obligations under the Agreement:

1612 A. Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out,  
1613 picketing, or other concerted job action;

1614 B. Contractor appears, in the reasonable judgment of the County, to be unable to regularly pay its  
1615 bills as they become due; or,

1616 C. Contractor is the subject of a civil or criminal judgment or order entered by a federal, state,  
1617 regional, or local agency for violation of Applicable Law.

1618 If the Contractor fails or refuses to provide to the County adequate information to establish its ability to  
1619 perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of  
1620 Section 13.1.A.

## **ARTICLE 14: RESOLUTION OF DISPUTES**

1621

1622 If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot  
1623 be settled through negotiation, the parties agree first to try in good faith to settle the dispute by  
1624 non-binding mediation before resorting to an appeal to the Board of Supervisors, litigation or some  
1625 other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be  
1626 mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from  
1627 among two nominations provided by each party. All costs and fees required by the mediator shall be  
1628 split equally by the parties, otherwise each party shall bear its own costs of mediation. Mediation  
1629 proceedings shall be held in the strictest confidence during the pendency of such proceedings. If  
1630 mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the  
1631 dispute.

1632 **ARTICLE 15: MISCELLANEOUS PROVISIONS**

1633 **Section 15.1: Relationship of the Parties**

- 1634 A. This Agreement is entered into by both parties with the express understanding that CONTRACTOR  
1635 will perform all services required under this Agreement as an independent contractor. Nothing in  
1636 this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees  
1637 or officers as an agent, employee or officer of COUNTY.
- 1638 B. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this  
1639 agreement that they are not employees of COUNTY. Subject to any performance criteria  
1640 contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means  
1641 and methods of performing the specified services and COUNTY shall have no right to control or  
1642 exercise any supervision over CONTRACTOR as to how the services will be performed. As  
1643 CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required  
1644 state and federal taxes. In particular, COUNTY will not:
- 1645 1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
  - 1646 2. Make state or federal unemployment insurance contributions on  
1647 CONTRACTOR'S behalf.
  - 1648 3. Withhold state or federal income tax from payments to CONTRACTOR.
  - 1649 4. Make disability insurance contributions on behalf of CONTRACTOR.
  - 1650 5. Obtain unemployment compensation insurance on behalf of  
1651 CONTRACTOR.
- 1652 C. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor  
1653 and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

1654 **Section 15.2: Notice to Parties**

- 1655 A. Except as may be otherwise required by law, any notice to be given shall be written and shall be  
1656 either personally delivered, emailed (with confirmation of receipt), sent by facsimile transmission  
1657 or sent by first class mail, postage prepaid and addressed as follows:

1658 **COUNTY:**

1659 **Phone No.:** 559-624-7195  
1660 **Fax No.:** 559-624-1041

1658 **With A Copy To:**

1659 Tulare County Solid Waste Dept  
1660 5955 S Mooney Blvd  
1661 Visalia, CA 93277

1664 **CONTRACTOR:**

1665 **Phone No.:** 661-725-0265  
1666 **Fax No.:** 661-725-0287

1665 South Tulare RichgroveRefuse Inc  
1666 210 Richgrove Dr  
1667 Richgrove, CA 93261

- 1669 B. Notice personally delivered or email with confirmation of receipt is effective when delivered.  
1670 Notice sent by facsimile transmission is deemed to be received upon successful transmission.  
1671 Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing.  
1672 Either party may change the above address by giving written notice pursuant to this paragraph.

1673 **Section 15.3: Actions of the County in its Governmental Capacity**

1674 Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the County in its  
1675 governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action  
1676 against the County, not based on the provisions set forth in this Agreement, arising out of any act or  
1677 omission of the County in its governmental or regulatory capacity.

1678 **Section 15.4: Binding Effect**

1679 This Agreement shall bind and inure to the benefit of the Parties hereto and any successor or assignee  
1680 acquiring an interest hereunder consistent with the provisions hereof.

1681 **Section 15.5: Amendments**

1682 Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except  
1683 by written agreement duly executed by both Parties.

1684 **Section 15.6: Further Assurance**

1685 Each party will execute any additional documents and perform any further acts that may be reasonably  
1686 required to affect the purposes of this Agreement.

1687 **Section 15.7: Assignment and Transfer of Agreement**

1688 A. **Consent of the County Required.** This Agreement shall not be transferred, sold, pledged,  
1689 hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred,  
1690 sold, pledged, hypothecated, leased, or assigned, either in whole or in part, nor shall title hereto  
1691 or thereto, either legal or equitable, or any right, interest or property herein or therein, pass to or  
1692 vest in any Person, except the Contractor, either by action or inaction of the Contractor, or by  
1693 operation of law, without the prior written consent of the County, which may be withheld or  
1694 delayed in County's discretion.

1695 The Contractor shall provide written notice of any request to assign or transfer this Agreement,  
1696 and shall provide the County with any information requested by the County in connection with the  
1697 proposed transfer, included but not limited to information regarding the general business  
1698 qualifications of the proposed assignee, as well as its ability to perform the Collection Services and  
1699 a statement of its financial resources. The Contractor's notice of intention to assign this  
1700 Agreement shall contain a statement of the allocation of dollars in the consideration to be paid by  
1701 the assignee to the Contractor for (a) goodwill, (b) equipment, and (c) any other asset transfer  
1702 which has any connection with said assignment, all as agreed upon by the Contractor and the  
1703 assignee. The notice shall also contain a statement showing the method of payment for the  
1704 consideration and whether the Contractor proposes to hold some security interest as security for  
1705 the payment of the unpaid balance of the consideration. Notwithstanding any provision herein to  
1706 the contrary, a consolidation, an assignment or transfer of this Agreement from Contractor (i) to  
1707 an Affiliate who is an Affiliate on the date of execution of this Agreement, (ii) between Contractor  
1708 or members of their immediate family, (iii) between members of the same immediate family, or  
1709 (iv) to a trust, testamentary or otherwise does not require the prior written consent of the County

1710 and is not subject to any requirement herein for submittal of information, reimbursement of costs  
1711 or the transfer fee.

1712 The County shall respond to any such request within ninety (90) days after receipt of any  
1713 information requested by the County pursuant to the preceding sentence. The Contractor  
1714 acknowledges that, prior to approving such a transfer, the County must find that such a transfer is  
1715 in the best interests of the public health, safety, and general welfare. Any attempt by the  
1716 Contractor to effectuate any of the foregoing without such consent of the County shall be null and  
1717 void, and any effectuation of any of the foregoing without such consent of the County shall  
1718 constitute an Event of Default resulting in the immediate termination of this Agreement as  
1719 provided in Section 13.1.A hereof.

1720 B. **Consolidation, Merger, Sale, Transfer, and Change in Control.** Subject to the provisions of section  
1721 3.7.A above, the Contractor shall not, without the prior written consent of the County which may  
1722 be withheld or delayed in its sole and absolute discretion, consolidate with or merge with another  
1723 entity or permit one (1) or more other entities to consolidate with or merge into it.  
1724 Notwithstanding any provision herein to the contrary, a consolidation, merger, sale, transfer, or  
1725 change of control from Contractor (i) to an Affiliate who is an Affiliate on the date of execution of  
1726 this Agreement, (ii) between Contractor or members of their immediate family, (iii) between  
1727 members of the same immediate family, or (iv) to a trust, testamentary or otherwise does not  
1728 require the prior written consent of the County and is not subject to any requirement herein for  
1729 submittal of information, reimbursement of costs or the transfer fee.

1730 C. **Transfer of Voting Stock.** The County's prior written consent, which may be withheld or delayed in  
1731 its sole and absolute discretion, shall be required for the sale or transfer by any means, whether  
1732 by agreement or by operation of law (including transfers resulting from death, bankruptcy or  
1733 divorce), of any of the voting stock of the Contractor. Notwithstanding any provision herein to the  
1734 contrary, a transfer of voting stock from (i) Contractor to an Affiliate who is an Affiliate on the date  
1735 of execution of this Agreement, (ii) between Contractor or members of their immediate family, (iii)  
1736 between members of the same immediate family, or (iv) to a trust, testamentary or otherwise  
1737 does not require the prior written consent of the County and is not subject to any requirement  
1738 herein for submittal of information, reimbursement of costs or the transfer fee.

1739 D. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of  
1740 the County for any transaction described in Section 15.7 hereof, the proposed assignee, as a  
1741 condition of assignment, shall reimburse the County for all costs and expenses incurred by the  
1742 County in reviewing, examining, and analyzing the request, including all direct and indirect  
1743 administrative expenses of the County and consultants and attorney's fees and expenses. Along  
1744 with its written request for the review of the assignment, Contractor shall remit to County an  
1745 assignment review fee in the amount of one hundred thousand dollars (\$100,000) which shall be  
1746 intended to compensate the County of the costs of its review of the requested assignment. Such  
1747 fee shall not be refundable to the Contractor in the event that the County determines, in its sole  
1748 discretion, that the proposed assignment is unacceptable. In the event that the County's total  
1749 costs for the review of the assignment exceed one hundred thousand dollars (\$100,000) the  
1750 assignee shall compensate the County for its actual and reasonable costs within thirty (30) days of  
1751 receiving the County's invoice. Such costs shall be supported with evidence of the expense or cost  
1752 incurred.

1753 E. **Transfer Fee.** On the date the County approves the Contractor's written request for an  
1754 assignment, Contractor shall pay the County a transfer fee in the amount of one percent (1%) of  
1755 the Gross Receipts for the most-recently completed Rate Period. The County's approval of such an  
1756 assignment shall be conditioned on the receipt of the transfer fee.

1757 **Section 15.8: Interpretation**

1758 In this Agreement, unless the context otherwise requires:

1759 A. **References Hereto.** The terms "hereby," "hereof," "herein," hereunder," and any similar terms  
1760 refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means  
1761 before, the date of execution of this Agreement.

1762 B. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the  
1763 feminine and neuter genders, and words importing the singular number mean and include the  
1764 plural number and vice versa.

1765 C. **Persons.** Words importing Persons include firms, companies, associations, general partnerships,  
1766 limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal  
1767 entities, including Governmental Bodies, as well as individuals.

1768 D. **Construction:** This Agreement reflects the contributions of all undersigned parties and  
1769 accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any  
1770 alleged uncertainty or ambiguity.

1771 E. **Headings.** The table of contents and Section headings are provided for organizational purposes  
1772 only and do not in any manner affect the scope, meaning or intent of the provisions under the  
1773 headings.

1774 F. **Reference to Days.** All references to days herein are to calendar days, including Saturdays,  
1775 Sundays, and holidays, except as otherwise specifically provided.

1776 G. **Units of Measure.** Weights or volumes described herein may be reported in either metric or U.S.  
1777 Standard terms of measurement, unless State or Federal law or regulation specifies the system of  
1778 measurement to be used.

1779 H. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such  
1780 counterparts shall constitute but one and the same Agreement.

1781 I. **Applicable Law.** This Agreement shall be governed by and construed in accordance with  
1782 Applicable Law. This Agreement is intended to be fully consistent with the requirements of the  
1783 County Code and any subsequent amendments thereto. In the event there is an inconsistency or  
1784 conflict between this Agreement and the County Code, the County Code is controlling and shall  
1785 substitute for the inconsistent provision.

1786 J. **Severability.** If any clause, provision, subsection, section, or article of this Agreement shall be  
1787 determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:



- 1788 1. Promptly meet and negotiate a substitute for such clause, provision, section, or article  
1789 which shall, to the greatest extent legally permissible, effect the intent of the Parties  
1790 therein.
- 1791 2. If necessary or desirable to accomplish item (1) above, apply to the court having declared  
1792 such invalidity for a judicial construction of the invalidated portion of this Agreement.
- 1793 3. Negotiate such changes in, substitutions for or additions to, the remaining provisions of this  
1794 Agreement as may be necessary in addition to and in conjunction with items (1) and (2)  
1795 above, to effect the intent of the Parties in the invalid provision. The invalidity of such  
1796 clause, provision, subsection, section, or article shall not affect any of the remaining  
1797 provisions hereof, and this Agreement shall be construed and enforced as if such invalid  
1798 portion did not exist. }

1799 **Section 15.9 Jurisdiction**

1800 This Agreement shall be interpreted and governed under the laws of the State of California without  
1801 reference to California conflicts of law principles. Any lawsuits between the Parties arising out of this  
1802 Agreement shall be brought and concluded in the courts of Tulare County in the State of California,  
1803 which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that  
1804 this Agreement is made in and will be performed in Tulare County.

1805 **Section 15.10 Assurances of Non-Discrimination**

1806 Contractor shall not discriminate in employment or in the provision of services on the basis of any  
1807 characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

1808 It is recognized that both the Contractor and the County have the responsibility to protect County  
1809 employees, Customers, and clients from unlawful activities, including discrimination and sexual  
1810 harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its  
1811 employees regarding discrimination and sexual harassment issues, and to promptly and appropriately  
1812 investigate any allegations that any of its employees may have engaged in improper discrimination or  
1813 harassment activities. The County, in its sole discretion, has the right to require Contractor to replace  
1814 any employee who provides services of any kind to County pursuant to this Agreement with other  
1815 employees where County is concerned that its employees or clients may have been or may be the  
1816 subjects of discrimination or harassment by such employees. The right to require replacement of  
1817 employees as aforesaid shall not preclude County from terminating this Agreement with or without  
1818 cause as provided for herein.

1819 **Section 15.11 Conflict of Interest**

1820 A. Contractor agrees to, at all times during the performance of this Agreement, comply with the  
1821 law of the State of California regarding conflicts of interests and appearance of conflicts of  
1822 interests, including, but not limited to Government Code Section 1090 et seq., and the Political  
1823 Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant  
1824 thereto by the California Fair Political Practices Commission. The statutes, regulations and laws  
1825 previously referenced include, but are not limited to, prohibitions against any public officer or  
1826 employee from making any decision on behalf of COUNTY in which such officer or employee has

1827 a direct or indirect financial interest. A violation can occur if the public officer, employee or  
1828 consultant/contractor participates in or influences any COUNTY decision which has the potential  
1829 to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR  
1830 has an interest, with certain narrow exceptions.

1831 B. Contractor agrees that if any facts come to its attention which raise any questions as to the  
1832 applicability of conflicts of interests laws, it will immediately inform the COUNTY designated  
1833 representative and provide all information needed for resolution of this question.

1834 **Section 15.12: Compliance with Applicable Laws**

1835 Contractor acknowledges that it is responsible for compliance during the entire Term of this Agreement  
1836 with all Applicable Laws including, without limitation, laws related to handling of Excluded Waste.

1837 **Section 15.13: Waivers**

1838 The failure of either party to insist on strict compliance with any provision of this Agreement shall not be  
1839 considered a waiver of any right to do so, whether for that breach or any subsequent breach. The  
1840 acceptance by either party of either performance or payment shall not be considered to be a waiver of  
1841 any preceding breach of the Agreement by the other party.

1842 **Section 15.14: Entire Agreement**

1843 This Agreement represents the entire agreement between Contractor and County as to its subject  
1844 matter and no prior oral or written understanding shall be of any force or effect. The recitals and the  
1845 exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement. No part  
1846 of this Agreement may be modified without the written consent of both parties. Unless specifically set  
1847 forth, the parties to this Agreement do not intend to provide any other party with any benefit or  
1848 enforceable legal or equitable right or remedy.

1849

1850

1851 **THE PARTIES**, having read and considered the above provisions, indicate their agreement by their  
1852 authorized signatures below.

1853 **COUNTY OF TULARE**

1854 Date:      BY     

1855 Chairman, Board of Supervisors

1856 ATTEST: JEAN M. ROUSSEAU  
1857 County Administrative Officer/Clerk of the Board  
1858 of Supervisors of the County of Tulare

1859  
1860  
1861 By                       
1862 Deputy Clerk

1863 **CONTRACTOR**

1864 Date:      By     

1865 TITLE                     

1866 Date:      By     

1867 TITLE                     

1868 Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the  
1869 president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the  
1870 contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

1871

1872 Approved as to Form  
1873 County Counsel

1874  
1875 By                       
1876 Deputy

1877  
1878 Date             
1879

## Exhibit A Definitions

1880 For purposes of this Agreement, unless a different meaning is clearly required, the following words and  
1881 phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be  
1882 capitalized throughout this Agreement:

1883 **"AB 939"** means the California Integrated Waste Management Act of 1989 (Division 30 of the California  
1884 Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented,  
1885 superseded, and replaced from time to time.

1886 **"AB 341"** means the Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 modifying Division  
1887 30 of the California Public Resources Code), also commonly referred to as "AB 341," as amended,  
1888 supplemented, superseded, and replaced from time to time.

1889 **"AB 1826"** means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying  
1890 Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as  
1891 amended, supplemented, superseded, and replaced from time to time.

1892 **"Affiliate(s)"** means any person, corporation or other entity directly or indirectly controlling or  
1893 controlled by another person, corporation or other entity, or under direct or indirect common  
1894 management or control with such person, corporation or other entity. As between any two (2) or more  
1895 persons or entities, when ten percent (10%) of one is owned, managed, or controlled by another, they  
1896 are hereunder Affiliates of one another.

1897 **"Agreement"** means this Franchise Agreement between the County and the Contractor.

1898 **"Agreement Date"** means the date of approval of this Solid Waste Management Agreement by the  
1899 County.

1900 **"Agreement Year"** means a twelve-month period beginning on July 1 of each year and ending on the  
1901 following June 30 each year during the Term of this Agreement, provided however, that the first  
1902 Agreement Year will commence on the Agreement Date and the last Agreement Year will end on the  
1903 date of termination of this Agreement.

1904 **"Annual Percentage Change"** means the average of the percentage monthly changes in the value of an  
1905 index for the 12-month period ending December of the then-current Rate Period minus the average of  
1906 the percentage monthly changes in the index value for the 12-month period ending December of the  
1907 most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest  
1908 thousandth (1,000th).

1909 For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate Period  
1910 2, the Annual Percentage Change in CPI shall be calculated as follows:  $[(\text{Average CPI for January 2015 through December 2015}) - (\text{Average CPI for January 2014 through December 2014})] / (\text{Average CPI for January 2014 through December 2014})$ .

1913 **"Applicable Law"** means any law, rule, regulation, requirement, guideline, permit, action,  
1914 determination, or order of any Governmental Body having jurisdiction, applicable from time to time to  
1915 the Collection Services; the Operating Assets; the siting, design, acquisition, permitting, construction,  
1916 equipping, financing, Ownership, possession, shakedown, testing, operation, or maintenance of any of  
1917 the Operating Assets; or any other transaction or matter contemplated hereby (including any of the  
1918 foregoing which concern health, safety, fire, governmental protection, accommodation of the disabled,

## Exhibit A Definitions

1919 labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of  
1920 minimum wages, the payment of per-ton charges on solid waste facilities imposed by a governmental  
1921 entity other than the County, and further including the County Code and the County Integrated Waste  
1922 Management Plan and the County's SRRE).

1923 **"Approved Mixed Waste Processing Facility"** Means the Carousel Recycling, Inc located at 1316 J Street  
1924 Wasco, CA 93280.

1925 **"Approved Organic Materials Processing Facility"** Means the Harvest Power California, LLC located at  
1926 24478 Road 140 Tulare, CA 93274.

1927 **"Approved Recyclable Materials Processing Facility"** Means the Carousel Recycling, Inc located at 1316  
1928 J Street Wasco, CA 93280.

1929 **"Base Rate"** means the Rate charged for basic Collection Service of Solid Waste including Recyclable  
1930 Materials in a specified area, as authorized by the County, absent any discounts offered by the  
1931 Contractor as specified in Appendix 2.

1932 **"Bureau of Labor Statistics (BLS)"** shall mean the U.S. Department of Labor, Bureau of Labor Statistics or  
1933 its successor agency.

1934 **"Bin"** means a Container with capacity of approximately one (1) to six (6) cubic yards, with a hinged lid,  
1935 and with wheels (where appropriate), that is serviced by a front end-loading collection Vehicle.

1936 **"Bulky Waste"** means large and small household appliances, furniture, tires, carpets, mattresses, and  
1937 similar large items of Solid Waste which cannot be contained within a standard Container, or which does  
1938 not fit in or causes harm to collection Vehicles.

1939 **"Business Days"** mean days during which the County offices are open to do business with the public.

1940 **"CalRecycle"** means the Department of Resources Recycling and Recovery, and any Governmental Body  
1941 which succeeds to its duties and powers under Applicable Law.

1942 **"Cart"** means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-  
1943 automated Collection vehicle. A Cart has capacity of 96 gallons (or similar volumes).

1944 **"CEQA"** means the California Environmental Quality Act codified at California Public Resources Code  
1945 Section 21000 et seq., as amended or superseded, and the regulations promulgated thereunder.

1946 **"Change in Law"** means any of the following events or conditions which has a material and adverse  
1947 effect on the performance by the Contractor of the Collection Services (except for payment obligations):

- 1948       • The enactment, adoption, promulgation, issuance, modification, or written change in  
1949       administrative or judicial interpretation on or after the Agreement Date of any Applicable Law;  
1950       or,  
1951       • The order or judgment of any Governmental Body, on or after the Agreement Date. to the  
1952       extent such order or judgment is not the result of willful or negligent action, error or omission or  
1953       lack of reasonable diligence of the County or of the Contractor, whichever is asserting the

## Exhibit A Definitions

1954 occurrence of a Change in Law provided, however, that the contesting in good faith or the  
1955 failure in good faith to contest any such order or judgment shall not constitute or be construed  
1956 as such a willful or negligent action, error or omission or lack of reasonable diligence.

1957 **"Collect" or "Collection" (or any variation thereof)** means the act of collecting Solid Waste and  
1958 Recyclable Materials at the place of generation in Franchise Service Area.

1959 **"Collection Premises"** means the Residential Premises, Non-Residential Premises, or both for which the  
1960 Contractor is authorized to provide Collection Services.

1961 **"Collection Services"** means all of the duties and obligations of the Contractor hereunder.

1962 **"Commercial"** shall mean of, from or pertaining to non-Residential Premises where business activity is  
1963 conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and  
1964 industrial operations, but excluding businesses conducted upon Residential property, which are  
1965 permitted under applicable zoning regulations and are not the primary use of the property. For the  
1966 purposes of this Agreement, Commercial also includes Multiple-Unit Dwellings with five (5) or more  
1967 units.

1968 **"Compactor"** means a mechanical apparatus that compresses materials together with the Container  
1969 that holds the compressed materials or the Container that holds the compressed materials if it is  
1970 detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic  
1971 yard Bin Compactors serviced by front-end loader Collection Vehicles and ten (10) to fifty (50) cubic yard  
1972 Drop Box Compactors serviced by roll-off Collection Vehicles.

1973 **"Construction and Demolition Debris (C&D)"** includes discarded building materials, packaging, debris,  
1974 and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any  
1975 pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded  
1976 Waste.

1977 **"Consumer Price Index (CPI)"** shall mean the All Urban Consumers Index (CPI-U) compiled and published  
1978 by the BLS, using the following parameters:

- 1979 • Area – Los Angeles-Riverside-Orange County, CA
- 1980 • Item – All Items
- 1981 • Base Period – 1982-1984=100
- 1982 • Not seasonally adjusted
- 1983 • Periodicity – Monthly
- 1984 • Series Identification Number – CUURA421SAO

1985 **"Container(s)"** mean Bins, Carts, Compactors, and Drop Boxes.

1986 **"Contractor"** means {Insert Company Name} organized and operating under the laws of the State and its  
1987 officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and  
1988 Subcontractors.

1989 **"County"** means the County of Tulare, California, a political subdivision of the State, acting through its  
1990 Board of Supervisors.

## Exhibit A Definitions

- 1991 **"County Code"** means the County's Codified Ordinances, as the same may be amended, supplemented,  
1992 or modified from time to time.
- 1993 **"County Contract Manager"** means the County Solid Waste Director or their designated representative  
1994 who is responsible for the administrative management of this Agreement.
- 1995 **"County Fees"** shall mean those fees described in Section 3.4 of this Agreement.
- 1996 **"Customer"** means Person who subscribes for service with Contractor.
- 1997 **"Customer Type"** means the Customer's sector category including, but not limited to, Residential,  
1998 Commercial and County Facilities.
- 1999 **"Designated Collection Location"** refers to the location, at each Collection Premises where Containers  
2000 of Solid Waste and Recyclable Materials are customarily placed for collection, all in accordance with  
2001 Section 4.5 herein.
- 2002 **"Designated Disposal Facility"** means the County-owned landfill(s) designated by the County Contract  
2003 Manager to which the Contractor shall transport Solid Waste and Residual Waste.
- 2004 **"Dispose" or "Disposal" (or any variation thereof)** means the final disposition of Solid Waste at a  
2005 Disposal site.
- 2006 **"Drop Box"** means an open-top Container with a capacity of ten (10) to fifty (50) cubic yards that is  
2007 serviced by a roll-off Collection Vehicle.
- 2008 **"Electronic Waste (E-Waste)"** means discarded electronic equipment including, but not limited to,  
2009 televisions, computer monitors, central processing units (CPUs), laptop computers, computer  
2010 peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile  
2011 machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular  
2012 telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous  
2013 Waste and thus require special handling, Processing, or Disposal.
- 2014 **"Emergency Services"** means Solid Waste Collection Services, other than those specified under this  
2015 grant of Agreement, provided during or as a result of an emergency which threatens the public health or  
2016 safety, as determined by the County Contract Manager.
- 2017 **"Employment Cost Index (ECI)"** shall mean the index, compiled and published by the BLS with the  
2018 following parameters:
- 2019       • Compensation – Total Compensation  
2020       • Ownership – Private Industry  
2021       • Periodicity – Index Number  
2022       • Group – 210 - Service-Providing Industries  
2023       • Seasonally Adjusted
- 2024 **"Event of Default"** means only the events described in Sections 7.4 and 12.1.A.

## Exhibit A Definitions

2025 **"Excluded Waste"** means Hazardous Waste, Infectious Waste, U-Waste, E-Waste, volatile, corrosive,  
2026 biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor  
2027 reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law,  
2028 regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of  
2029 in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to  
2030 human health or the environment, cause a nuisance or otherwise create or expose Contractor or County  
2031 to potential liability; but not including de minimis volumes or concentrations of waste of a type and  
2032 amount normally found in Residential Solid Waste after implementation of programs for the safe  
2033 Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500  
2034 and 41802 of the California Public Resources Code.

2035 **"Food Waste"** means any Residentially- or Commercially-generated discards resulting from food  
2036 preparation or left over after consumption which may or may not be separated by the Generator.

2037 **"Franchise Fee"** means the fee paid by Contractor to the County for the privilege to hold the rights  
2038 granted by this Agreement.

2039 **"Franchise Service Area"** means the specific geographic areas identified in Exhibit F to this agreement  
2040 which are numbered A through J, for which franchises have been issued to different companies. This  
2041 Franchise Agreement is exclusive to Franchise Service Area J.

2042 **"Franchised Materials"** means Solid Waste, Organic Materials, and/or Recyclable Materials. Franchised  
2043 Materials specifically excludes those materials identified in Section 1.1.A of this Agreement.

2044 **"Fuel Index"** shall mean the Producer Price Index-Commodities for #2 Diesel Fuel compiled and  
2045 published by the BLS, using the following parameters:

- 2046 • Not Seasonally Adjusted
- 2047 • Group – Fuels and Related Products and Power
- 2048 • Item – #2 Diesel Fuel
- 2049 • Base Date – 8200

2050 **"Generator"** means any person that generates, produces, or discards Solid Waste and Recyclable  
2051 Materials.

2052 **"Governmental Body"** means any federal, state, county, or regional legislative, executive, judicial or  
2053 other governmental board, agency, authority, commission, administration, court or other body, or any  
2054 officer thereof acting within the scope of his or her authority.

2055 **"Governmental Fee"** shall mean any fee or surcharge imposed by a governmental entity including  
2056 without limitation the State, County, or Local Enforcement Agency. Governmental Fees are a  
2057 component of the Tipping Fee.

2058 **"Greenwaste"** means grass, lawn clippings, shrubs, plants, weeds, small branches and other forms of  
2059 organic materials generated from landscapes or gardens, separated from other Solid Waste.

2060 **"Gross Receipts"** shall mean total cash receipts collected from Customers by the Contractor for the  
2061 provision of services pursuant to this Agreement, without any deductions. Gross Receipts do not include  
2062 revenues from the sale of Recyclable Materials.



## Exhibit A Definitions

2063 **"Hazardous Waste"** means:

2064 A. Any waste which by reason of its quality, concentration, composition, or physical, chemical, or  
2065 infectious characteristics may do either of the following: cause, or significantly contribute to, an  
2066 increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or  
2067 pose a substantial threat or potential hazard to human health or the environment when  
2068 improperly treated, stored, transported, or disposed of, or otherwise mismanaged, or any waste  
2069 which is defined or regulated as a Hazardous Waste, toxic substance, hazardous chemical  
2070 substance or mixture, or asbestos under Applicable Law, as amended from time to time, including,  
2071 but not limited to:

2072 1. The Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts  
2073 260-281.

2074 2. The Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations  
2075 contained in 40 CFR Parts 761-766.

2076 3. The California Health & Safety Code Section 25117 (west 1992 & Supp. 1998).

2077 4. The California Public Resources Code Section 40141 (West 1996).

2078 5. Future additional or substitute federal, state or local laws pertaining to the identification,  
2079 treatment, storage, or disposal of toxic substances or Hazardous Wastes.

2080 B. Radioactive materials which are source, special nuclear, or by-product material as defined by the  
2081 Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR  
2082 Part 40.

2083 **"Household Hazardous Waste"** means waste materials determined by CalRecycle, the Department of  
2084 Toxic Substances Control, the State Water Resources Control Board, or the Air Resources Board to be:

2085 A. Of a nature that they must be listed as hazardous in State statutes and regulations;

2086 B. Toxic/ignitable/corrosive/reactive; and,

2087 C. Carcinogenic/mutagenic/teratogenic

2088 which are discarded from Residential Premises as opposed to businesses.

2089 **"Infectious Waste"** means biomedical waste generated at hospitals, public or private medical clinics,  
2090 dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary  
2091 facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5  
2092 as may be amended from time to time.

2093 **"Insurance Requirement"** means any rule, regulation, code, or requirement issued by any fire insurance  
2094 rating bureau or anybody having similar functions or by any insurance company which has issued a  
2095 policy with respect to the Operating Assets or the Collection Services.

## **Exhibit A Definitions**

- 2096 **"Legal Proceeding"** means every action, suit, litigation, arbitration, administrative proceeding, and other  
2097 legal or equitable proceeding having a bearing upon this Agreement.
- 2098 **"Line of Business"** means any of the following services provided by the Contractor: Residential Solid  
2099 Waste, Residential Recycling, Commercial Solid Waste, Commercial Recycling,
- 2100 **"Liquid Waste"** means watered or dewatered sewage or sludge.
- 2101 **"Liquidated Damages"** means the amounts due by Contractor for failure to meet specific quantifiable  
2102 standards of performance as described in Section 12.2.
- 2103 **"Medical Waste"** means waste capable of producing an infection or pertaining to or characterized by  
2104 the presence of pathogens, including without limitation certain wastes generated by medical  
2105 practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians,  
2106 veterinary hospitals and medical testing labs, and waste which includes animal wastes or parts from  
2107 slaughterhouses or rendering plants.
- 2108 **"Multiple-Unit Dwelling" or "Multi-Family"** means any building in the unincorporated areas of the  
2109 County, other than a Single-Unit Dwelling, lawfully occupied for human shelter.
- 2110 **"Operating Assets"** means all real and personal property of all kind, which is owned, leased, managed,  
2111 or operated by or under contract to the Contractor for providing the Collection Services, including  
2112 without limitation the Containers, Vehicles, Transfer stations, maintenance and storage facilities,  
2113 administrative facilities, and other equipment, machinery, parts, supplies and tools.
- 2114 **"Organic Materials"** means Greenwaste and Food Waste which are specifically accepted at the  
2115 Approved Organic Materials Processing Facility. No Discarded Material shall be considered to be  
2116 Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.
- 2117 **"Owner"** means the person holding the legal title or having a right to possession of the real property  
2118 constituting the Collection Premises to which Solid Waste and Recyclable Materials Collection Service is  
2119 provided or required to be provided hereunder.
- 2120 **"Party or Parties"** refers to the County and Contractor, individually or together.
- 2121 **"Pass-Through Cost"** means those County Fees, Tipping Fees, Governmental Fees, and other costs, as  
2122 specifically identified in Exhibit B, that Contractor may include in the determination of Contractor's  
2123 Compensation, however, Contractor may not mark-up or otherwise add to the direct costs of such Pass  
2124 Through Costs for their profit, corporate overhead allocation, or any other purpose.
- 2125 **"Person(s)"** means any individual, firm, association, organization, partnership, corporation, trust, joint  
2126 venture, or public entity.
- 2127 **"Premises"** means any land or building in the Franchise Service Area where Solid Waste and Recyclable  
2128 Materials are generated or accumulated.
- 2129 **"Process" or "Processing"** refers to the removal of Recyclable Materials from Solid Waste prior to the  
2130 delivery of such Solid Waste to the Designated Disposal Facility.

## Exhibit A Definitions

- 2131 **"Processing Facility"** refers to any facility that removes Recyclable Materials from Solid Waste and  
2132 Recyclable Materials prior to the delivery of Solid Waste and Recyclable Materials to the County Disposal  
2133 System.
- 2134 **"Rate"** means the maximum amount, expressed as a dollar unit, approved by the County that the  
2135 Contractor may bill a Customer for providing services under this Agreement. A Rate has been  
2136 established for each individual Service Level and the initial Rates for Rate Period One are presented in  
2137 Exhibit C. The Rates approved by County are the maximum Rate that Contractor may charge a Customer  
2138 and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate  
2139 approved by the County.
- 2140 **"Rate Adjustment Factor"** shall mean the amount, expressed as a percentage, by which each of the  
2141 operating, disposal, processing, and fee components of each Rate are adjusted. The Rate Adjustment  
2142 Factor for each component shall be calculated separately.
- 2143 **"Rate Period"** means a twelve (12) month period, commencing July 1 and concluding June 30, excepting  
2144 Rate Period One.
- 2145 **"Rate Period One"** means the first Rate Period covered by this Agreement. Rate Period One shall begin  
2146 on the effective date of this Agreement and shall end on June 30, 2016.
- 2147 **"Recovered Materials"** means the products, excluding Residual Waste, produced by the Processing of  
2148 Recyclable Materials.
- 2149 **"Recyclable Materials"** means materials that through processing are capable of being returned to the  
2150 economic mainstream, through processing and available markets, in the form of raw material for new,  
2151 reused, or reconstituted products, including newspaper, cardboard, mixed color paper, white paper,  
2152 junk mail, magazines, telephone books, paper bags, cereal and food boxes, egg cartons, plastic bottles  
2153 and containers, plastic milk containers, plastic bags, detergent containers, clear, brown, and green food  
2154 and beverage container glass, cans of aluminum, steel, tin, food cans, empty aerosol cans, pipe tins or  
2155 other materials contained within a load of Recyclable Materials, and may also include any other type of  
2156 recyclable waste material agreed on by the Parties.
- 2157 **"Recycle," "Recycled," or "Recycling"** means the Process of collecting, sorting, cleansing, treating,  
2158 reconstituting, or otherwise Processing materials that are or would otherwise become Solid Waste and  
2159 returning them to the economic mainstream in the form of raw material for new, reused, or  
2160 reconstituted products which meet the quality standards necessary to be used in the marketplace.
- 2161 **"Recycling Plan"** is the Contractor's recycling plan which must be reviewed and approved by the County  
2162 Contract Manager.
- 2163 **"Residential"** shall mean of, from, or pertaining to a Single-Unit Dwelling Premises or Multi-Unit  
2164 Dwelling Premises including Single-Family homes, apartments, condominiums, townhouse complexes,  
2165 mobile home parks, and cooperative apartments.
- 2166 **"Residual Waste"** means any material remaining after the Processing, by any means and to any extent  
2167 of Solid Waste and Recyclable Materials.

## Exhibit A Definitions

- 2168 **"Roll-Off"** means Solid Waste pick-ups using Bulk Containers mounted on rail wheels or similar wheels  
2169 and using special trucking equipment for transporting the Bins and Containers.
- 2170 **"Routing and Collection System"** means the Routing and Collection System for Solid Waste and  
2171 Recyclable Materials which is in effect as of the effective date of this Agreement.
- 2172 **"Scrap Materials"** means any materials which are separated by type of Generator thereof from  
2173 materials which otherwise are discarded or rejected by the Generator as Solid Waste and Recyclable  
2174 Materials and which are sold or donated by the Generator to a private Recycler, scrap dealer, or salvager  
2175 and Recycled. Scrap Materials shall not include any materials which (1) are commingled with Solid Waste  
2176 and Recyclable Materials, or (2) are not commingled with Solid Waste and Recyclable Materials, but  
2177 which are collected by any person other than the Contractor as part of any transaction or arrangement  
2178 involving Solid Waste and Recyclable Materials, irrespective of whether the Generator pays or receives  
2179 consideration in connection with such transaction or arrangement.
- 2180 **"Service Level"** refers to the size of a Customer's Container and the frequency of Collection Services.
- 2181 **"Single-Unit Dwelling"** means a dwelling designed for or occupied exclusively for human shelter by one  
2182 (1) family.
- 2183 **"Solid Waste"** means all garbage, refuse, rubbish, and other materials and substances discarded or  
2184 rejected as being spent, useless, worthless, or in excess to the Generator thereof at the time of such  
2185 discard or rejection and which are normally discarded by or collected from Residential Premises, Non-  
2186 Residential Premises and institutional establishments, which are acceptable at Class III landfills under  
2187 Applicable Law, and which are originally discarded by the first Generator thereof and have not been  
2188 previously Processed. Solid Waste includes Greenwaste and food waste, if not source separated by  
2189 Customers, but does not include Hazardous Waste, Medical Waste, Liquid Waste, Scrap Materials,  
2190 construction and demolition debris, or self-hauled waste. Solid Waste includes only those materials  
2191 which were originally discarded by the first Generator thereof, prior to any Processing at any Collection  
2192 Premises within the County.
- 2193 **"Special Circumstance"** means a circumstance which, when occurring, permits, but does not require the  
2194 Contractor or the County to seek an adjustment in the Rates for Service, and which then requires County  
2195 Contract Manager to review such application and make a recommendation to the County Board of  
2196 Supervisors as to whether the Base Rate should be adjusted up or down, or remain unchanged. The  
2197 continuing need for any and all previously-approved Special Circumstance Rate adjustments shall be  
2198 reviewed at the time of each subsequent Rate adjustment.
- 2199 **"Special Service"** means a level of Solid Waste Collection Service in excess of that offered by the  
2200 Contractor as its basic level of service, at an additional cost to the Customer and may include, but is not  
2201 limited to, backyard pickup, additional Containers, or more frequent collections. "Special Service" does  
2202 not mean the reasonable accommodation of an individual with a disability. The charge for any Special  
2203 Service shall be reviewed by the County Contract Manager.
- 2204 **"SRRE"** means the County's Source Reduction and Recycling Element approved by CalRecycle, as the  
2205 element may be amended from time to time, all in accordance with AB 939 and regulations related  
2206 thereto, as they may be amended from time to time.

## Exhibit A Definitions

2207 **"Subcontractor"** means every person (other than employees of the Contractor) employed or engaged by  
2208 the Contractor or any person directly or indirectly in privity with the Contractor (including every  
2209 Subcontractor of whatever tier) for any portion of the Collection Services, whether for the furnishing of  
2210 labor, materials, equipment, supplies, services, or otherwise.

2211 **"Term"** means the Term of this Agreement, including extension periods if granted, as provided for in  
2212 Section 3.2.

2213 **"Tipping Fee"** shall mean the Rate or Tipping Fee charged for each Ton or unit of material delivered to  
2214 the Designated Disposal Facility or the Approved Recyclable Materials Processing Facility. The Parties  
2215 acknowledge that the timing of changes to the Tipping Fees that are not owned or operated by  
2216 Contractor or their subcontractor may not align with the review and adjustment of Rates under this  
2217 Agreement. In the event that the Contractor begins to pay new Tipping Fees at another facility approved  
2218 by the County, other than one owned and operated by Contractor or their Subcontractor, prior to the  
2219 adjustment of Rates under this Agreement, the adjustment to the Rate Adjustment Factor shall consider  
2220 that period. Alternatively, the County reserves the right to adjust Rates at any time during the year in  
2221 order to address changes in Tipping Fees alone without adjusting any other component of Rates. The  
2222 "current approved" Tipping Fees shall be the Tipping Fees in place on March 1 immediately preceding  
2223 the submission of the Rate Application. In addition, if a change in the Tipping Fee is anticipated or  
2224 expected subsequent to the February immediately preceding the date of the rate adjustment through  
2225 the subsequent Rate Year, that change shall be considered on a pro rata basis.

2226 **"Ton" or "Tonnage"** means a unit of measure for weight equivalent to two thousand (2,000) standard  
2227 pounds where each pound contains sixteen (16) ounces.

2228 **"Total Contractor's Compensation"** shall mean the total amount to be used as a basis for determining  
2229 the Rate Adjustment Factor. The Total Contractor's Compensation does not reflect or in any way  
2230 guarantee the Gross Receipts that are to be generated by Rates or retained by the Contractor.

2231 **"Transfer"** means the act of transferring the materials Collected by Contractor in their route vehicles  
2232 into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such  
2233 materials.

2234 **"Transport" or "Transportation" (or any variation thereof)** means the act of conveyance from one place  
2235 to another or state of being Transported.

2236 **"Uncontrollable Circumstance"** means one (1) or more of the following types of specified acts, events,  
2237 or conditions, whether affecting the Operating Assets, the approved Processing Facility, the Designated  
2238 Disposal Facility, the County, or the Contractor, and are beyond Contractor's reasonable control, that  
2239 materially and adversely affects the ability of the Contractor to perform any obligation under the  
2240 Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable  
2241 control, and is not also the result of the willful or negligent act, error, or omission or failure to exercise  
2242 reasonable diligence on the part of the Contractor, provided however, that the contesting in good faith  
2243 or the failure in good faith to contest such action or inaction shall not be construed as willful or  
2244 negligent action or a lack of reasonable diligence of the Contractor:

2245 A. An act of God (but not including reasonably anticipated weather conditions for the County),  
2246 hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence,

**Exhibit A  
Definitions**

2247 acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance or  
2248 pandemic, or the threat of same.

2249 B. A Change in Law (as defined herein).

2250 C. Preemption of materials or services by a Governmental Body in connection with a public  
2251 emergency or any condemnation or other taking by eminent domain of any portion of the  
2252 Operating Assets.

2253 D. The first fifteen (15) days of a strike, work stoppage, or other labor dispute or disturbance  
2254 occurring with respect to any activity performed or to be performed by the Contractor or any of  
2255 the Contractor's Subcontractors in connection with the Operating Assets or the Collection  
2256 Services, provided the Contractor has implemented the contingency plan in accordance with  
2257 Section 13.2.C.

2258 E. Strikes, labor unrest or labor disturbances not related to the Operating Assets or the Collection  
2259 Services or not directed at Contractor.

2260 F. Embargoes or delays in transportation.

2261 It is specifically understood that only the acts or conditions specified above shall constitute  
2262 Uncontrollable Circumstances. Without limiting the generality of the foregoing, the Parties acknowledge  
2263 that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

2264 1. General economic conditions, interest or inflation rates, currency fluctuations or changes in the  
2265 cost or availability of fuel, commodities, supplies, or equipment;

2266 2. Changes in the financial condition of the Contractor, or any of its Affiliates, or any Subcontractor  
2267 affecting their ability to perform their obligations;

2268 3. The consequences of errors, neglect, or omission by the Contractor, any of its Affiliates, or any  
2269 Subcontractor of any tier in the performance of the Collection Services;

2270 4. The failure of the Contractor to secure patents or licenses in connection with the technology  
2271 necessary to perform its obligations hereunder;

2272 5. Union work rules, requirements, or demands which have the effect of increasing the number of  
2273 employees employed in connection with the Operating Assets, or otherwise increase the cost to  
2274 the Contractor of operating and maintaining the Operating Assets or providing the Collection  
2275 Services;

2276 6. Any strikes, work stoppages, or other labor disputes or disturbances occurring with respect to any  
2277 activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors  
2278 in connection with the Operating Assets or the Collection Services and which last beyond fifteen  
2279 (15) days;

2280 7. Any failure of any Subcontractor to furnish labor, materials, service, or equipment for any reason  
2281 within its reasonable control;

**Exhibit A  
Definitions**

- 2282 8. Vehicle or equipment failure;
- 2283 9. Any impact of prevailing wage law, customs, or practices on the Contractor's construction or  
2284 operating costs; or,
- 2285 "**Universal Waste (U-Waste)**" means all wastes as defined by Title 22, Subsections 66273.1 through  
2286 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries,  
2287 fluorescent light bulbs, mercury switches, and E-Waste.
- 2288 "**Vehicle**" means any truck, rolling stock, or other Vehicle used by the Contractor in connection with  
2289 Collection Services.

## **EXHIBIT B RATE ADJUSTMENT METHODOLOGY**

### **2290 General**

2291 Subject to the terms herein, the Contractor shall be entitled to an annual adjustment of all Rates. Each  
2292 Rate, excluding special charges, includes an "Operating Component", "Disposal Component",  
2293 "Processing Component", and "Fee Component", which are annually adjusted.

2294 Contractor shall submit its calculation of a Rate adjustment to the County Contract Manager on or  
2295 before April 1 of each Rate Period. Contractor's Rate calculations shall include all supporting schedules,  
2296 documentation of Disposal or Processing Facility Tipping Fee changes, documentation of changes in  
2297 Governmental Fees and County Fees, and any other documentation or evidence determined by the  
2298 County Contract Manager to be reasonably necessary to ensure that the calculation of Rate adjustments  
2299 has been performed in strict conformance to the requirements of this Exhibit B.

2300 The County Board of Supervisors shall make a good faith effort to approve Rates by June 1 of each year,  
2301 and such Rates shall be effective on each subsequent July 1. If Rates are not effective by July 1 due to a  
2302 delay caused solely by the County, County shall allow Contractor to retroactively bill Customers for the  
2303 amount of the Rate increase for any period of said delay that is solely caused by the County. If Rates are  
2304 not effective by July 1 as a result of Contractor's delay in submitting the Rate calculations in a complete  
2305 and accurate form, then prior Rates remain in effect until such adjustment is made.

### **2306 Multi-Index Rate Adjustment**

2307 The multi-index Rate adjustment methodology involves adjusting: (1) the operating component of Rates  
2308 for the current Rate Period by the CPI, ECI, and Fuel Index; and, (2) the disposal, processing, and fee  
2309 components of the Rates by the actual changes to those components, to determine the Rates for the  
2310 coming Rate Period. The intent of performing the multi-index-based adjustment is to allow Contractor's  
2311 Compensation to be adjusted throughout the Term of this Agreement (giving consideration to those  
2312 specific cost categories of "fuel" and "labor" that may be more volatile than the CPI) using simple,  
2313 readily available surrogates for the actual changes in Contractor's costs for providing service.

2314 If the ECI, CPI, or Fuel Index is/are discontinued or revised during the Term by the BLS, such other  
2315 government index or computation with which it is replaced shall be used in order to obtain substantially  
2316 the same result as would be obtained if said index had not been discontinued or revised.

2317 As of the Effective Date of this Agreement, the posted disposal rate at the Designated Disposal Facility is  
2318 \$34.00 per ton, but that the County has offered a discounted disposal rate to certain Contractors. In  
2319 order to provide parity between all Collection Contractors, notwithstanding any provision herein to the  
2320 contrary, the calculation of future annual adjustments to the disposal component will not consider (i) for  
2321 those Contractors with a discounted disposal rate, any rate change at the County Disposal Facility that  
2322 results in a disposal rate for those Contractors of less than \$34.00 per ton, and (ii) any disposal rate  
2323 discount below \$34.00 per ton offered by the County to any Contractor in the future.

### **2324 Calculation**

2325 Contractor shall calculate the adjustment to its Rates using the following methodology:

2326 **Step 1:** Calculate the "Operating Component Factor" or "OCF". If the OCF is greater than five percent  
2327 (5%), the OCF shall be set equal to five percent (5%).



## EXHIBIT B RATE ADJUSTMENT METHODOLOGY

2328 **Step 1a:** Determine the Labor-Related Factor of the OCF by calculating eighty percent (80%) of  
2329 the Annual Percentage Change in the ECI. The factor shall be rounded to the nearest tenth  
2330 (percent (0.1%).

2331 **Step 1b:** Determine the Fuel Factor of the OCF by calculating the Annual Percentage Change in  
2332 the Fuel Index. The factor shall be rounded to the nearest tenth percent (0.1%).

2333 **Step 1c:** Determine the Other Factor of the OCF by calculating eighty percent (80%) of the  
2334 Annual Percentage Change in the CPI. The factor shall be rounded to the nearest tenth percent  
2335 (0.1%).

2336 **Step 1d:** Determine the OCF, rounded to the nearest tenth percent (0.1%), as follows :

2337  $OCF = (30\% \times \text{Labor-Related Factor calculated in Step 1a above}) + (9\% \times \text{Fuel Factor calculated in}$   
2338  $\text{Step 1b above}) + (61\% \times \text{Other Factor calculated in Step 1c above})$

2339 For example, assuming:

2340 1. Labor-Related Factor = 3% (calculated in Step 1a)

2341 2. Fuel Factor = 17% (calculated in Step 1b)

2342 3. Other Factor = 1% (calculated in Step 1c)

2343 4.  $OCF = (30\% \times 3\%) + (9\% \times 17\%) + (61\% \times 1\%) = 0.0304 = 3.04\%$

2344 5.  $3.04\% < 5.00\%$ , therefore,  $OCF = 3.04\%$

2345 **Step 2:** Calculate the adjusted Operating Component, rounded to the nearest cent, for each Rate as  
2346 follows:

2347  $\text{Adjusted Operating Component} = \text{Then-current Operating Component} \times (1 + OCF)$

2348 For example, assuming:

2349 1. Then-current Operating Component = \$50.00

2350 2.  $OCF = 3.04\%$

2351 3.  $\text{Adjusted Operating Component} = \$50.00 \times (1 + 0.0304) = \$51.52$

2352 **Step 3:** Calculate the adjusted Disposal Component, rounded to the nearest cent, for each Rate to  
2353 reflect any percentage change in the Tipping Fee charge at the approved Disposal Facility. This "step 3"  
2354 shall only be applied to Solid Waste Rates. The adjustment shall be calculated as follows:

2355  $\text{Adjusted Disposal Component} = \text{Then-current Disposal Component} \times [(\text{Current Approved}$   
2356  $\text{Disposal Facility Tipping Fee} \times \text{Most Recent 12-month Tonnage} + \text{Interim Tipping Fee Increment}$   
2357  $\times \text{Actual Tonnage at Interim Tipping Fee}) / (\text{Prior Approved Disposal Facility Tipping Fee} \times \text{Prior}$   
2358  $\text{12-month Tonnage})]$

2359 For example, assuming:

2360 1. Then-current Disposal Component = \$20.00

2361 2. Current Approved Disposal Facility Tipping Fee = \$50.00 per Ton

2362 3. Most Recent 12-month Tonnage = 1,050

2363 4. Interim Tipping Fee Increment = \$3.75

## EXHIBIT B RATE ADJUSTMENT METHODOLOGY

2364 5. Actual Tonnage at Interim Tipping Fee = 525  
2365 6. Prior Approved Disposal Facility Tipping Fee = \$46.25 per Ton  
2366 7. Prior 12-month Tonnage = 1,000  
2367 Adjusted Disposal Component =  $\$20.00 \times [(\$50.00 \times 1,050 + \$3.75 \times 525) / (\$46.25 \times 1,000)] =$   
2368 \$23.55

2369 **Step 4:** Calculate the adjusted Processing Component, rounded to the nearest cent, for each Rate to  
2370 reflect any percentage change in the Tipping Fee charge at an approved Processing Facility. This "step  
2371 4" shall not be applied to Solid Waste Rates. The processing component Rate Adjustment Factor shall  
2372 not exceed the Annual Percentage Change in CPI for any facility owned and operated by Contractor or  
2373 their Subcontractor. The adjustment shall be calculated as follows:

2374 Adjusted Processing Component = Then-current Processing Component x [(Current Approved  
2375 Processing Facility Tipping Fee x Most Recent 12-month Tonnage + Interim Tipping Fee  
2376 Increment x Actual Tonnage at Interim Tipping Fee) / (Prior Approved Processing Facility Tipping  
2377 Fee x Prior 12-month Tonnage)]

2378 For example, assuming:

2379 1. Then-current Processing Component = \$2.00  
2380 2. Current Approved Processing Facility Tipping Fee = \$16.00 per Ton  
2381 3. Most Recent 12-month Tonnage = 900  
2382 4. Interim Tipping Fee Increment = \$1.00  
2383 5. Actual Tonnage at Interim Tipping Fee = 500  
2384 6. Prior Approved Processing Facility Tipping Fee = \$15.00 per Ton  
2385 7. Prior 12-month Tonnage = 1,000  
2386 Adjusted Processing Component =  $\$2.00 \times [(\$16.00 \times 900 + \$1.00 \times 500) / (\$15.00 \times 1,000)] =$   
2387 \$1.99

2388 **Step 5:** Calculate the adjusted Fee Component, rounded to the nearest cent, for each Rate. The adjusted  
2389 Fee Component of each Rate shall equal the then current cumulative County Fee percentage multiplied  
2390 by the Rate resulting from all above changes.

2391 **Step 6:** Calculate the adjusted value for each Rate charged under this Agreement. Adjusted Rates shall  
2392 be calculated as follows:

2393 Adjusted Rate = Adjusted Operating Component + (Adjusted Disposal Component OR Adjusted  
2394 Processing Component) + Adjusted Fee Component

2395 For example, assuming:

2396 1. The Rate being adjusted is a Solid Waste Collection Rate  
2397 2. Adjusted Operating Component = \$51.52 (as calculated in Step 2)  
2398 3. Adjusted Disposal Component = \$23.55 (as calculated in Step 3)  
2399 4. Adjusted Fee Component = \$3.13 (as calculated in Step 5 assuming a 4% County Fee  
2400 percentage)  
2401 5. Adjusted Rate =  $\$51.52 + \$23.55 + \$3.13 = \$78.20$

## **EXHIBIT D REPORTING REQUIREMENTS**

2402 Records shall be maintained in forms and by methods that facilitate flexible use of data contained in  
2403 them to structure reports, as needed. Reports are intended to compile recorded data into useful forms  
2404 of information that can be used to, among other things:

- 2405 1. Determine and set Rates and evaluate the financial efficacy of operations.
- 2406 2. Evaluate past and expected progress towards achieving the Contractor's Diversion goals and  
2407 objectives.
- 2408 3. Provide concise and comprehensive program information and metrics for use in fulfilling  
2409 reporting requirements under the Act.
- 2410 4. Determine needs for adjustment to programs.
- 2411 5. Evaluate Customer service and complaints.

### 2412 **Quarterly Report Content**

2413 Quarterly reports shall be presented by Contractor to show the following information for each month in  
2414 the reported quarter and include a quarterly average. In addition, each quarterly report shall show the  
2415 past four (4) quarters average for data comparison (the first three (3) quarters of the Agreement shall  
2416 only include the available quarterly information).

#### 2417 **1. Tonnage Report**

- 2418 A. Tonnage delivered to each Approved Facility by Customer Type, subtotaling and clearly  
2419 identifying those Tons that are Disposed and those that are Diverted.
- 2420 B. Units of Bulky Items Collected by Customer Type.
- 2421 C. Recyclable Materials Tonnage Marketed (by commodity and including average commodity value  
2422 for each) and Processing Residue Tonnage Disposed.

#### 2423 **2. Customer Report**

- 2424 A. Number of Customers by Customer Type.
- 2425 B. Number of Containers at each Service Level by Customer Type and program. Summarizing the  
2426 total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Drop  
2427 Box and Compactor service by Customer Type. Report should calculate the average volume of  
2428 service received per Single-Family Customer and Commercial Customer.
- 2429 C. Number of Bulky Item Collection events by Customer Type.
- 2430 D. Participation percentage by program and Customer Type where the participation percentage is  
2431 calculated as the number of Customers who have subscribed to or requested service under the  
2432 program relative to the number of Customers of that Customer Type subscribing to Solid Waste  
2433 service. Contractor shall not be required to submit participant Customer names and addresses  
2434 as part of the regular reporting; however, such information shall be provided to the County  
2435 Contract Manager upon request.

## **EXHIBIT D**

### **REPORTING REQUIREMENTS**

2436 **3. County Services Report**

2437 County facility Diversion rate report (i.e., volume of service by Service Type received by each Disposal  
2438 and/or Processing Facility and the percentage of the total Service Levels that are for Diversion services  
2439 relative to the total).

2440 **4. Customer Service Report**

2441 A. Number of Customer calls listed separately by complaints and inquiries (where inquiries include  
2442 requests for Recycling information, Rate information, etc.). For complaints, list the number of  
2443 calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage  
2444 claims, etc.).

2445 B. Number of new service requests for each Customer Type and program.

2446 C. Number of events of Discarded Materials being tagged for non-Collection summarized by the  
2447 reason for tagging (e.g., inclusion of non-Recyclable materials, improper setout, Hazardous  
2448 Waste, etc.).

2449 D. Number of hits and unique visitors to the Contractor's website.

2450 **5. Education and Outreach Report**

2451 A. Provide a status report of Contractor's actual activities completed compared to the annual  
2452 public education plan. For each completed item, document the results including what date the  
2453 activity was performed, how many Customers were targeted or participated, and what methods  
2454 were used to accomplish the task, if different from the plan.

2455 B. Summarize the Recycling opportunity assessments provided to Customers by identifying the  
2456 number of Recycling opportunity assessments conducted each month in the most-recently  
2457 completed quarter, and contact information including address, contact names, and telephone  
2458 number of Persons contacted. Include any Service Level changes resulting from such visits.

2459 C. Dates, times, and group names of meetings and events attended.

2460 **6. Pilot and New Programs Report**

2461 For each pilot and/or new program, provide activity related and narrative reports on goals, milestones,  
2462 and accomplishments. Describe problems encountered, actions taken and any recommendations to  
2463 facilitate progress. Describe vehicles, personnel, and equipment utilized for each program.

2464 **7. Revenue Report**

2465 A. Provide a statement detailing Gross Receipts from all operations conducted or permitted  
2466 pursuant to this Agreement as required by Section 7.8.

2467 B. Maintain a list of Customers that are sixty (60) or more calendar days past due and include the  
2468 following information for each delinquent account: name; service address; contact information;  
2469 number of days the account is delinquent; method(s) the Contractor has used to attempt

## **EXHIBIT D REPORTING REQUIREMENTS**

2470 collection of the bad debt including date of such attempt(s); and, identification, if, and when the  
2471 Contractor plans to or did stop service to a delinquent account.

### 2472 **Annual Report Content**

2473 The annual report shall be the fourth quarterly report plus the following additional information.

#### 2474 **8. Summary Assessment**

2475 Provide a summary assessment of the programs performed under this Agreement from Contractor's  
2476 perspective relative to the financial and physical status of the program. The physical status assessment  
2477 shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in  
2478 meeting all the goals and objectives of this Agreement, particularly the Contractor's Diversion goals.  
2479 Provide recommendations and plans to improve. Highlight significant accomplishments and problems.  
2480 Results shall be compared to other similar size communities served by the Contactor in the State.

#### 2481 **9. Vehicle Inventory**

2482 Provide a listing of all vehicles used in performing services under this Agreement including the license  
2483 plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if  
2484 applicable), and mileage at December 31.

#### 2485 **10. Recyclables Markets**

2486 Contractor shall include a listing of markets for Recyclable Materials and the end use of these materials.  
2487 This type of information is intended to help the County gauge the sustainability of Recycling markets and  
2488 the ultimate Disposal of all types of materials Collected.

#### 2489 **11. Operational Information:**

##### 2490 **A. Routes by Customer Type:**

- 2491 i. Number of routes per day.
- 2492 ii. Types of vehicles.
- 2493 iii. Crew size per route.
- 2494 iv. Number of full time equivalent (FTE) routes.
- 2495 v. Number of accounts and cubic yards scheduled per route.
- 2496 vi. Total route hours per Customer Type per year.
- 2497 vii. Average cost per route.

##### 2498 **B. Personnel:**

- 2499 i. Organizational chart.
- 2500 ii. Job classifications and number of employees (e.g., administrative, Customer service  
2501 representatives, drivers, supervisors, educational staff).
- 2502 iii. Wages by job classification.
- 2503 iv. Number of FTE positions for each job classification.
- 2504 v. Number of hours per job classification per year.

##### 2505 **C. Productivity Statistics:**

## **EXHIBIT D REPORTING REQUIREMENTS**

- 2506 i. Average Number of accounts per route per day by Customer Type.
- 2507 ii. Average number of setouts per route per day by Customer Type.
- 2508 iii. Average Tons per route per day by vehicle type (i.e. side-loader, front-loader, roll-off).
- 2509 iv. Average cubic yards of Collection scheduled per route.

2510 **D. Vehicles:**

- 2511 i. List of collection vehicles including year purchased and mileage.
- 2512 ii. Average age of mobile equipment with oldest and newest.

2513 **E. Operational Changes:**

- 2514 i. Number of routes.
- 2515 ii. Staffing.
- 2516 iii. Supervision.
- 2517 iv. Collection services.

2518 **12. Variance Analysis**

2519 Provide the following variance analysis for each Customer Type. For any variances greater than five  
2520 percent (5%) annually, Contractor shall provide sufficient rationale to support variance:

- 2521 A. Variance analysis comparing current Rate Period to each of the prior Rate Periods of  
2522 Agreement
- 2523 B. Variance analysis comparing current Rate Period to each of the future projected Rate Periods.